

NORTH CAROLINA)
ALLEGHANY COUNTY)

MOUNTAIN RIDGE PROTECTION ORDINANCE

COUNTY OF ALLEGHANY, N. C.

AN ORDINANCE OF THE COUNTY OF ALLEGHANY, NORTH CAROLINA, REGULATING THE HEIGHT OF TALL BUILDINGS OR STRUCTURES ON MOUNTAIN RIDGES, PROVIDING FOR THE METHOD OF ADMINISTRATION AND ENFORCEMENT, DEFINING CERTAIN TERMS USED HEREIN, AND PROVIDING FOR THE IMPOSITION OF PENALTIES FOR VIOLATION OF PROVISIONS OF THIS ORDINANCE.

ARTICLE I

TITLE

This ordinance shall be known and may be cited as "The Mountain Ridge Protection Ordinance of the County of Alleghany, North Carolina."

ARTICLE II

PURPOSE¹

The Board of Commissioners finds that the construction of tall buildings or structures on mountain ridges may cause unusual problems and hazards to the residents of and visitors to the mountains. The purpose of this ordinance therefore is to regulate the construction of tall buildings or structures on mountain ridges to ensure that: adequate water supply is available to such building or structure; the disposing of sewage will not infringe on the ground water rights and endanger the health of those persons living at lower elevations; adequate fire protection can be made available; such buildings or structures will not be a hazard to air navigation and to persons on the ground; and such tall buildings will not detract from the natural beauty of the mountains.

ARTICLE III

AUTHORITY AND ENACTMENT

In pursuance of the authority conferred by Article 14 of Chapter 113A of the North Carolina General

Statutes, the Board of Commissioners of the County of Alleghany, North Carolina, hereby ordains and enacts into law these articles and sections.

ARTICLE IV

JURISDICTION

The provisions of this ordinance shall apply to the construction of tall buildings or structures, as defined in this ordinance, on protected mountain ridges, as defined in this ordinance, within Alleghany County, and outside the territorial jurisdiction of any municipality within Alleghany County. This ordinance may also apply to any or all areas lying within the territorial jurisdiction of any municipality within Alleghany County if the municipality by resolution requests such application. Protected mountain ridges are further identified by the map entitled "Identification of Protected Mountain Ridges in the County of Alleghany" and Is on file in the office of the enforcement officer² and with the Register of Deeds of Alleghany County.

ARTICLE V

INTERPRETATION AND DEFINITIONS³

Section 500. Word Interpretation.

Except as specifically defined herein, all words used in this ordinance shall have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein are defined as follows and in

Section 501:

- 500.01 The word "County" shall mean the County of Alleghany, North Carolina.
- 500.02 The words "County Commissioners" shall mean the County Commissioners of the County of Alleghany, North Carolina.
- 500.03 The words "Planning Board" shall refer to the Alleghany County Planning Board.
- 500.04 The word shall mean the Mountain Ridge Protection Ordinance of the County of Alleghany, North Carolina.
- 500.05 The word "may" is permissive.

- 500.06 The word "shall" is mandatory.
- 500.07 The word "building" includes the word "structure".
- 500.08 Words used in the singular include the plural, and words used in the plural include the singular.
- 500.09 Where this ordinance references a locally adopted subdivision, ordinance or zoning ordinance, all applicable definitions in said ordinances shall apply to this ordinance.
- 500.10 The words "enforcement officer" may mean the building inspector, zoning enforcement officer, planning board, or any other person or agency designated by the local governing board.

Section 501. Definitions.

- 501.01 Building. Any structure built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for fifty (50) percent of its perimeter. The word "building" shall be construed as if followed by the word "or part thereof".
- 501.02 Construction. Any new construction, reconstruction, alteration or expansion.
- 501.03 Crest. The uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.
- 501.04 Enforcement Officer/Agency. (The local governing body will designate the appropriate person or agency.)
- 501.05 Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission board, public or private institution, utility, cooperative, inter state body, the State of North Carolina and its agencies and political subdivisions, or other entity.
- 501.06 Protected Mountain Ridges. All mountain ridges whose elevation is five hundred

(500) or more feet above the elevation of an adjacent valley floor.

- 501.07 Resident. Any person, as defined in this section, residing, doing business or maintaining an office within Alleghany County.
- 501.08 Ridge. The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within one hundred (100) feet below the elevation of any portion of such line or surface along the crest.
- 501.09 Structure. Anything constructed or erected, including, but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.
- 501.10 Tall Buildings or Structures. Any building, structure or unit within a multi-unit building, with a vertical height of more than forty (40) feet measured from the top of the foundation of said building, structure or unit and the uppermost point of said building, structure or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high slope of a ridge exceeds three (3) feet, then such measurement in excess of three (3) feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than thirty-five (35) feet. Tall buildings or structures do not include:
- (1) Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.
 - (2) Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flag poles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills.

