

**BURKE COUNTY  
SUBDIVISION ORDINANCE**



**Enacted by the Burke County Board of Commissioners  
on September 15, 1998**

**Amendments**

December 7, 1999	Article VI & Article XI
May 3, 2000	Section 1001 Proposed Development
February 20, 2002	Section 1001 Proposed Development Amended & Section 1002 Added
March 30, 2004	Section 808 & Section 907 Amended
September 7, 2004	Section 600, 700, 900, & 1100 Amended
October 19, 2004	Section 800 Amended
February 16, 2005	Section 705 & 906 Amended
May 17, 2005	Section 800, 1001, & 1002 Amended
January 17, 2006	Article IV & Sections 502, 600, & 1300 Amended
January 17, 2006	Sections 501, 600, 700, 701, 702, 703, 704, 705, 800, 808, 900, 901, 902, 903, 906, & 907 Amended (effective 3/1/2006)
May 15, 2007	Section 503 Added
October 7, 2008	Sections 702.2.C.8, 705.4.C.8 and 807.4 Amended
November 3, 2008	Section 701.3 Amended
January 15, 2013	Section 808.5.A Amended

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**ARTICLE I  
SHORT TITLE**

These regulations shall be known and may be cited as the Subdivision Regulations of Burke County, North Carolina.

**ARTICLE II  
AUTHORITY AND ENACTMENT AND REPEAL CLAUSE**

The Board of Commissioners of Burke County, pursuant to the authority conferred by an act of the General Assembly of the State of North Carolina (General Statutes, Article 18, Part 2 of Chapter 153A), does hereby ordain and enact into law these articles and sections. The Board of Commissioners also repeal Article 200: Subdivision Regulations in the Water Supply Watershed Management and Protection Ordinance adopted January 1, 1994. It is not the intent to fully repeal the Water Supply Watershed Management and Protection Ordinance, only Article 200.

**ARTICLE III  
JURISDICTION**

On and after the date of adoption, these regulations shall govern each and every subdivision of land within Burke County (hereinafter referred to as the "County") and outside the jurisdiction of any incorporated municipality. However, this ordinance may also regulate territory within the subdivision regulation jurisdiction of any municipality whose governing body by resolution requests such regulation; provided, however, that any such municipal governing body may, upon two years written notice, withdrawal its approval of the County Subdivision Regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

**ARTICLE IV  
PURPOSE**

The purpose of this ordinance is to support and guide the proper subdivision of land within the defined jurisdiction of Burke County, as identified in Article III, in order to promote the public health, safety, and general welfare of the County. This ordinance is designed to provide for the orderly development of Burke County; for the coordination of transportation networks and other public facilities and utilities; for the dedication or reservation of rights-of-way or easements for streets and utility purposes; and for the distribution of population and traffic, which shall avoid overcrowding, and which shall create conditions that substantially promote public health, safety, and the general welfare. This ordinance is designed to further facilitate adequate provision for water, sewerage, parks, schools and playgrounds, and also to facilitate the further re-subdivision of larger tracts into smaller parcels of land.

## **ARTICLE V COMPLIANCE**

### **Section 500. Approval of Plats**

A plat shall be prepared, approved and recorded pursuant to this ordinance whenever any subdivision of land occurs within the defined jurisdiction of Burke County. All plats for the subdivision of land shall conform to the requirements of this ordinance and shall be submitted in accordance with the procedures and specifications established herein. No plat of a subdivision of land within the defined jurisdiction of Burke County shall be filed or recorded by the Burke County Register of Deeds until it has been submitted to and given final approval as provided herein, and until such approval is entered on the face of the final plat by the Chairman (or Vice Chairman when serving in the absence of the Chairman) of the Burke County Planning Board. Minor subdivisions may be approved by the Planning Administrator or his designee.

### **Section 501. Permits**

No on-site wastewater septic permits or building permits shall be issued for any construction in any subdivision for which a plat is required to be approved until the final plat has been approved and recorded.

### **Section 502. Selling of Lots**

No lot referenced to or exhibited on any subdivision plat required herein shall be sold or transferred until the final plat for such subdivision has been recorded by the Burke County Register of Deeds. The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the Subdivision Ordinance or recorded with the Register of Deeds, provided the contract complies with the N.C. General Statute Section 153A-334, as amended.

### **Section 503. Development Agreements**

The County may enter into development agreements as set forth in the Burke County Development Agreement Ordinance and G.S. 153A-349.

## **ARTICLE VI DEFINITION OF TERMS**

### **Section 600. Definitions**

For the purpose of this ordinance, certain words or terms used herein shall be defined as follows:

**Subdivision:** A “subdivision” shall include all divisions of a tract or parcel of land into two (2) or more lots, building sites or other divisions, when any one or more of those divisions are created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets, provided however, that the following shall not be included within this definition nor be subject to the regulations prescribed by this ordinance.

1. The combination or recombination of portions or previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County as required by this ordinance.
2. The division of land into parcels greater than ten (10) acres if no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation corridors.
4. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where resultant lots are equal to or exceed the standards of the County as shown in this ordinance.

**Minor Subdivision:** A minor subdivision is defined as any subdivision requiring no variances and consisting of not more than six (6) lots. This definition also includes the intent of a family subdivision.

### **ADDITIONAL DEFINITIONS**

**Abbreviated Subdivision Process:** This subdivision process applies to minor subdivisions. The petitioner(s) for this process only has to follow the final plat procedure.

**All Weather Road:** A road used by vehicular traffic that is either paved with concrete or asphalt, or is gravel. Such road shall be well drained and shall have a minimum base of six inches of gravel.

**Alley:** A strip of land, owned publicly or privately, set primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

**Block:** A parcel of land which is bounded on all sides by public street or roadway.

**Board of Adjustment:** The Burke County Board of Adjustment.

**Building Setback Line:** A line parallel to a street or lot line and extending the full width or length of the lot for a specified distance at all points from the property line, and thus defining an area on which no building or structures, or portions thereof, may be constructed. Covered porches, etc. whether enclosed or not shall be considered as part of the main building and shall not project into the required yard.

**Cluster Subdivision:** A cluster subdivision shall mean any subdivision of land applied for under Section 707 of this ordinance. A cluster subdivision shall permit lots to be reduced below the minimum size and dimension requirements of the subdivision ordinance, provided an amount of common land shall be provided to the owners and residents of the cluster subdivision for open space recreation and preservation, and/or recreational facilities equivalent to the total reduction of lot sizes. The number of lots in a cluster subdivision shall not exceed that permitted in a conventional subdivision.

**County Commissioners:** The Board of Commissioners of Burke County.

**Dedication:** The giving of land by the sub-divider to a public body for a specific purpose or for the general public use and acceptance of the land by the public body.

**Double-Frontage Lot:** A continuous (through) lot which is accessible from both of the streets upon which it fronts.

**Easement:** A grant by the property owner for use by the public, a corporation, or person(s) of a strip of land for specified purposes. The easement should be specified on the deed.

**Front Yard Building Line:** The line established for the minimum width of the lot for a structure located at the building setback line.

**Individual Septic System:** Any on-site wastewater treatment and disposal system serving a single source, connection or dwelling that has been permitted and approved by Burke County Environmental Health or applicable agency of the State of North Carolina. This definition includes the septic tank or any other pretreatment device, supply lines, drainfield, and repair area drainfield.

**Individual Water System:** Any well, spring, stream or other source used to supply a single connection or dwelling.

**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” includes the words “plot” or “parcel”.

**Lot Width:** The distance between side lot lines measured at front yard building line where structure is placed.

**Lot Depth:** The mean horizontal distance between front and rear property lines.

**Official Maps or Plans:** Any maps or plans officially adopted by the Board of Commissioners as a guide for the development of Burke County.

**Planning Administrator:** The Burke County official charged with the responsibility for enforcing this ordinance.

**Planning Board:** The Burke County Planning Board.

**Planned Multi-Family Development:** A planned multi-family development is a group of two (2) or more duplexes, established in a single development tract, having unified design of buildings and coordinated organization of open space and service areas, and developed in accordance with an approved site plan.

**Planned Unit Development:** The planned unit development is a permitted use designed to provide for development incorporating a single type or a variety of residential, commercial and their related uses which are planned and developed as a unit. Such development may consist of individual lots or common building sites. Common land must be an element of the plan related to effecting the long-term value of the entire development.

**Plat:** A map or plan of a parcel of land which is to be or has been subdivided; prepared by a registered land surveyor, in accordance with G.S. 47-30.

**Private Driveway:** A roadway serving not more than two (2) lots, building sites or other parcels of land, and not intended for public ingress or egress.

**Private Road:** A road intended to be for private ingress or egress, or to serve a large development under one ownership; such as in a large industrial park or with a planned unit development. Private roads planned for subdivisions must meet the same requirements as public roads except as provided under Section 808(B)(1).

**Private Water System:** A water source, well, and its distribution systems serving two (2) to fourteen (14) connections under the legal control of its users.

**Public Road, Street, or Highway:** A dedicated and accepted right-of-way for vehicular traffic and designated for vehicular traffic and designated as follows:

1. **Principal Arterial:** A rural link in a highway system serving travel, and having characteristics indicative of substantial statewide or interstate travel and existing solely to serve traffic. This network should consist of Interstate routes and other routes designated as a principal arterial.
2. **Minor Arterial:** A rural roadway joining cities and larger towns providing intra-state and inter-county service at relatively high overall travel speeds with minimum interference to through traffic.

3. **Limited Access Highway:** A divided arterial highway with full or partial control of access and generally with grade separations at major intersections.
4. **Residential Collector Street:** A local street which serves as a connector street between local residential streets and the thoroughfare system. Residential collector streets typically collect traffic from 100 to 400 dwellings.
5. **Local Residential Street:** Cul-de-sacs, loop streets less than 2,500 feet in length, or streets less than one mile in length that do not connect thoroughfares, or serve major traffic generators, and do not collect traffic from more than 100 dwelling units.
6. **Marginal Access Street:** A local collector street, which parallels and is immediately adjacent to an arterial road, and which provides access to abutting property and protection from through traffic.
7. **Major Thoroughfare:** Major thoroughfares consist of Interstate, other freeway, expressway, or parkway roads, and major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.
8. **Minor Thoroughfare:** Minor thoroughfares perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating minor through traffic movements and may also serve abutting property.
9. **Cul-de-sac:** A short street having only one end open to traffic and the other end being permanently terminated and a vehicular turn-around provided.
10. **Frontage Road:** A road that is parallel to a partial or full access controlled facility and provides access to adjacent land.

