

MEMO TO: Mayor and City Council

FROM: City of Lincoln Planning Department

DATE: June 29, 2023

SUBJECT: CZ-5-2023 - Application from Bean Brothers Real Estate LLC requesting an amendment to their site plan that was approved as part of a conditional zoning change.

Background

In December of 2022, Bean Brothers Real Estate LLC requested a conditional zoning from R-25 to GMC-CD of 2.109 acres to construct a storage facility, mulch yard and parking for the adjacent Home and Garden Center and was approved by City Council. The subject property is located at the southeast corner of Reepsville Road and Lore Road (Parcel ID 00512).

CONDITIONAL ZONING

Because this approved rezoning was to a conditional zoning district, the property could only be used for the specified use in accordance with the approved site plan. Any major modification or change in use would require approval by the City Council through a public hearing process.

The applicant was approved to construct the following:

- 3,600 square foot storage building
- As required by the UDO, there will be a screening buffer between residential areas
- Mulch yard
- One access point onto Lore Road
- 19 parking spaces
- Rental equipment storage area
- Rental equipment display area

AERIAL VIEW:



APPLICANT IS REQUESTING THE FOLLOWING:

Dear City of Lincolnton & Lincolnton County,

My name is Nathan Bean, owner of Bean Brothers Hardware & Supply along with Bean Brothers Landscaping. Both companies operate out of 969 Reepsville Rd, Lincolnton NC. We purchased Carolina Hardware in August Of 2022. We knew we'd grow out of ourselves very soon and inquired purchasing the wooded, vacant lot adjacent to us. About one third of the property was fenced in and was leased to Carolina Hardware for the last 30 plus years. It had a propane tank located near the road, a straw trailer, a pine needle bin, small utility trailers, asphalt, and mulch bins. It was Leased by Rosters Oil to Carolina Hardware for commercial use for 30 plus years while it was zoned residential. Rosters Oil owned the land for years. So with the new growth and expansion we decided to have our Grand Opening March 25th. So we pushed to have the yard cleared and ready to use by our Grand Opening. We have over \$500,000 in these 2 acres. We have over \$27,000 in the fence. The additional fence is tided into the old existing fence that has been there for 30 years. The old fence was even on the neighbors property, which we removed. There is also asphalt in the buffer on the rear of the lot in the nature area. To remove the fence, replace new poles, concrete, move materials around would cost us an additional \$7,500. We have spoken with the neighbors and they are extremely pleased with the updates. They however did express concerns over shrubs in the front of the lot and did not want to see them there. We also used mesh privacy netting instead of the metal slats. We did this for two reasons. The metal was going to be four times more expensive and it was on back order almost 18 weeks. I was waiting to move any further on the project until our meeting. We would like the County and City to approve the condition of the lot that it is in minus a couple of details we intend to do.

- 1) DOT driveway permit and installation.
- 2) Installing pipes to connect water on Lore Rd and cover with dirt to plant grass instead of having a large ditch.
- 3) Bringing in top soil and planting grass near the stop sign.
- 4) Installing new gate on Lore Rd.
- 5) Installing more shrubs and trees along the back side of property minus where existing asphalt is.

CHANGES FROM SITE PLAN

1 - The Water Supply Watershed Protection Act requires development to be less than 70% impervious surface. The initial plan was at 66.4% impervious surface. With the fence in the incorrect location, it puts the project at 78% impervious surface. We are required by state law to enforce these provisions.

NCGS 143-214.5 STATES THE FOLLOWING:

(f) State Enforcement Authority. - The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management requirement.

(g) Civil Penalties. - A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

2 - There is no street landscaping on the frontage along Reepsville Road. Site plan shows street landscaping in accordance with the ordinance.

ORDINANCE STATES THE FOLLOWING:

(B) Street landscaping,

(1) Street landscaping off the street right-of-way and behind the sight triangle shall be required in the ROS, OR, OI, NB, GB, CC, HB, PB, GMC and GI Zoning Districts along all thoroughfares.