- (3) Buildings and structures designated as National Historic Sites on the National Archives Registry.

ARTICLE VI

ADMINISTRATION AND ENFORCEMENT⁴

Section 600. Permits.

No tall building or structure shall be constructed, altered, reconstructed or expanded on any protected mountain ridge until a permit for such construction, alteration, reconstruction or expansion has been obtained as provided in this Article. No permit shall be issued that would not be in compliance with the provisions of this ordinance.

Section 601. Enforcement Officer.

The Board of Commissioners shall appoint an enforcement officer. It shall be the duty of the enforcement officer to administer and enforce the provisions of this ordinance.

Section 602. Application for Permit.⁵

- 602.01 All applications for permits shall be submitted to the enforcement officer and shall be accompanied by a development plan containing, where applicable, the following information:
- (1) Title block containing the name of the development, name of owner, name of developer, scale, and north arrow.
 - (2) Existing site conditions, including contours, water courses, any unique natural or man-made features such as vegetation' and ground cover.
 - (3) Exact boundary lines of the property containing the propos4d construction.
 - (4) Location and use of all existing and proposed buildings or structures.
 - (5) Plans of proposed water and sewer layouts (excluding individual wells

and septic systems) shall show the location of lines, line sizes, approximate location of manholes, pumps hydrants, force mains, and the connection of the proposed system with existing systems.

- (6) Location of existing and proposed easements and rights-of-way.
- (7) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences and walls.
- (8) Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.
- (9) Existing and proposed road access to and within the development showing rights-of-way and pavement widths. Notation of the proposed ownership of the Street system (public or private).
- (10) A front and side elevation profile, drawn to scale, of all existing and proposed buildings.

602.02 In addition to the development plan, all applications for permit shall be accompanied by the following documentation:

- (1) If a street is to be dedicated for public use, a letter of approval for the proposed street plan shall be submitted indicating that Street plans have been reviewed and approved in the following manner:
 - (a) Street plans shall be reviewed and approved by the N.C. Department of Transportation (or whatever public agency is to accept the dedication and assume maintenance of the streets).
 - (b) Street plans shall contain all data, calculations and information as required by the N. C. Department of Transportation (or other appropriate public agency).
 - (c) The developer shall meet all other

requirements of N.C. General Statutes 136-102.6 if the development constitutes a subdivision.

- (2) If the proposed water and/or sewer system is to connect onto an existing system, a letter of approval from the owner of said existing system for such connection shall be submitted. In addition, a letter of approval from the appropriate regulatory agency shall be submitted indicating that the proposed connection will not cause any problems related to overloads, discharges, shortages, etc. on said existing system.
- (3) If individual wells and/or septic tanks are to be utilized, a written statement from the Appalachian District Health Department indicating approval of wells and/or septic tanks for use in the development shall be submitted.
- (4) If an on-site package water and/or sewer treatment system is to be utilized, a letter of approval from the N. C. Department of Human Resources and/or the N. C. Department of Natural Resources and Community Development shall be submitted.
- (5) Documentation of an approved Sedimentation and Erosion Control Plan shall be submitted where required.
- (6) A letter of approval from the appropriate fire department indicating the adequacy of the development facilities for emergency medical and fire services. Such determination shall take into consideration the Street access, water pressure and availability, building height, and any other relevant factors.
- (7) A letter from the applicant indicating the land in the proposed development is under single ownership or management by the applicant or proper assurances (legal title or execution of a binding sales agreement) shall be provided indicating that the

development can be successfully completed by the applicant.

Section 603. Application Approval.

603.01 The enforcement officer shall review the application for compliance with the provisions of Section 602. Any application not containing all information required in Section 602 shall be returned to the applicant for correction and resubmission. After the enforcement officer has determined the application contains all information required in Section 602, he shall have 90 days to recommend to the Planning Board either approval or disapproval of the application. In making his recommendation, the enforcement officer may include any appropriate conditions he feels should be placed on the issuance of the permit.

603.02 First consideration of the application shall be at the next regularly scheduled meeting of the Planning Board after receiving the recommendations of the enforcement officer. The Planning Board shall take action on the application at its first consideration or within 90 days of its first consideration. In taking action, the Planning Board shall recommend to the Board of Commissioners either approval or disapproval of the application. If the Planning Board fails to take action within the time period specified in this subsection, it shall be deemed to have recommended approval of the application. The Board of Commissioners shall approve or disapprove the application and if approved authorize the enforcement officer to issue a permit within 90 days after submission of the recommendation from the Planning Board. In making its recommendation, the Planning Board may include any appropriate conditions it feels should be placed on the issuance of the permit.