**Public Sewer System:** Any sewer system owned and operated by a local unit of government in Burke County, or other public entity sewage treatment facility serving two (2) or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Environment and Natural Resources, or non-ground absorption systems serving two or more connections when approved by the County Environmental Health Specialist.

**Public Water System:** Community and non-community water systems serving fifteen (15) or more connections or serving more than twenty-five (25) residents sixty (60) or more consecutive days as defined in N.C.G.S. 130A-313(10). Plans and specifications

must be approved by the Public Water Supply Section of the Department of Environment and Natural Resources.

**Reference Line:** An example is the Duke Power elevation for Lake Hickory, Lake James, and Lake Rhodhiss. The elevation for Lake Hickory is 935 feet above mean sea level, the elevation for Lake James is 1,200 feet above mean sea level, and the elevation for Lake Rhodhiss is 1,000 feet above mean sea level.

**Single Tier Lot:** A lot which backs upon a limited access highway, a railroad, a physical barrier, or a non-residential use and to which access from the rear of the lot is usually prohibited.

**Sub-divider:** Any person, firm, corporation, entity or estate who subdivides or develops any land deemed to be a subdivision as herein defined.

**Subdivision Administrator:** The Planning Administrator or his/her designee charged with the responsibility for enforcing this ordinance.

**Thoroughfare Plan:** The map and attendant documents prepared by the NC DOT Statewide Planning Branch in cooperation with Burke County.

**Word Interpretation:** For the purpose of this ordinance, certain words shall be interpreted as follows:

1. The word "County" shall mean Burke County, North Carolina.
2. The words "Register of Deeds" shall mean the Register of Deeds of Burke County, North Carolina
3. The words "ordinance" and "regulations" shall mean the Subdivision Regulations for Burke County, North Carolina.
4. The word "may" is permissive.
5. The words "shall" and "will" are mandatory.
6. The present tense includes the future tense and the future tense includes the present tense.
7. The singular includes the plural and the plural includes the singular.

**ARTICLE VII  
PROCEDURE FOR SUBDIVISION PLAT REVIEW AND APPROVAL**

**Section 700. General**

**700.1 Review and Approval of Subdivision Plats Required**

No final plat of a subdivision within the defined jurisdiction of Burke County shall be recorded by the Register of Deeds of Burke County until it has been approved as provided herein. To secure such approval of a final plat, the sub-divider shall follow the procedure established in this article. Furthermore, no street shall be accepted for ownership or maintenance, nor shall water, sewer, or other public facilities or services be extended to or connected with any subdivision for which a final plat is required to be approved unless and until such plat has been approved.

**700.2 Pre-Application Staff Consultation**

The sub-divider may request a pre-application appointment to obtain the advice and assistance of the Planning Department and other applicable departments in order to facilitate the subsequent preparation and approval of the sketch plan, preliminary plat, or final plat. Such consultation is recommended for subdivisions over ten acres in size or containing more than twenty-five (25) proposed lots. The pre-application consultation does not require formal application or fee.

**Section 701. Procedure for Approval of Minor Subdivisions**

In lieu of the procedures set forth in the remaining sections of this article, the sub-divider may apply for final approval for any minor subdivision through the procedure set forth herein. This procedure is designed to eliminate the requirement for submission of a preliminary plat, thus allowing the sub-divider to submit only the final plat for approval. The final plat for a minor subdivision shall be subject to all development requirements of this ordinance.

1. The required right-of-way for minor subdivisions after the effective date of this ordinance will be forty-five (45) feet. Private roads in minor subdivisions do not have to be paved nor be constructed to NC Department of Transportation Subdivision Road Design Standards (Reference Section 808.5.A).
2. Any parcel fronting on a right-of-way that was platted and recorded or in use prior to April 1, 1998 may be subdivided as a minor subdivision using the provisions of Section 808.5.B provided that no more than six (6) lots may be created using the existing right-of-way and that no new unpaved road would be permitted on the parcel (Reference Section 808.5.B).
3. Plats for minor subdivisions may be given final approval by the Planning Director or his/her designee. However, if the sub-divider owns, leases, holds an option, or holds any legal or equitable interest in any property adjacent to or located directly across a street, easement, road or right-of-way from the property to be subdivided, and the current or future intent of the sub-divider is more in line with a major

subdivision, then the subdivision shall not qualify under the abbreviated procedure for approval as a minor subdivision.

4. The original and one (1) copy of the minor subdivision plat shall be submitted to the Subdivision Administrator or his/her designee for review. Submission of the final plat shall be accompanied by the review fee set forth in the Schedule of Fees adopted by the Board of Commissioners.

## **Section 702. Subdivision Review Board Sketch Plan**

### **702.1 General**

The sub-divider shall submit a sketch plan prior to submitting a preliminary plat for all subdivisions subject to the major subdivision process. The purpose of submitting the sketch plan is to afford the Planning Board and sub-divider an opportunity to obtain advice and technical assistance of the Subdivision Review Board in order to facilitate the subsequent preparation and approval of the preliminary plat in lieu of obtaining State plan review and approvals prior to preliminary plat application. This procedure does not require fee.

### **702.2 Required Information**

#### **A. Scale and Size of Plat**

The sketch plan and preliminary plat shall be clearly and legibly drawn at a scale not less than one hundred (100) feet to one (1) inch.

#### **B. Plat Preparation**

The sketch plan and preliminary plat shall be prepared by a registered land surveyor, engineer, or landscape architect.

#### **C. Development Information and Title Block**

Each sketch plan and preliminary plat shall include the following information:

1. Subdivision name
2. Sub-divider's name, address, and telephone number
3. Preparer's name, seal, address, and telephone number
4. North arrow
5. Scale (denoted graphically and numerically)
6. Date of plat preparation
7. Location of subdivision (township, county, and state)
8. Parcel Identification Number (PIN) of the property(s) to be sub-divided
9. 911 address of the principle tract (when available)
10. Sketch vicinity map

#### **D. Property Dimensions, Characteristics, and Uses**

Each sketch plan and preliminary plat shall include the following information:

1. The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown
2. Adjoining property lines, owners' names, and subdivisions of record
3. Total acreage in tract (and portion thereof to be subdivided when applicable)

4. Total number of lots
5. Smallest lot in square feet
6. Proposed lots numbered sequentially with approximate dimensions and acreage
7. Zoning district(s)
8. Town limit lines
9. Existing structures and uses
10. Proposed use of land (if other than single-family residential)
11. Identify adjoining non-residential uses
12. Significant natural features included wooded areas, marshes, gullies, known wetlands, major rock outcrops, lakes or streams, or other natural features affecting the site
13. Watershed classification (or note if not in a water supply watershed)
14. School Districts
15. Building setback lines (typical) and approximate building envelopes if applicable
16. Fire district (note if not in a fire district)
17. Flood plain data and flood zones
18. Existing topographic contours at five (5) foot intervals
19. Subsurface conditions on the tract, location and results of tests made to ascertain subsurface soil, rock and groundwater conditions, depth to ground water, unless test pits are dry to a depth of seven (7) feet.

**E. Existing and Proposed Infrastructure and Improvements**

Each sketch plan and preliminary plat shall include the following information:

1. Streets
  - a. Rights-of-way showing approximate widths and dimensions
  - b. Dedication and reservation
  - c. Pavement widths
  - d. Sight triangles
  - e. Note design standards
  - f. Proposed street names (approved names on preliminary)
  - g. Curbing (when applicable)
  - h. Approximate grades
  
2. Utilities
  - a. Utility easements (showing widths, dimensions, and dedication)
  - b. Power lines (indicate above ground or buried)
  - c. Water and sewer lines (including distance, line size and utility stations of nearest existing and proposed)
  - d. Fire hydrant locations
  - e. Street lights (including shielding and direction)
  - f. Well locations and type of well
  - g. On-site wastewater systems (existing)
  - h. Drainage ways and easements (including width for easements)
  - i. Storm water systems
  - j. Railroads and railroad easements (including width for easements)

- k. Other applicable utility facilities and easements (including use, dedication, and size)
3. Amenities, Common Areas, and Other Aesthetic and Natural Improvements
  - a. Common areas (including acreage, dedication, use, and design concepts)
  - b. Trail easements (including width, dedication, use, and design concepts)
  - c. Sidewalks (including easement, width, and design)
  - d. Street trees, landscaping, buffers, or other natural enhancements or protections
  - e. Sign location, dimensions, and design (not to include traffic signs or street name signs purchased from the County)
  - f. Areas dedicated or reserved for public service sites (i.e. school sites or fire stations) or other amenities (including use, acreage, and approximate dimensions)

#### Additional Materials

1. A project narrative that provides a general theme for the development, phasing schedules, and vesting requests may be provided to clarify or elaborate on specific details shown on the plat. In addition, the narrative may include drawing and sketches of proposed facilities, amenities, or structures that may assist the Subdivision Review Board in visualizing the proposed development.
2. A copy of the proposed deed restrictions and restrictive covenants for the development, when required or applicable.
3. Two (2) copies of the draft erosion control plan for the proposed development.

#### **702.3 The Subdivision Review Board**

The Subdivision Review Board shall consist of the staff representatives from the following departments: Planning, Environmental Health, General Services, Fire Marshall, 911 Addressing/Land Records, Building Inspections, the N.C. Department of Transportation, and other agencies and departments as deemed necessary by the Subdivision Administrator.

#### **702.4 Subdivision Review Board Procedure**

1. The Subdivision Review Board shall set regular, monthly meeting dates.
2. The sub-divider shall submit ten (10) copies of the sketch plan, containing all information required in Section 702.2, and other applicable attachments to the Subdivision Administrator or his/her designee at least twenty-one (21) days in advance of the next regularly scheduled meeting of the Subdivision Review Board.
3. The Subdivision Administrator shall forward the complete, submitted application within three (3) days of the deadline to the Subdivision Review Board.
4. The members of the Subdivision Review Board will prepare written comments, if any, and provide said comments to the Subdivision Administrator at least seven (7) days prior to the regularly scheduled meeting of the Subdivision Review Board.