(2) The landscaping shall be provided in a designated landscaping area which shall include, as width, at least the first 12 feet of the front yard and side yard as measured from the edge of the street right-of-way line. Per 100 linear feet of landscaping, there shall be, at a minimum, four small trees and 12 shrubs, or four large trees. The remaining portion of the landscaped area shall be improved with ground covers or natural mulching materials. No part of the landscaped area shall be left as bare soil. It shall be the responsibility of the owner of the property and any tenant of the property to maintain the landscaped area in a healthy condition; to keep plant growth off roadways or otherwise from interfering with traffic visibility or safety, and to keep the landscaped area free of litter, debris, and uncontrolled weed growth. Within the designated landscaped area, landscaped decorative fences and masonry walls may be constructed no closer than six feet to the street right-of-way line and behind the sight triangle, however, the construction of the fences or masonry walls shall not relieve the developer from planting requirements except as provided in the succeeding divisions of this section.

(3) All required plantings shall be located on the street side of any fence or wall, and where berms are constructed, between the street right-of-way line and the crest of the berm. Any side devices constructed within the designated landscaped area shall be limited to the following.

(a) Berms. All earth shall be planted with ground covers except where mulching is provided for trees or shrubs. Shrubs and trees on the berms and within the designated

landscaping area may be counted in planting requirements. Berms shall meet all requirements of § 153.046(C)(3) of this chapter.

(b) Fences. Fences shall be constructed of decorative wood or metal materials, designed specifically for fencing, be of a consistent pattern, and not exceed six feet in height. Metal fences shall be limited to decorative steel or iron. Utility metal fencing such as chain link fencing is not permitted within the designated landscape area. (Utility fences are permitted outside (side opposite street side) the designated landscaping area, see § 153.049 and other applicable requirements.) Wood fences shall be limited to pressure treated wood or naturally preserved species approved by the Administrator (e.g., locust and redwood). Wood fencing may be rail, picket, or opaque in construction and must be of a consistent pattern.

3- There is not any screening on Lore Road. Site plan shows screening in accordance with the ordinance.

4 - There are some trees planted on the rear property line, however it does not meet the ordinance screening requirements. Ordinance requirements, definitions and a visual diagram are below:

ORDINANCE STATES THE FOLLOWING:

§ 153.046 SCREENING.

The intent of these screening requirements shall be to create a screen between zoning districts and other zoning districts or to screen certain uses in order to minimize potential nuisances such as the transmission of noise, dust, odor, litter and glare of lights; to reduce the visual impact of unsightly aspects of adjacent development; to provide for the separation of spaces; and to establish a sense of privacy. Any screening required under this section shall materially screen the subject use between the ground level and the height of the required screening from the view of the adjoining.

(A) Screening. Screening shall be required under the following situations.

(1) Between residential and nonresidential districts. Where an OI, NB, GB, CC, HB, PB, GMC or GI District abuts a Residential (R) District, screening shall be provided on the lot(s) which are located in the OI, NB, GB, CC, HB, PB, GMC or GI District (except a residential use) at the time the lots are developed (except with a residential use) or when any existing and/or accessory structure on the lot is expanded.

(4) Open storage and open structures.

(a) Within any NB, GB, CC, HB, PB, GMC or GI District, screening shall be required for the open storage of any goods other than vending machines, retail goods left outside only during business hours, vehicles, trailers, other equipment capable of being driven on a roadway and any fixtures fastened to a building, ground or impervious surface; or for any unenclosed structure consisting of a roof, but no walls used for storage of materials, products, wastes or equipment, whenever the storage or structure is located within 100 feet of the street right-of-way line.

(B) Location of screening.

(1) (a) Any screening required by division (A) shall be located along side and/or rear property lines of the lot(s) in question except that screening shall not be required along any street right-of-way unless otherwise stipulated in this chapter.

(b) If screening is required along a street right-of-way it shall be located behind the right-of-way and outside the area of the sight triangle (defined in § 153.031 of this chapter).