603.03 The Board of Commissioners shall not approve an application until it has determined that the intent of this ordinance has not been violated. In making such determination, the Board of Commissioners shall not approve the issuance of a permit if the application for said permit fails to provide for:

- (1) Sewering that meets the requirements of a public wastewater disposal system that it discharges into, or that is part of a separate system that meets applicable state and federal standards.
- (2) A water supply system that is adequate for fire protection, drinking water and other projected system needs; that meets the requirements of any public water supply system that it interconnects with; and that meets any applicable state standards, requirements and approvals.
- (3) Compliance with applicable state and local sedimentation control regulations and requirements.
- (4) Adequate consideration to protecting the natural beauty of the mountains as determined by the Board of Commissioners.⁶

In making such determination, the Board of Commissioners may impose any additional conditions on the permit it deems necessary.

603.04 If the application is approved by the Board of Commissioners, such approval shall be stated in a letter. One (1) copy of said letter shall be sent to the applicant, one (1) copy shall be sent to the enforcement officer, and one (1) copy shall be retained by the Board of Commissioners. Said letter shall be sent within five (5) days of approval of the application. Upon receipt of the letter indicating approval the enforcement officer shall issue a permit for construction. Said letter shall contain a listing of all conditions imposed on the issuance of the permit.

603.05 The Board of Commissioners shall, if it disapproves the application, make findings of fact to justify such disapproval. These findings of fact shall be entered in the minutes of the board's meeting.

In addition, a letter containing the findings of fact and specifying the provisions of this ordinance with which the application does not comply shall be prepared. One (1) copy of said letter shall be sent to the applicant, one (1) copy shall be sent to the enforcement officer, and one

(1) copy shall be retained by the Board of Commissioners. Said letter shall be sent within five (5) days of disapproval of the application. If the application is disapproved, the applicant may make such changes as will bring the application into compliance with this ordinance and resubmit same for reconsideration by the enforcement officer as provided in Section 602.

Section 604. Issuance of Permit.

Upon receipt of a letter from the Board of Commissioners approving the application for a permit, the enforcement officer shall issue such permit for construction within 10 days. A copy of the approved permit shall be filed with the Register of Deeds of Alleghany County. The issuance of the permit shall be subject to any conditions imposed by the Board of Commissioners as authorized in subsection 603.03 and as stated in the letter approving the application. All conditions specified at the Issuance of the permit shall appear on the face of the permit. If no construction has begun within 6 months after the date of Issuance of the permit, the permit shall expire. Construction shall be deemed to have begun when any grading or excavation has commenced. If a permit expires, it shall not be reissued except under the provisions outlined in this ordinance for all permits.

Section 605. Application to Existing Buildings.⁷

The provisions of this ordinance shall apply to buildings that existed upon the effective date of this ordinance as follows:

- 605.01 No reconstruction, alteration or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with this ordinance upon its effective date.
- 605.02 No reconstruction, alteration or expansion may cause or create a violation by an existing building or structure that did comply with this ordinance upon its effective date.

ARTICLE VII

Section 700.Violations.

Whenever, by the provisions of this ordinance, the performance of any act is prohibited, or whenever any regulation, dimension or limitation is imposed on the construction, reconstruction, alteration or expansion of any building or structure, a failure to comply with such provisions of this ordinance shall constitute a separate violation and a separate offense.

Section 701. Penalties.

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be punished as provided in G.S. 14-4. In addition, any person injured by a violation of this ordinance or any person who resides in the county in which a violation occurred may bring a civil action against the person alleged to be in violation in accordance with G.S. 113A-211(b).

Section 702.Remedies.

If a building or structure is constructed, reconstructed, altered or expanded in violation of this ordinance, the enforcement officer, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. 153A-123 and C.S. 113A-211 to prevent the unlawful construction, reconstruction, alteration or expansion, to restrain, correct or abate the violation, or to prevent occupancy of the building.

ARTICLE VIII

LEGAL STATUS PROVISION AND EFFECTIVE DATE⁹

Section 800.Severability.

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 affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 801.Conflict with Other Laws.

In interpreting and applying the provisions of this ordinance, said provisions shall be held to be the minimum requirements for promoting the intent of this ordinance. This ordinance is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the County. However, if the requirements

of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances of the County of Alleghany, the more restrictive or that imposing the higher standards shall govern.

Section 802.Effective Date.

This ordinance shall take effect and be in force on December 30, 1983.