5. The Subdivision Administrator shall provide the developer a copy of the written comments, if any, at least four (4) days prior to the regularly scheduled meeting of the Subdivision Review Board.
6. The sub-divider or his/her agent shall attend the Subdivision Review Board meeting to address recommendations and comments.
7. The Subdivision Administrator shall provide the sub-divider final written comments and recommendations of the Sketch Plan Review within four (4) days after the regularly scheduled Subdivision Review Board meeting.

**Section 703. Preliminary Plat**

**703.1 General**

For all subdivision, the sub-divider shall submit a preliminary plat, containing all required information, to the Planning Administrator or his/her designee at least twenty one (21) days prior to the regular Planning Board meeting at which said plat is to be considered. Twelve (12) copies of said plat shall be required, provided that additional copies may be required by the Planning Board. Submission of the preliminary plat shall be accompanied by a filing fee set forth in the Schedule of Fees adopted by the Board of Commissioners.

**703.2 Information Required**

1. A preliminary plat shall be submitted containing the information required for the Subdivision Review Board Sketch Plan as found in Section 702.2 above. The preliminary plat shall reflect recommended changes, as provided by the Subdivision Review Board, or the sub-divider shall provide an explanation in narrative form for each Subdivision Review Board recommendation that is not reflected on the submitted preliminary plat. In addition, the preliminary plat shall include the following certificates:

a. Certificate of Approval or Conditional Approval by the Planning Board

I, \_\_\_\_\_, chairman of the Planning Board hereby certify that the said board fully or conditionally approved the preliminary plat of the subdivision entitled \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, Chairman

b. Certificate of Preliminary Plat Approval by the Watershed Review Board

I, \_\_\_\_\_, chairman of the Watershed Review Board hereby certify that the preliminary plat complies with the Water Supply Watershed Protection Ordinance and that the said board fully or conditionally approved the preliminary plat on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, Chairman

2. A copy of the proposed deed restrictions and restrictive covenants for the proposed subdivision, when required or applicable.
3. A narrative that provides a general theme for the development, phasing schedules, vesting requests, and provides reasons and justifications for deviations from the sketch plan recommendations provided by the Subdivision Review Board. The subdivision narrative also provides an opportunity for the developer to clarify or elaborate on specific details shown on the plat. In addition, the narrative may include drawings and sketches of proposed facilities, amenities, or structures that may assist the Planning Board in visualizing the proposed development.

### **703.3 Preliminary Plat Review Procedure**

1. The Planning Board shall review and approve, conditionally approve, or disapprove each preliminary plat. First consideration of the preliminary plat shall be at the next regularly scheduled meeting of the Planning Board that follows at least ten (10) days after the plat is submitted meeting the requirements of Section 703.1 and Section 703.2. The Planning Board shall take action on the preliminary plat at its first consideration or within forty five (45) days of its first consideration. Should the Planning Board fail to act on the preliminary plat within the prescribed period, the plat shall be deemed to have been approved.
2. Before acting on the preliminary plat, the Planning Administrator shall request a report from any person or agency directly concerned with the proposed development, including the Subdivision Review Board and other such officials or agencies thought necessary. Such reports shall certify compliance with or note deviations from the requirements of these regulations and include comments on other factors which bear upon the public interest.
3. If the Planning Board approves or conditionally approves the preliminary plat, such approval shall be indicated on four (4) copies by the Chairman or other authorized member of the Planning Board. One (1) copy shall be returned to the sub-divider, one (1) copy shall be provided to 911 Addressing for record of preliminary addresses and road name reservation, one (1) copy shall be kept by the Planning Board for its records, and one (1) copy shall be retained by the Planning Department.
4. If the Planning Board conditionally approves the preliminary plat, a written statement of the conditions, as approved by the Planning Board, shall be sent to the sub-divider within fourteen (14) days of the conditional approval, one (1) copy shall be retained by the Planning Board as part of its records, and one (1) copy shall be kept by the Planning Department.
5. If the Planning Board disapproves said plat, the reason for such action shall be stated in writing and entered in the records of the Planning Board. One copy of this statement shall be transmitted to the sub-divider within fourteen (14) days of the disapproval and one copy shall be retained by the Planning Board as part of its

proceedings. The sub-divider may make changes and submit a revised plat which shall be submitted, reviewed, and acted upon by the Planning Board pursuant to this section.

6. Approval and conditional approval of the preliminary plat shall be valid for (2) years unless a written extension is granted by the Planning Board on or before the anniversary of said approval. Such an extension may be granted only where the applicant demonstrates good cause and where there has been a substantial expenditure of resources directly related to the subdivision development. The cumulative time period for obtaining final plat approval shall not exceed a total of six (6) years from the preliminary plat approval or conditional approval. With respect to a multi-phase preliminary plan, if no substantive changes have occurred then the two (2) year anniversary date applies to the first phase final plat. Final plats for subsequent phases must be submitted for approval within two (2) years of final plat approval of the previous phase unless the Planning Board grants a written extension. If substantial changes have occurred, then the plat will be presented to the Planning Board for approval. If the final plat is not submitted within a two (2) year period or any period of extension, the said approval or conditional approval of the preliminary plat shall be null and void. Any vested rights, as defined in G.S. 153A-344.1, shall expire along with the application.

#### **Section 704. Improvements Installation or Guarantees**

Upon approval of the preliminary plat by the Planning Board, the sub-divider may proceed with the preparation of the final plat, and the installation of, arrangement for, required improvements and conditions (if applicable) in accordance with the approved or conditionally approved preliminary plat and the requirements of this ordinance for that portion of the subdivision to be shown on the final plat.

Prior to final approval of a final plat, the sub-divider shall have installed said improvements or guaranteed their installation as provided below.

##### **704.1 Improvement Guarantees**

###### **1. Agreement and Security Required**

In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, Burke County may enter into an agreement with the sub-divider whereby the sub-divider shall agree to complete all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a reasonable time, to be determined in said agreement. The sub-divider shall meet subsections (A) and (B) if a surety bond or cash or an equivalent security required herein is provided, the final plat may be approved by the Planning Board provided it meets with the requirements of Section 705.

###### **(A) Surety Performance Bond(s)**

The sub-divider shall obtain a performance bond(s) from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to Burke County and shall be equal to 1.25 times the entire cost, as estimated by the sub-

divider's licensed engineer, or three bids and approved by the County Planner of installing all required improvements as specified on the preliminary plat for that portion of the subdivision to be shown on the final plat. The duration of the bond(s) shall be until such time as the improvements are approved by the Subdivision Administrator.

The Subdivision Administrator shall not give said approval until it has been satisfied that all required improvements have been installed or guaranteed as specified on the preliminary plat for that portion of the subdivision to be shown on the final plat.

**(B) Cash or Equivalent Security**

The sub-divider shall deposit cash or other instruments readily convertible into cash at face value, either with the County or in escrow with a financial institution designated as an official depository of the County.

The use of any instrument other than cash shall be subject to the approval of the Subdivision Administrator. The amount of the deposit shall be equal to 1.25 times the cost as estimated by the sub-divider's licensed engineer or three quotes as approved by the County Planner, of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat.

If cash or other instrument is deposited in escrow with a financial institution as provided above, then the sub-divider shall file with the Planning Department an agreement between the financial institution and himself guaranteeing the following:

(A) That said escrow account shall be held in trust until released by the Subdivision Administrator and may not be used or pledged by the sub-divider in any other matter during the term of the escrow; and

(B) That in the case of failure on the part of the sub-divider to complete said improvements, the financial institution shall, upon notification by the Planning Board, immediately either pay to the County all funds in said account, or deliver to the County any other instruments fully endorsed or otherwise made payable in full to the County.

**2. Default**

Upon default, meaning failure on the part of the sub-divider to complete, within the time period specified in the agreement in part (1) of this subsection, the required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat, then the Planning Board may require the sub-divider, the surety, or the financial institution holding the escrow account to pay all or any portion of said funds as it deems necessary to complete all or any portion of the required improvements.

### **3. Release of Guarantee Security**

The Subdivision Administrator may release any portion of any security posted as the improvements are completed and recommended for approval. Within thirty-two (32) days after receiving the sub-divider's request to release the security, in part or in whole, the Subdivision Administrator shall approve or not approve said improvements. At such time the Subdivision Administrator approves all improvements placed in the subdivisions, then all security posted shall be immediately released.

The sub-divider shall guarantee for one year minimum, the improvements for the subdivision approved by the Planning Board. The sub-divider shall maintain all land and required improvements, including streets and rights-of-way offered for dedication in required improvements in satisfactory condition until acceptance of dedication. The developer may accomplish this by:

1. Allowing the surety bond or other security to remain in effect until the road is accepted by the State,
2. Create a Home Owners Association for the road maintenance meeting approval of the Planning Board, or
3. Present a plan that is acceptable to the Subdivision Administrator that meets the intent of this ordinance to secure the road maintenance or other guaranteed improvement.

## **Section 705. Final Plat**

### **705.1 General**

The final plat shall constitute only that portion of the preliminary plat which the sub-divider proposes to record and develop at the time of submission. The final plat shall be submitted within two (2) years of the date of preliminary plat approval unless an extension is granted by the Planning Board in accordance with Section 703.3. Submission of the final plat shall be accompanied by a filing fee set forth in the Schedule of Fees adopted by the Board of Commissioners.

### **705.2 Installation of Improvements or Approved Guarantee Required**

No final plat shall be approved unless and until the sub-divider installs all improvements required by the ordinance and provided for in the approval of the preliminary plat in that area represented on the final plat. In lieu of the installation of improvements, approval of a final plat may be granted if the required improvements are guaranteed in an approved manner set forth in Section 704 of this ordinance.

### **705.3 Affect of Conditional Preliminary Plat Approval**

No final plat shall be approved unless and until the sub-divider installs or completes all conditions required by the conditional preliminary plat approval as approved by the Planning Board as applicable to that area represented on the final plat or to the development as a whole.