(C) *Specifications for screening.* Screening may be in the form of natural plantings, planted berms, walls or fences. Screening shall be encouraged, however, in the form of natural plantings. Where sufficient room exists to place a screen consisting of natural plantings or maintain an existing screen of natural plantings, the natural plantings shall be used as the required form of screening. Otherwise, screening in the form of a planted berm, wall or fence may be used. The Administrator may approve a combination of natural planting, planted berm, wall or fence, if he or she determines that the spirit and intent of this section are met by the combination. (See this section, this division (C) and division (D) below and note street landscaping requirements in this division.)

(1) *Natural plantings.*

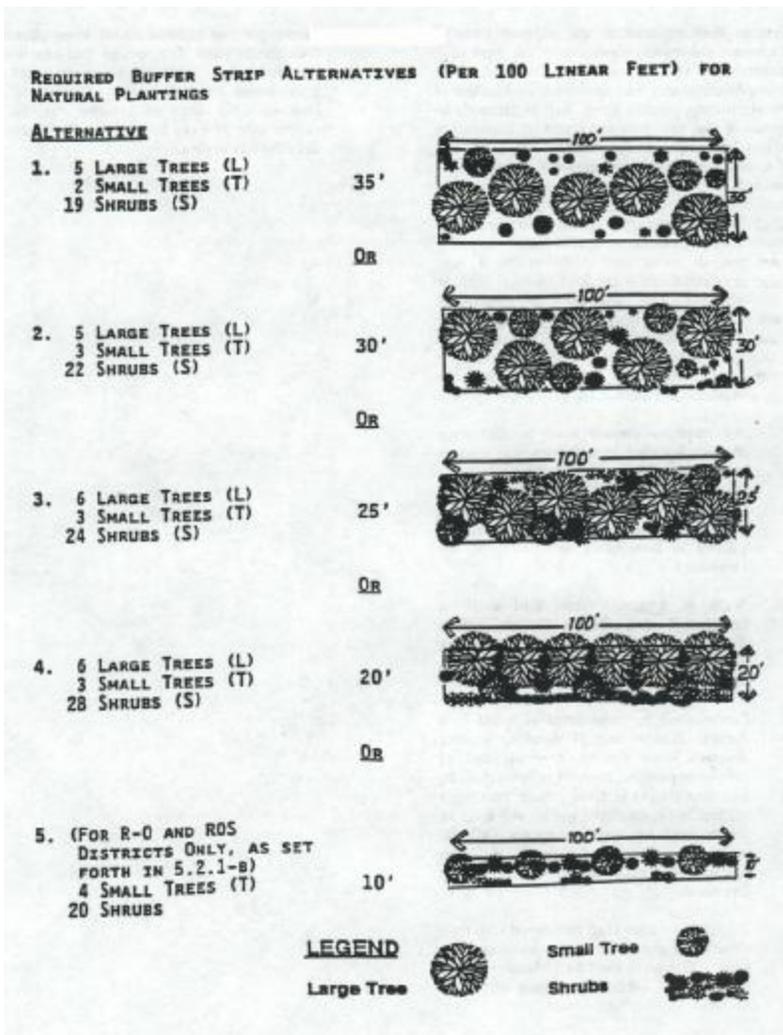
(a) Where natural plantings are used, a buffer strip of at least 20 feet in width (ten feet for a nonresidential use in the R-O District) shall be planted. This strip shall be free of all encroachment by structures, parking areas or other impervious surfaces. The amount and type of buffer materials to be planted per 100 linear feet shall be as indicated in Figure A below.

(b) All materials planted shall be free from disease, installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth, properly guyed or staked and planted in a manner that is not intrusive to utilities and/or pavement and planted in accordance with division (G) below of this section.

(2) *Walls or fences.*

(a) Any wall shall be constructed in a durable fashion with a finish surface of brick, stone or other decorative masonry material approved by the Administrator.

(b) Fences shall be constructed of wood in a durable fashion and of durable, weather resistant wood fencing materials and of consistent pattern. No wall or fence shall be less than six feet nor greater than eight feet in height above grade. All walls or fences used for screen purposes shall be opaque. Walls and fences shall be constructed in accordance with division (G) of this section.