(sig: Burton Osborne)
Burton Osborne,
Chairman Alleghany County Board of Commissioners

(sig: Leo Tompkins)
Leo Tompkins,
Member Alleghany County Board of Commissioners

(sig: David Carpenter)
David Carpenter,
Member Alleghany County Board of Commissioners

ATTEST:

(sig: Charles E. Dysart, Jr.)
Charles E. Dysart, Jr.
Clerk to the Board
(County Seal)

Filed for registration on the 9 day of August 1984 at 4:10 o'clock P.M., and duly recorded in the office of the Register of Deeds of Alleghany County, N.C., in book No. 1 Page 74 etc.

(sig: Danny L. Finney)
Register of Deeds

FOOTNOTES

¹This article is patterned after the legislative findings found in C.S. 113A-207, and in accordance with G.S. 113A-208(c) may include any of the legislative findings that the local unit wishes to address. Since G.S. 113A-208(a) requires that an ordinance adopted pursuant to it contain a statement of objectives to be sought by the ordinance and plans for achieving those objectives, it is important that this article stating the purpose be included in the ordinance. In addition, C.S. 113A-208(a) requires that any ordinance adopted pursuant to it shall be based upon studies of mountain ridges in the county. In the opinion of the Institute of Government, this terminology may be read to suggest that a local unit of government should prepare some separate documentation to justify the ordinance adoption action. Rich Ducker from the Institute of Government advises that a city or county should develop

and officially adopt a "mini-plan" or impact statement that includes (1) maps showing the location of ridges subject to the ordinance (2) maps showing the existing land use of the areas subject to the ordinance, (3) forecasts of the type and amount of mountain development the local unit can expect in the future, (4) a summary of the implications of this development for the citizens of the city or county and its impact upon the provision of public or community facilities and services, and (5) some sort of policy statement indicating what the local unit intends to do about these matters.

²It is suggested, but not required, that the map, drawing or document be filed in the office of the enforcement officer.. G.S. 113A-212(b) requires NRCDC to prepare by November 1, 1983, a map, drawing or document identifying all protected mountain ridges in each county and to file the map, drawing or document with the Board of County Commissioners, and upon request with each municipal governing body in the county. G.S. 113A-212(b) does require that the map, drawing or document be filed with the register of deeds in each affected county by January 1, 1984.

³Several items in this article are suggestive rather than required. Words not specifically defined in G.S. 113A-206 should not be in conflict with any corresponding definitions in any other locally adopted ordinance such as zoning, subdivision, building codes, etc. All of Section 500 is suggestive. In Section 501 the following words are defined in G.S. 113A-206 and, therefore, must apply to all ridge ordinances: construction crest, person, protected mountain ridge, resident, ridge, tall building or structure. Other definitions may be added or deleted in this section as desired.

⁴The procedure outlined in this article is only one of a number of various procedures that could be utilized. Each local unit of government has considerable discretion as to what extent, if any, it wishes to utilize an enforcement officer, planning board, or any other appropriate agencies. Whatever procedure is utilized should clearly define the responsibilities of each person or agency involved. In the case where the local unit of government is currently enforcing related ordinances such as zoning, building codes and subdivision regulations, the procedure in this article should be closely coordinated with administrative procedures outlined in those ordinance.

⁵The information required in this section is only suggestive. However, the local unit of government must require enough information to ensure a project provides for:

- (1) Sewering that meets the requirements of a public wastewater disposal system that it discharges into, or that is part of a separate system that meets applicable state and federal regulations;
- (2) A water supply system that is adequate for fire protection, drinking water and other projected system needs; that meets the requirements of any

- public water supply system that it interconnects with; and that meets any applicable state standards, requirements and approvals;
- (3) Compliance with applicable state and local sedimentation control regulations and requirements; and
 - (4) Adequate consideration to protecting the natural beauty of the mountains, as determined by the local governing body.

A permit must be denied if the above four criteria are not complied with. In addition, the local unit of government may require additional information in order to address other potential problems as outlined in G.S. 113A-208(c).

⁶The governing body should specify in the ordinance what criteria should be satisfied in order to protect the natural beauty of the mountains. The local government may want to include such requirements as (1) special controls designed to protect existing vegetation, limit grading of the site, preserve views to and from the site, and ensure that the developer landscapes the site; (2) special controls to ensure that buildings and infrastructure blend in with the landscape (control over exact siting of buildings and roads with an eye to camouflage them), limit the scale, bulk and density of the site, and ensure that the architectural style and design of the building is appropriate to the site.

⁷Subsections 605.01 and 605.02 are required and are taken from G.S. 113A-210.

⁸Section 700 is optional. Sections 701 and 702 are taken from G.S. 113A-211 and should be included here.

⁹All of Article VIII is optional.