## **705.4 Required Information**

### **A. Scale and Size of Plat**

The final plat shall be clearly and legibly drawn at a scale not more than two hundred (200) feet to one (1) inch. The original of the final plat shall be prepared on linen or Mylar film, drawn on a sheet not more than eighteen (18) by twenty-four (24) inches, acceptable by the Register of Deeds of Burke County and at a scale of no more than two hundred (200) feet to one (1) inch, and shall conform substantially to the preliminary plat as approved. A final plat drawn on a twenty-four (24) inch by thirty-six (36) inch sheet is permitted with prior written approval from the Register of Deeds.

### **B. Plat Preparation**

The final plat shall be prepared by a registered land surveyor in accordance with N.C. General Statute 47-30 as amended.

### **C. Development Information and Title Block**

1. Subdivision name
2. Sub-divider's name, address, and telephone number
3. Preparer's name, seal, registration number, address, and telephone number
4. North arrow
5. Scale (denoted graphically and numerically)
6. Date of plat preparation
7. Location of subdivision (township, county, and state)
8. Parcel Identification Number (PIN) of the property(s) to be sub-divided
9. 911 address of the principle tract (when available)
10. Sketch vicinity map

### **D. Property Dimensions, Characteristics, and Uses**

1. The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown
2. Adjoining property lines, owners' names and deed references, and subdivisions of record
3. Control points and monuments
4. Lots numbered consecutively (showing bearings, dimensions, and acreage)
5. Existing structures and proposed uses
6. Proposed use of land (if other than single-family residential)
7. Streams, rivers, lakes, or other significant natural features affecting the site
8. Watershed classification (or note if not in a water supply watershed)
9. Flood plain data and flood zones (show dimensions)
10. Wetlands (show dimensions)
11. Building setback lines (typical) and building envelopes if applicable

### **E. Existing and Proposed Infrastructure and Improvements**

1. Streets
  - a. Rights-of-way showing widths, bearing, and dimensions
  - b. Dedication and reservation
  - c. Sight triangles (when applicable)

- d. Street names (approved names from preliminary)
  - e. Pavement widths (existing)
2. Utilities
    - a. Utility easements (showing widths, bearings, dimensions, and dedication)
    - b. Utility locations and size (existing)
    - c. Fire hydrant locations
    - d. Street lights
    - e. Well locations and type of well
    - f. On-site waste water systems
    - g. Drainage ways and easements (including widths for easements)
    - h. Storm water systems
    - i. Railroads and railroad easements (including widths, bearings, and dimensions)
    - j. Other applicable utility facilities and easements (including use, dedication, width, bearings, and dimensions)
  3. Amenities, Common Areas, and Other Aesthetic and Natural Improvements
    - a. Common areas (including acreage, dedication, use, dimensions, and bearings)
    - b. Trail easements (including width, dedication, bearings, and dimensions)
    - c. Sidewalks (including easement width, dedication, bearings, and dimensions)
    - d. Buffer areas or other natural enhancements and protections
    - e. Areas dedicated or reserved for public service sites or other amenities (including dedication, use, bearings, and dimensions)

F. Final Plat Certifications

1. Applicable certifications and statements must be presented on the final plat and signed by the designated person prior to approval and recordation.
2. The following certificates shall be lettered or rubber stamped in such a manner as to ensure that said certificate will be legible on and prints made there from.
  - a. Certificate of Final Plat Approval

I, \_\_\_\_\_, Subdivision Administrator of Burke County hereby certify that the final plat of the Subdivision entitled \_\_\_\_\_ meets the conditions and requirements for approval on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Subdivision Administrator \_\_\_\_\_

b. Review Officer Certificate

State of North Carolina  
County of Burke

I, \_\_\_\_\_, Review Officer of Burke County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer \_\_\_\_\_ Date \_\_\_\_\_

c. Certificate of Ownership and Dedication

I (We) hereby certify that I an (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent and dedicate all streets, sewers, water lines, alleys, walks, parks, and other sites to public or private use as noted. Further, I (we) certify the land shown hereon is within the platting jurisdiction of Burke County, North Carolina.

Owner \_\_\_\_\_ Date \_\_\_\_\_

d. Certificate of Approval of the Design and Installation of Public Streets

Department of Transportation  
Division of Highways  
Proposed Subdivision Road  
Constructions Standards Certification

Approved \_\_\_\_\_ Date \_\_\_\_\_  
District Engineer

e. Disclosure Statement for the Responsibility for Constructing and Maintaining Public Streets

All roads in this subdivision are hereby declared public as shown and shall not be maintained by the County of Burke. The maintenance of all streets shall be the responsibility of \_\_\_\_\_ (specify Developer of Home Owners Association) until such time they are accepted by the North Carolina Department of Transportation for state maintenance.

f. Disclosure Statement for the Responsibility for Constructing and Maintaining Private Streets

All roads in this subdivision are hereby declared private as shown and shall not be maintained by the North Carolina Department of Transportation or the County of Burke. The responsibility of all streets shall be the responsibility of \_\_\_\_\_ Home Owners Association.

Sub-divider or Agent \_\_\_\_\_ Date \_\_\_\_\_

g. Improvements Certification (choose appropriate certificate)

Certification of Approval of the Installation and Construction of Streets, Utilities, and Other Improvements

I hereby certify that streets, utilities, and other required improvements as shown on the preliminary plat for the portion of the property shown on this final plat have been installed in an acceptable manner and according to the specifications shown on the preliminary plat and standards in the subdivision entitled \_\_\_\_\_.

Subdivision Administrator \_\_\_\_\_ Date \_\_\_\_\_

or (for bonds and letters of credit)

Certification of Approval of the Installation and Construction of Streets, Utilities, and Other Improvements

I hereby certify that a guarantee of the installations of the required improvements shown on the portion of the preliminary plat reflected on the final plat for \_\_\_\_\_ Subdivision has been received in an amount and manner satisfactory to Burke County.

Subdivision Administrator \_\_\_\_\_ Date \_\_\_\_\_

or (for cash or cash equivalent)

Certification of Approval of the Installation and Construction of Streets, Utilities, and Other Improvements

I hereby certify that a filing fee in the amount of \$ \_\_\_\_\_ has been paid to the County for the installations of the required improvements shown on the portion of the preliminary plat reflected on the final plat for \_\_\_\_\_ Subdivision.

Subdivision Administrator \_\_\_\_\_ Date \_\_\_\_\_

h. Certificate of Survey and Accuracy

I, \_\_\_\_\_, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made under by supervision) (deed description record in Book \_\_\_\_, Page \_\_\_\_, etc.) (other); that the error of closure as calculated by latitudes and departures is 1:\_\_\_\_; that the boundaries not surveyed are shown as broken lines plotted from information found in Book \_\_\_\_, Page \_\_\_\_; that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_\_\_\_.

Registered Surveyor \_\_\_\_\_

i. Other Certificates and Statements

Other certificated and statements shall be affixed to the plat as required by federal, state, or other applicable local ordinances.

**705.5 Final Plat Review Procedure**

A. Final Plat Submittal

The sub-divider shall submit one (1) original of the final plat and four (4) paper copies to the Subdivision Administrator prior to two (2) years from the date of preliminary plat approval (unless an extension has been granted by the Planning Board) or the final plat of the previous development phase in the case of a multi-phase development.

B. Final Plat Review

The Subdivision Administrator shall review the final plat for completeness and conduct such inspections and consult with other agencies to determine whether the subdivision is substantially consistent with the approved preliminary plat and that all conditions and requirements have been completed. Further the Subdivision Administrator will consult with the Finance Director, County Engineer, County Attorney, or other agency to ensure that all improvements have been installed or that an approved guarantee of said improvements has been presented.

C. Final Plat Approval

The Subdivision Administrator shall approve or disapprove the final plat upon completion of the plat review and site inspection within twenty-one (21) days of a complete application. If the final plat is approved, such approval shall be indicated on the original and copies of the final plat and the original and one (1) paper copy shall be returned to the sub-divider for recordation. Additionally, one (1) copy shall be forwarded to 911 Addressing, one (1) copy retained for Planning Board records, and one (1) copy shall be retained by the Planning Department for permanent record.

D. Recordation of the Final Plat

The original tracing of the final plat shall be recorded by the sub-divider with the Burke County Register of Deeds within thirty (30) days after the approval date of the Subdivision Administrator; otherwise, such approval shall be null and void.

#### E. Final Plat Disapproval

If the final plat is disapproved, the Subdivision Administrator shall find in writing the provision of this ordinance or conditions of preliminary plat approval with which the plat does not comply. One (1) copy of said findings shall be sent to the sub-divider whom may make such changes as needed to bring the plat into compliance with the provisions of this ordinance and conditions of approval for the preliminary plat. The sub-divider may resubmit the revised plat for reconsideration by the Subdivision Administrator pursuant to the procedures set forth in this section.

#### F. Failure of Action by the Subdivision Administrator

If the Subdivision Administrator fails to act on the final plat within the prescribed period of time, the plat shall be sent to the Planning Board for review at the next regularly scheduled meeting.

#### G. Appeal of the Subdivision Administrator Decision

The sub-divider may appeal the decision pertaining to the final plat of the Planning Administrator to the Planning Board at the next regularly scheduled meeting. The context of the appeal shall be provided in writing to the Subdivision Administrator at least twenty-one (21) days in advance of the meeting. The Subdivision Administrator shall provide the Planning Board a copy of the findings from the final plat review and report pertaining to the context of the appeal. The Planning Board shall make a final decision to approve or disapprove the final plat within sixty (60) days of its first consideration of the appeal. If the Planning Board fails to act on the appeal of the final plat within the prescribed period, then the final plat shall be deemed to have been approved.

#### **705.6 Effect of Plat Approvals on Dedications**

The approval of a final plat shall not be deemed to constitute or affect the acceptance by the county of the dedication of any ground, public utility line, or other public purposes, when the lands or facilities are located within its subdivision regulations jurisdiction. Acceptance of such dedication shall be made only by the resolution of the Board of County Commissioners or appropriate action by the North Carolina Department of Transportation (NC DOT). The Board of County Commissioners shall consider such resolution only on determination that any required improvements have been properly installed and all applicable conditions met.