TREE, LARGE. A tree which, at the time of planting, has a caliper of at least one and three-fourths inches and a height of at least ten feet and of a species which, at maturity, can be expected to reach a height of at least 40 feet under normal growing conditions in the local climate.

TREE, SMALL. A tree which, at the time of planting, has a caliper of at least one and one-half inches and a height of at least five feet and of a species which at maturity, can be expected to reach a height of at least 20 feet under normal growing conditions in the local climate.

§ 153.048 SCREENING AND LANDSCAPING REQUIRED PRIOR TO ISSUANCE OF CERTIFICATE OF COMPLIANCE.

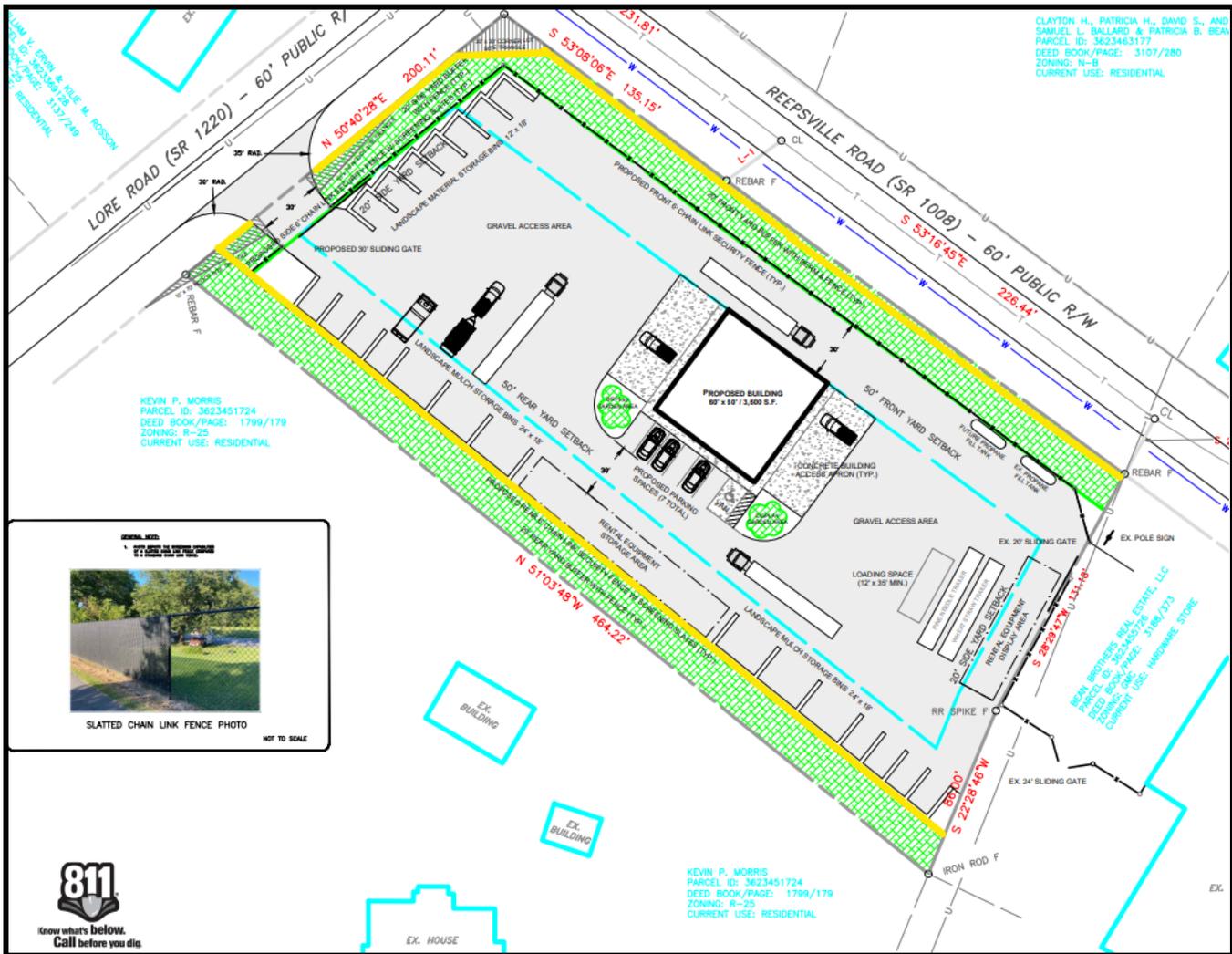
After the effective date of this chapter, a certificate of zoning compliance shall not be issued for any use located on a lot(s) upon which screening and/or landscaping is required, unless the screening and landscaping is provided on the lot(s) as herein specified. This provision may be temporarily waived by the Administrator in cases where it was not possible for the developer to install certain species of plant material prior to occupancy due to the recommended planting season not occurring at an appropriate phase in construction, and in that case, the time deadline for planting the materials shall be extended only to the ideally recommended planting season for the materials.