#### **705.7 Re-subdivision Procedures**

For any re-platting or re-subdivision of land, the same procedures, rules, and regulations shall apply as prescribed herein for an original subdivision. Lot sizes may, however, be varied on an approved plan after recording, provided that (a) no lot or tract of land shall be created or sold that is smaller than the size shown on the approved plan; (b) drainage easements, or rights-of-way shall not be changed; (c) the property line between the back of the lots shall not be changed; (d) the rear portion of lots shall not be subdivided from the front part; (e) the character of the area shall be maintained.

### **Section 706. Recording of the Final Plat**

Within thirty (30) days after the final Plat has been approved by the Burke County Planning Board, it shall have been recorded with the Register of Deeds of Burke County. Should the thirty (30) day time limit expire before the plat is recorded, it must be resubmitted to the Chairman of the Planning Board or his/her designee for reprocessing under the subdivision regulations then currently in effect. Upon adoption of these regulations, the Register of Deeds shall not thereafter file or record a plat of a subdivision located within the subdivision jurisdiction area of Burke County until said plat has been approved by the Planning Board. Without the approval of the Planning Board, the filing or recording of a subdivision plat shall be null and void. The Clerk of Superior Court of Burke County shall not order or direct the recording of a plat where such recording would be in conflict with these regulations.

### **Section 707. Exceptions**

Cluster subdivisions, as defined in Article VI, Section 600 of this ordinance, are considered subdivisions and are thus subject to these regulations. All requirements of this ordinance are applicable to cluster subdivisions unless specifically exempted by this section. The following standards and review procedures shall apply to cluster subdivisions.

#### **707.1 Purpose**

Cluster subdivisions under these provisions are intended to promote imaginative, well-designed subdivisions which preserve common open space areas in return for reduced individual lot area, and which encourage a more cost effective approach to housing development.

#### **707.2 Density**

A cluster subdivision shall not contain a greater number of lots than would be allowed in a conventional subdivision.

#### **707.3 Utilities**

Utilities in a cluster subdivision shall meet all requirements of this ordinance. In addition, the following shall apply:

In proposed cluster subdivisions where public water and/or sewer is not available and some or all of the proposed lots are smaller than the standards for lots in Section 906, each proposed building lot shall be provided with safe and adequate water and sewerage service.

#### **707.4 Minimum Lot Area**

Within a cluster subdivision, the area of individual lots designed for building sites, as determined in Section 906, may be reduced by up to 60% provided:

1. Utilities can be provided in accordance with requirements in this ordinance, and

2. Common areas for preservation, recreation and/or open space are provided within the cluster subdivision in an amount at least equivalent to the total reduction in lot size. In no case shall the common areas be less than 20% of the total development acreage.
3. Common area can be utilized for well and septic system.

#### **707.5 Yard Requirements**

The lot size requirements as listed in the Burke County Zoning Ordinance shall apply.

#### **707.6 Lot Width and Depth**

There are no minimum lot width or lot depth requirements in a cluster subdivision.

#### **707.7 Common Areas**

Common areas are to be designated in the cluster subdivision for the purpose of providing open space for recreation, preservation and/or recreation facilities for owners and/or occupants of the lots in the cluster subdivision provided they do not interfere with well or septic systems. The common area required in each cluster subdivision shall be equivalent to the total reduction in lot sizes. In no case shall the common areas be less than 20% of the total development acreage.

#### **707.8 Ownership and Maintenance of Common Areas and Facilities**

All common areas and facilities, including but not limited to, land, structures and facilities to be held and used in common in the cluster subdivision shall be conveyed to an association of the owners of the lots within the cluster subdivision. Within the conveyance, provisions for maintenance and repair of said land and facilities shall be stipulated. The conveyance shall also provide a mandatory membership of all present and future owners and residents within the cluster subdivision, and shall also provide for a levy against all property within the development for said maintenance and repair. All such conveyance shall be made part of the subdivision review process and shall be approved as to form and content by the County Attorney.

#### **707.9 Plat Requirements**

In addition to the procedure and information required in Article VII, the preliminary and final plats shall also require the following:

1. The term "cluster subdivision" shall be placed in the title block.
2. All proposed structures shall be drawn to scale and sited on the plat.
3. Designation on the plat for all common areas and specific descriptions for there proposed use.
4. Designation of all streets, facilities and utilities which are to be owned and maintained in common with supporting documentation to provide for transfer and maintenance of the common property and facilities.

5. The size of each lot in square feet shall be shown on the preliminary plat or referenced on a separate attachment. The size of all common areas in square feet or acres shall be designated on the plat.

## **ARTICLE VIII GENERAL REQUIREMENTS**

### **Section 800. Conformity to Existing Maps or Plans**

- A. The location and width of all proposed public streets shall be in conformity with official plans and maps of Burke County, and with existing or amended plans on the Planning Board.
- B. All applicable development and subdivision of land located within the Interstate 40 Corridor Overlay District (I-40 COD) as shown on the Official Zoning Maps of Burke County shall comply with the requirements of Article XX of the Burke County Zoning Ordinance. Where conflict exists between the requirements of the I-40 COD and this ordinance, the stricter requirement shall apply.
- C. All applicable development and subdivision of land located within the Scenic Overlay District as shown on the Official Zoning Maps of Burke County shall comply with the requirements of Article XXI of the Burke County Zoning Ordinance. Where conflict exists between the requirements of the Scenic Overlay District and this ordinance, the stricter requirement shall apply.
- D. The location, design, and system specifications (including, but not limited to, pipe size and pressure) of all proposed utilities shall be in conformity with infrastructure policies, plans and maps as adopted by Burke County and other public utility providers. Where conflict exists between the requirements of this ordinance and infrastructure plans adopted by the Burke County Board of Commissioners, the stricter requirement shall apply unless specifically exempted.
- E. The location, design, and system requirements of all proposed stormwater control plans shall be in conformity with stormwater control policies, plans and maps as adopted by Burke County and other applicable entities. Where conflict exists between the requirements of this ordinance and infrastructure plans adopted by the Burke County Board of Commissioners, the stricter requirement shall apply unless specifically exempted.

### **Section 801. Continuation of Adjoining Street System**

The proposed public street layout shall be coordinated with the public street system of the surrounding area. Where possible, existing principal public streets shall be extended.

### **Section 802. Access to Adjacent Properties**

Where, in the opinion of the Planning Board, it is desirable to provide for public street access to an adjoining property, proposed public streets shall be extended by dedication to the boundary of such property is required..

### **Section 803. Large Tracts or Parcels**

Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future streets and logical further re-subdivision.

### **Section 804. Street Names**

Proposed streets, which are obviously in alignment with existing streets, shall bear the assigned name of the existing streets. In no case shall the name of the proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of the suffix street, avenue, boulevard, drive, place, court, etc.

### **Section 805. Surveying and Placement of Monuments**

“Standards of Practice of Land Surveying” as adopted and hereafter amended by the N.C. Board of Registration for Professional Engineers and Land Surveyors, under provisions of Chapter 89 of the N.C. General Statutes 47-30 as amended, shall apply when conducting surveys. Control corners shall be established in compliance with G.S. 39.32.1, 39.32.2, 39.32.3, and 39.32.4 as amended.

### **Section 806. Air Quality**

As authorized under Chapter 143, Article 215, of the General Statutes, all subdivisions with more than 500 units at a density of more than 7,680 persons per square mile (12 persons/acre) shall comply with air quality guidelines set out by the Division of Air Quality of the N.C. Department of Environment and Natural Resources.

### **Section 807. Flood Damage Prevention**

Lots that are subject to flooding shall not be established in subdivisions for the purpose of creating building lots except as herein provided.

1. If there is any water course of any type running through or within 150 feet of the proposed subdivision, the prospective sub-divider shall furnish reasonable evidence to the Planning Board that lots within the subdivision will not be flooded according to the Flood Insurance Rate Maps as distributed by FEMA.
2. The prospective sub-divider shall make a determination of the 100-year probable frequency in accordance with generally accepted engineering practice. This determination must reflect the actual conditions imposed by the completed subdivision, and must give due consideration to the effects of urbanization and obstruction.
3. No proposed building lot shown that is wholly subject to flooding shall be approved.
4. No proposed building lot that is partially subject to flooding shall be approved, unless there is established on the lot a line representing an actual contour at an elevation two (2) feet above the 100-year flood. Such line shall be known as the “building restriction flood line”. No filling shall be permitted in the 100-year

flood area. All buildings or structures designed or intended for use shall be located on such a lot so that the lowest usable and functional part of the structure shall not be below the elevation of building restriction flood line. Usable and functional part of the structure is defined as being inclusive of living areas, basements, sunken dens, utility rooms, attached carports and mechanical appurtenances such as furnaces, air conditioners, water pumps, electrical conduits and wiring but shall not include water lines or sanitary sewer traps, piping and clean-outs provided openings serving the structure are above the building restriction flood line. Where only a portion of the proposed building lot is subject to flooding, such a lot may be approved only if there will be available for building a usable lot area of not less than 10,000 square feet. The usable lot area shall be determined by deducting from the total area of the setback required by the Burke County Zoning Ordinance and any remaining area of lot lying below the building restriction flood line.

5. During the construction, preparation, arrangement, and installation of subdivision improvements and facilities in subdivisions located at or along a stream bed, the developer shall maintain the stream bed of each stream, creek backwash channel contiguous to the subdivision, in an unobstructed state. The developer shall also remove from the channel and banks of the stream all debris, logs, timber, junk, and other accumulations of a nature that would, in time of flood, clog or dam the passage of waters in their downstream course. Installation of appropriately sized storm water drains, culverts, or bridges shall not be construed as obstructions in the streams.
6. No private or public wells are to be located within the designated flood plain.

## **Section 808. Subdivision Road Standards**

### **808.1 General Requirements**

All streets shall be designated in writing on the face of the preliminary or final plat as either “public” or “private”. Regardless of the designation of the street, every lot shall have access to the street that is sufficient to provide a means of ingress and egress for emergency vehicles as well as those likely to need or desire access to the property for its intended use.

### **808.2 Public Roads**

#### **A. Frontage on Public Road Required**

All subdivision lots shall abut on a public road except as provided for in Section 808.3 of this ordinance.

#### **B. Design and Construction Standards for Public Roads**

1. All public roads shall be dedicated to the public, designed, and paved within the subdivision and connected to a state maintained road.
2. The subdivision roads shall be designed and built according to the standards in the NC DOT’s “Subdivision Roads, Minimum Construction Standards”.

3. Where conflict exists between the requirements of the Burke County Zoning Ordinance or other adopted plans and the NC Department of Transportation subdivision road standards, the stricter requirement shall apply.

C. Maintenance of Public Roads

Public roads shall be maintained by the developer or approved home owners association until the NC DOT assumes responsibility for the maintenance. A statement shall be placed on the final plat identifying the party responsible for maintaining the public roads until acceptance into the State Highway System (Reference Section 705.4.F(2e) for statement language).

D. Ineligible Roads Requirements

Roads which are ineligible to be put on the NC DOT system because there are too few residences shall nevertheless be dedicated for public use and shall be built in accordance with NC DOT standards.

**808.3 Private Roads Permitted**

The construction of new private roads or subdivisions fronting along existing private roads which are not maintained by NC DOT are allowed for subdivisions as indicated in Sections 808.4 through 808.6.

**808.4 Private Roads – Major Subdivision Requirements**

Design and Construction Standards for Private Roads in Major Subdivisions

1. Private roads which are not maintained by NC DOT or any other municipality of Burke County shall be connected to a maintained road as indicated in Section 808.2.
2. Private roads in major subdivisions shall meet all right-of-way and design standards of NC DOT “Subdivision Roads, Minimum Construction Standards” except as allowed herein or if subject to Section 808.6.
3. Private driveway easements that require a right-of-way less than forty-five feet in width are permitted with justification and Planning Board approval.
4. No more than six (6) lots may be served by a private road not constructed to NC DOT standards.

B. Maintenance Requirements for Private Roads in Major Subdivisions

1. All private roads in major subdivisions shall have a maintenance statement included on the final plat indicating who will have the responsibility for maintaining the streets (Reference Section 705.4.F(2f) for statement language). The maintenance responsibility shall be either:
  - a. The property owner in the form of an agreement signed by the buyer and the seller in Exhibit A of the recorded deed; or
  - b. A valid, recorded home owners association agreement.

2. If the sub-divider elects to establish a home owners association for the maintenance of streets, the provisions for establishing the home owners association and road maintenance agreement, in the form of a restrictive covenant, must be approved by the Subdivision Administrator.
3. The sub-divider shall maintain all private streets until such time as the maintenance agreement is signed by the buyer and the seller or the road maintenance responsibility is conveyed to the approved home owners association.
4. When private roads are created for a subdivision, a statement must be placed on the final plat indicating that the plat was approved as a subdivision and further subdividing of the property is subject to the road improvements requirements of this Section.

### **808.5 Private Roads – Minor Subdivision Requirements**

#### **A. Design and Construction Standards for Private Driveways and Roads in Minor Subdivisions**

1. New private driveways and roads shall be connected to a road that is constructed and maintained to NC DOT subdivision road standards as described in Section 808.2.
2. Only one (1) private road that is not eligible for maintenance by NC DOT is allowed on each tax parcel of land.
3. No more than six (6) lots may be served by a private road not constructed to NC DOT standards unless approved by the Board of Adjustment.
4. New private driveway easements and roads shall conform to the following standards:

1-3 Lots = 20' private driveway access easement may be utilized. No construction standards required. Easements must provide statement for allowance of public and private utilities. Final plats must contain a note conveying maintenance responsibility of the easement to the homeowners' utilizing it to access their property.

New private roads shall conform to the following minimum standards:

4-6 Lots = 30' right of way may be utilized. Minimum road standards shall include: 15' graveled surface road, utilizing (6) inch (compacted ABC) gravel base, 2' shoulders and ditch slopes not exceeding a 3:1 ratio. Right-of-way must provide language for the allowance of public and private utilities. Final plats must contain a note conveying maintenance responsibility of the easement to the homeowners' utilizing it to access their property. A compliance inspection to ensure proper installation of road is required prior to final plat approval.

7+ Lots = Minimum 45' right-of-way, and constructed to meet the "Subdivision Roads, Minimum Construction Standards" as published by the NC Department of Transportation.

5. All new private roads shall be graded, well drained, and stabilized utilizing gravel, asphalt, or concrete.
6. Where, in the opinion of the Subdivision Administrator, it is desirable and necessary to provide for future road access to an adjoining property or land locked parcel, proposed private roads or access easements shall be extended to the boundary of such property as required.

B. Exception to Allow Subdivision on Pre-Existing, Non-Compliant Private Roads

1. Any parcel fronting on a right-of-way that was platted and recorded or in residential use prior to the date of adoption of this ordinance (September 15, 1998) may be subdivided using the pre-existing right-of-way as access.
2. The sub-divider shall provide proof that the private right-of-way existed prior to September 15, 1998 by providing on the final plat a dated deed book page and reference (recorded by the Burke County Register of Deeds) identifying the right-of-way or by providing a notarized and sworn affidavit by the affected or past property owners to this effect.
3. Only one (1) private road that is not eligible for maintenance by NC DOT is allowed on each tax parcel of land existing as of the adoption date of this ordinance (September 15, 1998).
4. No more than six (6) lots may be served by a private road not constructed to NC DOT standards.

C. Maintenance Requirements for Private Roads in Minor Subdivisions

1. All private roads in a minor subdivision shall have a maintenance statement included on the final plat indicating who will have the responsibility for maintaining the streets. The maintenance responsibility shall be either;
  - a. The property owner in the form of an agreement signed by the buyer and the seller in Exhibit A of the recorded deed; or
  - b. A valid, recorded home owners association agreement.
2. If the sub-divider elects to establish a home owners association for the maintenance of streets, the provisions for establishing the home owners association and road maintenance agreement, in the form of a restrictive covenant, must be approved by the Subdivision Administrator.
3. When private roads are created for a subdivision, a statement must be placed on the final plat indicating that the plat was approved as a subdivision and further

subdividing of the property is subject to the road improvement requirements of this Section.

#### **808.6 Private Roads Allowed in Conservation Parallel Conditional Zoning Districts**

1. New subdivisions approved in a Low Density Conservation Parallel Conditional Zoning District or Estate Lots Parallel Conditional Zoning District application as per Article IX-A of the Burke County Zoning Ordinance may be allowed to service the subdivision using private roads if the permission is expressly agreed to in the conditions of approval.
2. Such roads are to be specifically designed to alleviate erosion and storm water concerns that may be problematic in sensitive environmental locations. In no case shall curb and gutter designs be approved in these situations.
3. A platted right-of-way of forty-five (45) feet will still be required and the all-weather roadway surface shall not be less than twelve (12) feet in width.
4. Such a road network shall connect to a NC DOT maintained road, be graded and finished to an all-weather surface, and in no case shall slopes contain slopes in excess of 18% grade.

#### **808.7 Access to Adjacent Properties**

1. For the purpose of providing improved traffic flow, limiting the number of subdivision street intersections on collector and arterial streets and providing access between adjoining subdivisions the approving authority may require that a proposed public street be extended by dedication or reservation to the boundary of such property and a temporary cul-de-sac be provided meeting NC DOT guidelines. Prior to approval of a final plat, the developer shall construct the road(s) accessing adjacent properties or provide an approved guarantee for the construction of said road(s).

#### **808.8 Permits for Connection to State Roads**

1. An approved NC DOT driveway permit is required for connection of a subdivision to any existing state road system. This permit is required prior to any construction which connects the subdivision road to the state system road.
2. The sub-divider shall provide verification of an approved NC DOT driveway permit prior to final plat approval.

#### **808.9 Marginal Access Street**

1. Where a tract of land to be subdivided adjoins a principal arterial or major thoroughfare as designated on the Burke County Thoroughfare Plan, the sub-divider shall be required to provide a collector road parallel to the arterial/thoroughfare or utilize reverse frontage along the subdivision's public road for access to the lots.

2. Where reverse frontage is utilized, private driveways shall be prevented from having direct access to the arterial/thoroughfare.
3. In cases where it is not feasible or practical for the sub-divider to provide a collector road or utilize reverse frontage or when the Planning Board determines that the installation of such would result in a less desirable subdivision design, the Planning Board may grant such an exception to this requirement. In granting such an exception, the Planning Board shall find that the spirit and intent of this chapter are preserved and that circumstances particular to the subject property, such as topography or shape of the tract, warrant the exception.

**808.10 Additional Entrances Required for Major Subdivisions**

1. Developments of fifty (50) or more one or two family dwelling units shall be provided with separate and approved fire apparatus access roads.
2. Fire apparatus access road gates shall comply with Section D103.5 of Appendix D of the International Fire Code, as amended.
3. Where two access roads are required, they shall be placed a distance apart equal to not less than one half the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses (Reference International Fire Code Appendix D, Section D104.3).
4. In cases where it is not feasible or practical for the sub-divider to provide additional entrances or when the Planning Board determines that the installation of such would result in a less desirable subdivision design, the Planning Board may grant an exception to this requirement. In granting such an exception, the Planning Board shall find that the spirit and intent of this chapter are preserved and that circumstances particular to the subject property, such as topography or shape of the tract, warrant the exception.

**808.11 Relation to Thoroughfare and Land Development Plans**

1. Arrangement, character, extent, width, grade, and location of all streets shall conform to the officially adopted Burke County Thoroughfare Plan, the adopted Burke County Comprehensive Plan or elements thereof and any other adopted thoroughfare plan.
2. In addition, proposed streets and street design characteristics given above shall be considered in relation to existing and proposed transportation patterns; topographic and other natural features; public convenience and appropriate relation to proposed uses of land to be served by such streets; and existing or potential land uses in adjoining areas.

**ARTICLE IX**  
**IMPROVEMENTS REQUIRED AND MINIMUM STANDARDS OF DESIGN**

**Section 900. Suitability of Land**

Where land to be subdivided is found by the Subdivision Administrator to be subject to the conditions of flooding, improper drainage, severe erosion, slides, or to have other characteristics which pose an ascertainable danger to health, safety or property, the subdivider shall take measures necessary to correct said conditions and eliminate said dangers.

**Section 901. Public or Private Streets and Roads**

All lots to be platted shall front on and have direct access to an existing street in the state highway system; or a street eligible for inclusion in the state highway system; or a private road which meets the requirements set forth in Section 808.3.