5 - The fence along Reepsville is one foot from the ROW and Lore is on the ROW line. The site plan shows the fence 20' back from the ROW line on both streets. The old fence (shown in below pic) was just behind the ROW line which is allowed in residential zoning areas. This lot was R-25 prior to the conditional zoning. You can clearly see the existing gas tank in this photo and if you look at the site plan, you will see the fence was to be located right beside the existing tank.





- 6 - The site plan shows screening slats. Mesh privacy netting was used.
- 7 - Applicant wants to wait on constructing the 3600 SF building and parking area.

PLANNING BOARD VOTE

5-0 in favor to deny application to amend and give applicant 60 days to come into compliance

STAFF AND PLANNING BOARD RECOMMENDATION

Staff feels that items 6 and 7 are reasonable amendments. **However, items 2-5 are direct zoning violations. Item 1 violates state statute. If this amendment were approved, it would be in conflict with the Unified Development Ordinance and NCGS 143-214.5.** Staff recommends the following actions:

- denial of the amendment of the conditional zoning site plan
- the time frame to come into compliance be 60 days.

§ 143-214.5. Water supply watershed protection.

(a) Policy Statement. - This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. - The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection requirements applicable to each classification to protect surface water supplies by (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 160D-913, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(c) Classification of Water Supply Watersheds. - The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. - The Department shall assist local governments to develop water supply watershed protection programs that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). Local governments shall administer and enforce the minimum management requirements. Every local government that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a local government must comply with Article 6 of Chapter 160D of the General Statutes. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive

than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(d2) A local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

(1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.

(2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.

(3) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements.

(4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.

(6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.

(7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

(d3) A local government implementing a water supply watershed program shall allow an applicant to exceed the allowable density under the applicable water supply watershed rules if all of the following circumstances apply:

(1) The property was developed prior to the effective date of the local water supply watershed program.

(2) The property has not been combined with additional lots after January 1, 2021.

(3) The property has not been a participant in a density averaging transaction under subsection (d2) of this section.

(4) The current use of the property is nonresidential.

(5) In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all of the existing and new built-upon area on the property is

treated in accordance with all applicable local government, State, and federal laws and regulations.

(6) The remaining vegetated buffers on the property are preserved in accordance with the local water supply watershed protection program requirements.

(e) **Assumption of Local Programs.** - The Commission shall assume responsibility for water supply watershed protection, within all or the affected portion of a water supply watershed, if a local government fails to adopt a program that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of an approved local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) **State Enforcement Authority.** - The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management requirement.

(g) **Civil Penalties.** - A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) **Planning Grants to Local Governments.** - The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such criteria shall give priority to local governments that are not then administering zoning ordinances in affected water supply watershed areas.

(i) Every State agency shall act in a manner consistent with the policies and purposes of this section, and shall comply with the minimum statewide water supply watershed management requirements adopted by the Commission and with all water supply watershed management and protection ordinances adopted by local governments. (1989, c. 426, s. 1; 1991, c. 342, s. 9; c. 471, s. 2; c. 579, s. 1; 1991 (Reg. Sess., 1992), c. 890, s. 14; 1998-215, s. 62; 2012-200, s. 7; 2019-111, s. 2.5(k); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-164, s. 1(a); 2022-62, s. 35.)