**901.1 Minimum Street Design Standards**

A. Public Street Design Standards

Any proposed public street in a subdivision shall be required to meet the Department of Transportation standards listed in the “Subdivision Roads, Minimum Construction Standards” as amended. A proposed public street must be installed and approved prior to final plat approval unless otherwise permitted pursuant to Section 704. For all subdivisions containing new public streets the sub-divider shall meet the requirements of N.C.G.S. 136-102.6.

B. Private Street Design Standards

Any proposed private street in a subdivision shall be required to meet the Department of Transportation right-of-way and design standards listed in the “Subdivision Roads, Minimum Construction Standards” as amended unless subject to the exceptions in Sections 808.5 or 808.6. A proposed private street must be installed and approved prior to final plat approval unless otherwise permitted pursuant to Section 704. All major subdivisions containing new private streets shall meet the maintenance requirements of Section 808.4.B.

**901.2 Review of Subdivision Road Plans**

A. Street Review for Preliminary Plat Approval

Prior to preliminary plat approval, the Subdivision Review Board shall provide a recommendation to the Planning Board whether the proposed public and private streets are consistent with Section 808 and other applicable sections of this ordinance. Preliminary plats may be given conditional approval by the Planning Board subject to road plan approval and driveway permit(s) as required by Section 901.1 of this ordinance.

B. Public Street Review

Plans for all public streets in subdivisions within the jurisdictional area of this ordinance shall be reviewed by the N.C. Department of Transportation, and a recommendation provided to the Planning Board indicating whether the proposed public street plans meet the street requirements as specified in Section 901.1.A prior to final plat approval.

**C. Private Street Review (Major Subdivisions)**

Plans for all private streets in major subdivisions within the jurisdictional area of this ordinance shall be reviewed by the Subdivision Review Board, and a recommendation provided to the Planning Board indicating whether the proposed private street plans meet the street requirements as specified in Section 901.1.B prior to final plat approval.

The sub-divider shall provide a signed and sealed statement from a registered engineer indicating the streets have been designed and constructed consistent with minimum standards and any conditions adopted with the approved preliminary plan. The statement will be provided prior to final plat approval, except that if a financial security guarantee for the streets is posted in accordance with Section 704 of this ordinance, then such a statement regarding construction shall be provided prior to release of the security.

**D. Private Street Review (Minor Subdivisions)**

Plans for all private streets in minor subdivisions within the jurisdictional area of this ordinance shall be reviewed by the Subdivision Administrator or his/her designee prior to final plat approval to determine whether the proposed private street plans meet the street requirements as specified in Section 901.1.B.

**Section 902. Water and Sewer Systems**

The preliminary plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The installation of all said systems (except for individual systems, well and septic tanks) shall be required prior to final plat approval unless otherwise permitted pursuant to Section 704.

**902.1 Public Systems**

Where applicable, the developer will connect to a governmental water and/or sewer system if said utility can be extended within the right-of-way (r-o-w) of a public road or street to the subdivision and through property easements. The term “where applicable” shall apply to conditions established by the County Engineer and adopted infrastructure plans based on topographic, financial, and other established determinants used to establish feasibility. At a minimum all major subdivisions within 1,000 feet of existing governmental water and/or sewer systems shall be required to connect to said system(s). Minor subdivisions are required to meet this requirement only if the property to be divided is adjacent to a public water and/or sewer system.

**Public Water Systems**

1. Plans and specifications for a new public water supply system or expansion of an existing system (refer to the definition of public water system in Article VI of this ordinance) shall be prepared by an engineer licensed to practice in North Carolina

and shall be approved by the Public Water Section of the N.C. Department of Environment and Natural Resources prior to construction of the system.

2. When the proposed system is to be connected to an existing system, approval of the project must also be obtained from the owner of the existing system prior to construction, and the system shall be constructed according to the specifications and standards of the existing system.
3. A letter of approval of the system plans and specifications from the N.C. Department of Environment and Natural Resources shall be submitted with the final plat.
4. When applicable, a letter of approval from the owner of the existing system to which another connection is proposed shall be submitted with the preliminary plat. Said letter will provide a determination of capacity for the proposed extension and consistency of the proposed extension with the specifications and standards of the existing system.

**B. Public Sewer System**

1. Plans and specifications for a new public sewer system or expansion of an existing public sewer system (refer to the definition of public sewer system in Article VI of this ordinance) shall be prepared by an engineer licensed to practice in North Carolina and shall be approved by the N.C. Department of Environment and Natural Resources prior to construction of the system.
2. When the proposed system is to be connected to an existing system, approval of the project must also be obtained from the owner of the existing system prior to construction, and the system shall be constructed according to the specifications and standards of the existing system.
3. A letter of approval of the system plans and specifications from the N.C. Department of Environment and Natural Resources shall be submitted with the final plat.
4. When applicable, a letter of approval from the owner of the existing system to which another connection is proposed shall be submitted with the preliminary plat. Said letter will provide a determination of capacity for the proposed extension and consistency of the proposed extension with the specifications and standards of the existing system.

**902.2 Individual On-Site Septic Systems**

Where public sewer is not available for each lot in the subdivision, the developer shall provide the following certification:

1. Certification by a soil scientist licensed to practice in North Carolina that each lot is suitable for and meets the requirements to obtain appropriate on-site sewage

permits. The final report of the soil scientist should be submitted to the Subdivision Review Board prior to approval of the final plat by the Planning Board; or,

2. **For minor subdivisions only** - Place a statement on the final plat stating; “No preliminary evaluation by a licensed soil scientist for on-site septic systems for the individual lots has been done and the Burke County Environmental Health Office has no liability, or fault, in lots that may be denied or forced to have an alternate on-site sewer system”.

### **902.3 Fire Protection and Hydrant Location**

Where a water line six (6) inches or greater in diameter is required in a public system, and the system has been designed and approved by the Public Water Section of the N.C. Department of Environment and Natural Resources to provide fire protection, fire hydrants shall be installed on said line. The hydrants shall be spaced so that coverage to all building sited along said line may be provided with not more than five hundred (500) feet of hose; and shall be located to facilitate access, hose laying, and drainage.

### **902.4 Subdivisions Serviced with Well(s) for Potable Water Supply**

It shall be incumbent upon the developer to have the proposed well site(s) located, on the final plat, for every individual water system and/or private water system, servicing or to service the development. In lieu of locating proposed individual well sites on final plats, the sub-divider shall place a statement on the plat that “This subdivision shall use individual well sites for potable water. The sites shall be consistent with Section 902.4 of the Burke County Subdivision Ordinance”. If the proposed site is not feasible for the well, the property owner must meet with the County’s Environmental Health Specialist to determine the most appropriate site prior to issuance of an on-site sewage permit or submit an alternative site to the Subdivision Review Board prior to final plat approval by the Planning Board.

#### **A. Individual Well Sites**

1. To benefit the public health, proposed individual well sites should be drilled wells with a minimum setback of ten (10) feet from any property line and fifty (50) feet from any on-site wastewater system, any on-site wastewater component part, and any designated on-site wastewater system repair area.
2. Bored wells shall be set back at least ten (10) feet from any property line and set back at least one hundred (100) feet down slope and fifty (50) feet up slope from any on-site wastewater system, on-site wastewater system component or repair area.
3. In order to promote ground water quality and availability, every effort should be made to maintain maximum separation distance between wells within the subdivision.

#### **B. Shared Private Wells (Non-Community System)**

1. For private wells that are to serve more than one lot, but are not community well water sources, a minimum setback of one hundred (100) feet must be maintained from any on-site wastewater system, any on-site wastewater system component, and any on-site wastewater system repair area.
2. A utility easement consistent with Section 908.1 shall be shown on the plat connected to each lot served by the proposed well.
3. A non-revocable ownership and maintenance agreement for the shared well shall be recorded on the deed to each lot being served by the shared well.

C. Private Community Wells

1. For subdivisions to be serviced by private community wells, the developer must have the community well site(s) located on the preliminary and final plats with a minimum setback of one hundred (100) feet from any proposed property line.
2. Community well water systems must be approved by the Public Water Supply Section of the Division of Environmental Health prior to issuance of an on-site wastewater permit by Burke County Environmental Health or building permit by Building Inspections for any lot in the subdivision.
3. When located within a common area, use of the one hundred (100) feet setback for common community work or recreational area is not permitted. The maintenance and ownership of said wells shall be established in the covenants established for the Home Owners Association.

**Section 903. Sedimentation Control**

In order to prevent the pollution of streams, springs, flat water bodies, and other drainage networks due to soil erosion and sedimentation, the following requirements shall be met in accordance with Title 15 of the N.C. Administrative Code as amended.

A. Requirements for Major Subdivisions

1. The Planning Board may conditionally approve preliminary plats subject to the ability of the sub-divider to obtain necessary erosion and sedimentation plan approval from the appropriate state agency.
2. Prior to any land disturbing activity of one (1) or more acre(s) and prior to final plat approval, the sub-divider shall provide an erosion control and sedimentation plan approval letter from the Division of Land Resources of the Department of Environment and Natural Resources to the Subdivision Administrator.
3. Prior to final plat approval, the Subdivision Administrator or his/her designee shall inspect the property to ensure that disturbed areas have been stabilized and that no improper drainage, severe erosion, slides, or other like characteristics which pose an ascertainable danger to health, safety, or property exist on the property. If such characteristics remain, it shall be the responsibility of the sub-

divider to eliminate said dangers and correct said conditions prior to final plat approval.

4. When installation improvement guarantees are used, per Section 704 of this ordinance, the inspection required in Section 903.A.3 above shall be conducted prior to the release of the security.

**B. Requirements for Minor Subdivisions**

1. Prior to any land disturbing activity of one (1) or more acre(s) and prior to final plat approval, the sub-divider shall provide an erosion control and sedimentation plan approval letter from the Division of Land Resources of the Department of Environment and Natural Resources to the Subdivision Administrator.
2. The Subdivision Administrator may require notification of completion of the land disturbing activity and inspect the property to ensure that disturbed areas have been stabilized and that no improper drainage, severe erosion, slides, or other like characteristics which pose an ascertainable danger to health, safety or property exist on the property. If such characteristics remain, it shall be the responsibility of the sub-divider to eliminate said dangers and correct said conditions prior to the issuance of improvement permits by the County.

**Section 904. Blocks**

The maximum and minimum length of blocks shall be as follows:

**A. Length**

Block lengths shall not exceed fifteen hundred (1,500) feet nor be less than four hundred (400) feet. Where deemed necessary by the Planning Board, a pedestrian crosswalk at least ten (10) feet in width may be required.

**B. Width**

Blocks shall have sufficient width to allow two tiers of lots of minimum depth. Blocks may be one lot in depth where single tier lots are required to separate residential development from through vehicular traffic or non-residential uses.

**Section 905. Sidewalks**

Sidewalks, if constructed, shall be within the street right-of-way and shall be constructed to a minimum width of five (5) feet and shall consist of a minimum thickness of four (4) inches of reinforced concrete, six (6) inches on reinforced concrete at driveways.

**Section 906. Lots**

Residential lots shall comply with the following requirements:

**906.1 Area**

- A. The minimum requirement for lot area shall comply with Article X, Section 1001 Minimum Lot Area of the Burke County Zoning Ordinance, except as allowed in 906.1.B of this Section, and the Watershed Protection Ordinance. Where conflict exists between the requirements the stricter requirement shall apply.

- B. An exception to the minimum lot area requirement is permitted to divide two (2) or more primary structures that existed prior to February 16, 2005 onto separate parcels of land that would otherwise not contain sufficient acreage to meet current lot area requirements. The resulting lots shall comply with the Watershed Protection Ordinance and contain a minimum of one-half (0.5) acre of land per parcel.
- C. In calculating the lot area, the street right-of-way shall not be included.

### **906.2 Width and Depth**

- A. All lots shall have a minimum width at the front yard building line of one hundred (100) feet and a minimum width at the street right-of-way of thirty-five (35) feet. Corner lots shall have an extra width of ten (10) feet to permit adequate setback from side streets.
- B. All lots shall have an average depth of at least one hundred (100) feet. Single tier lots shall have an average depth of at least one hundred twenty-five (125) feet.
- C. Lots shall be configured in such a way that the average length, measured from the front to the rear property lines, shall not exceed four times the average lot width.

### **906.3 Orientation of Lot Lines**

Side lot lines shall be substantially at right angles or radial to street lines.

### **Section 907. Building Setback Lines**

- A. The minimum building setback lines shall be as follows unless otherwise approved as part of a parallel conditional zoning district application approval as per Article IX-A of the Burke County Zoning Ordinance or as allowed in Section 907.B herein.
  - 1. Distance from street right-of-way... 30 feet (Except when adjacent to a road designated as minor arterial, major collector, or urban major thoroughfare, setback shall be 45 feet as amended).
  - 2. Distance from side property line... 10 feet.
  - 3. Distance from rear property line... 10 feet
  - 4. Distance from a side property line abutting a street right-of-way line... 10 feet.
- B. Upon approval of the Subdivision Administrator, an exception to the building setback requirement is permitted to divide two (2) or more permanent structures that existed prior to September 15, 1998 onto separate parcels of land that would otherwise not meet current setback requirements. The new property line shall be located in a manner that provides equal separation of the pre-existing structures or is sited in a manner approved by the Subdivision Administrator that promotes the public health, safety, and general welfare of the County.

### **Section 908. Easements**

Utility and other easements shall be provided as follows:

A. Utility easements centered on rear or side lot lines shall be provided where deemed necessary by the Planning Board. There shall be at least seven and one-half (7.5) feet on each property line with a total easement of fifteen (15) feet.

B. Drainage

Surface drainage courses shall have side slopes of at least three (3) feet of horizontal distance for each one (1) foot of vertical distance, and shall be of sufficient size to accommodate run-off from the drainage area without flooding. The minimum grade along the bottom of a surface drainage course shall be a vertical fall of at least one (1) foot in each one hundred (100) feet of horizontal distance.

**ARTICLE X  
PRESERVATION OF WATER AREAS**

**Section 1000. Intent**

It is the intent of these regulations both to safeguard existing and potential development in appropriate locations and to preserve and to promote a desirable ecological balance. Insofar as is reasonably practicable, subdivisions shall, therefore, be located, designed and improve to preserve important natural water areas and related vegetation and wildlife habitats, to avoid creation of upstream impoundment or downstream runoff harmful to such complexes or to existing or potential development in appropriate locations, and to maintain desirable groundwater levels.

**Section 1001. Proposed Development on Lake Rhodhiss and Lake Hickory**

All lots in any subdivision around Lake Hickory or Lake Rhodhiss, shall be served by a publicly operated central water and sewer system to help protect these watercourses if any portion of the subdivision is located within 250 feet of the reference line. The reference line for each of the listed lakes is: Lake Hickory 935 feet above mean sea level full pond and Lake Rhodhiss 1,000 feet above mean sea level full pond. All applicable floodplain regulations shall still apply to these areas as necessary.

In addition, the lots covered under this section will be required to meet the requirements of Article XII of the County's zoning ordinance.

This requirement shall not apply to lots subdivided as sites for single family dwellings which are two (2) acres or more in size not to lots subdivided as sites for single family dwellings which are one and one-half (1-1/2) acres or more in size and are to be served with either a publicly operated central water or central sewer system.

**Section 1002. Proposed Development on Lake James**

All new lots created on Lake James or the main stem of the Catawba River between the dams at Lake James to the mouth of Lake Rhodhiss shall be in compliance with Article XII and Section 1001 of the County's zoning ordinance. The reference line for parcels on the main stem of the Catawba River shall be the top edge of the river bank. All new subdivisions approved in the Planned Residential Mixed Use District after February 23, 2002 must be served by public water and sewer lines.

## **ARTICLE XI ADMINISTRATIVE REMEDIES**

### **Section 1100. Variances**

Where, because of the size of the tract to be subdivided, its topography, the condition or nature of adjoining areas or the existence of other unusual physical conditions, strict compliance with the provisions of the ordinance would cause an unusual and unnecessary hardship on the sub-divider, the Board of Adjustment may vary the requirements set forth herein. In granting variances, the Board of Adjustment may require such conditions as will secure, insofar as practicable, the objectives of the requirement varied. Any variance(s) authorized shall be entered in the minutes of the Board of Adjustment together with the circumstances that justified the variance(s) granted, and the conditions upon which the variance(s) was granted. Submission of a variance application shall be accompanied by a filing fee set forth in the Schedule of Fees adopted by the Board of Commissioners.

Any person that is aggrieved by the decision of the Board of Adjustment may within thirty (30) days of the Board of Adjustment's decision, petition the Board of Commissioners to review the Board of Adjustment's decision. The Board of Commissioners may uphold the action of the Board of Adjustment or make any other decision with reference to the variance application that it deems appropriate.

### **Section 1101. Appeals Procedure**

#### **1101.1 Decisions by the Planning Administrator**

Decisions of the Planning Administrator relating to the administrative enforcement of the provisions herein are subject to an appeal to the Board of Adjustment by any person aggrieved or by an officer, department, or agency of the County affected by said decision or decisions.

- A. An appeal shall be submitted in writing to the Planning Administrator who shall refer the written appeal to the Board of Adjustment at the next regularly scheduled meeting at least twenty-one (21) days from submission of the appeal.
- B. Each appeal shall be accompanied by payment of a seventy-five dollar (\$75.00) non-refundable fee to help defray the cost of publicizing and conducting the public hearing.
- C. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the Board of Adjustment has all the powers of the Planning Administrator from whom the appeal is taken.

**1101.2 Decisions by the Board of Adjustment**

Any person that is aggrieved by the decision of the Board of Adjustment may within thirty (30) days of the Board of Adjustment's decision, petition the Board of Commissioners to review the Board of Adjustment's decision. The Board of Commissioners may uphold the action of the Board of Adjustment or make any other decision with reference to the variance that it deems appropriate.

**1101.3 Decisions by the Board of Commissioners**

All decisions by the Board of Commissioners are subject to an appeal to the superior court by any person, firm, corporation, or government agency aggrieved by said decision or others.

## **ARTICLE XII AMENDMENTS**

### **Section 1200. Amendment Procedures**

This ordinance may be amended from time to time by the County Commissioners as herein specified, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have forty-five (45) days from the date of presentation to the Planning Board within which to submit its report. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment. No amendment shall be adopted by the County Commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Burke County at least once a week for two (2) successive calendar weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing the ten (10) to twenty-five (25) day period, the date of publication is not to be counted, but the date of hearing is. The filing fee for an amendment is \$75.00 plus the cost for advertisement.

## **ARTICLE XIII LEGAL PROVISIONS**

### **Section 1300. Penalties for Violation**

#### **A. Definition of Violation**

After the effective date of this ordinance, any person who, being the owner or agent of any land located within the jurisdiction of this ordinance, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this ordinance and recorded in the office of the Burke County Register of Deeds, shall be guilty of a misdemeanor.

#### **B. Penalty for Violation**

Violators of the ordinance shall be subject, upon conviction, to a fine and/or imprisonment as provided by N.C. General Statute Section 14-4. Each day that a violation continues shall be considered a separate violation and punishment assigned accordingly.

#### **C. Exception for Contracts**

The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. However, the provisions of this section shall not prohibit any owner or agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the Subdivision Ordinance or recorded with the Register of Deeds, provided the contract complies with the N.C. General Statute Section 153A-334, as amended.

#### **D. Violation Process**

Burke County, through its attorney or other official designated by the County Commissioners, may take appropriate actions and proceedings at law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation and to prevent illegal occupancy of a building, structure, or premises.

#### **E. Additional Recourse for Violation**

No building permit or certificate of occupancy shall be issued nor shall water, sewer, or other public facilities or services be extended to or connected with any land for which approval of a subdivision, under the provisions of this ordinance, is required unless the regulations of the ordinance are met.

### **Section 1301. Separability**

Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not effect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 1302. Abrogation**

This ordinance shall neither repeal, abrogate, annul, impair, nor interfere with any existing subdivisions, the plats of which are properly recorded in the Office of the Register of Deeds prior to the effective date of this ordinance, nor with existing easements, covenants, deed restrictions, agreements or permits previously adopted or issued pursuant to law prior to the effective date of this ordinance.

**Section 1303. Effective Date**

This ordinance shall take effect immediately and be in force from and after its adoption by the Burke County Commissioners, the 15<sup>th</sup> day of September, 1998.