

ORDINANCE TO LIMIT HEIGHT OF OBJECTS AROUND AVERY COUNTY AIRPORT
(MORRISON FIELD)
NEWLAND, NORTH CAROLINA

✓ Co. Work
Nancy Cook

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE AVERY COUNTY AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF, PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES, DEFINING CERTAIN TERMS USED HEREIN, REFERRING TO THE AVERY COUNTY AIRPORT ZONING MAP, WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE, PROVIDING FOR ENFORCEMENT, ESTABLISHING AN AIRPORT AUTHORITY BOARD OF ADJUSTMENT, AND IMPOSING PENALTIES

In pursuance of the authority conferred by the Constitution of the State of North Carolina for the purpose of promoting the health, safety, and general welfare of the inhabitants of the County of Avery by preventing the creation or establishment of obstructions and hazards to air navigation, thereby protecting the lives and property of users of Avery County Airport and of occupants of land in its vicinity and preventing destruction or impairment of the utility of the airport and the public investment therein

IT IS HEREBY RESOLVED BY THE AVERY COUNTY BOARD OF COMMISSIONERS AND THE AVERY COUNTY AIRPORT AUTHORITY AS FOLLOWS:

SECTION I: SHORT TITLE

This Ordinance shall be known and may be cited as the "Avery County Airport Ordinance."

SECTION II: DEFINITIONS

1. AIRPORT - Means the Avery County Airport.
2. ESTABLISH AIRPORT ELEVATION - 2750 feet above mean sea level.
3. APPROACH SURFACE - A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section IV of this Ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.
4. APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES - These zones are set forth in Section III of this Ordinance.
5. AIRPORT AUTHORITY BOARD OF ADJUSTMENT - A board consisting of 3 members appointed by the Avery County Board of Commissioners.
6. CONICAL SURFACE - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
7. HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
8. HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
9. HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which, in plan, coincides with the perimeter of the horizontal zone.

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10. LARGER THAN UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller-driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft
11. NONCONFORMING USE - Any pre-existing structure, object of natural growth, or use of land that is inconsistent with the provisions of this Ordinance or an amendment thereto
12. NON-PRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned
13. OBSTRUCTION - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section IV of this Ordinance
14. PERSON - An individual, firm partnership, corporation, company, association, joint stock association, or government entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them
15. PRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR) or a Microwave Landing System (MLS). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document
16. PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially-prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; or military runways; or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Section III of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline
17. RUNWAY - A defined area on an airport prepared for landing and takeoff of aircraft along its length
18. STRUCTURE - An object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines
19. TRANSITIONAL SURFACES - These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each one (1) foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet, measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline
20. TREE - Any object of natural growth
21. VISUAL RUNWAY - A runway intended solely for the operation of aircraft using visual approach procedures.

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SECTION III: AIRPORT ZONES AND ZONING MAP

In order to carry out the provision of this Ordinance, there are hereby created and established certain zones that include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Avery County Airport. Such zones are shown on the Avery County Airport Map consisting of one sheet, and dated August 30, 1999, which is attached to this Ordinance and made a part hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined, as follows:

1. **RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NON-PRECISION INSTRUMENT APPROACH ZONE** - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
2. **PRECISION INSTRUMENT RUNWAY APPROACH ZONE** - The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
3. **TRANSITIONAL ZONES** - The transitional zones are the areas beneath the transitional surfaces.
4. **HORIZONTAL ZONE** - The horizontal zone is established by swinging an arc of 10,000 feet from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.
5. **CONICAL ZONE** - The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet.

SECTION IV: AIRPORT ZONE HEIGHT LIMITATIONS

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance, to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question, as follows:

1. **RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NON-PRECISION INSTRUMENT APPROACH ZONE** - Slopes thirty-four (34) feet outward for each one (1) foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
2. **PRECISION INSTRUMENT RUNWAY APPROACH ZONE** - Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

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- 3. TRANSITIONAL ZONES - Slope seven (7) feet outward for each one (1) foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation, which is 2750 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet, measured at 90-degree angles to the extended runway centerline.
- 4. HORIZONTAL ZONE - Established at 150 feet above the airport elevation or at a height of 2900 feet above mean sea level.
- 5. CONICAL ZONE - Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation, 3100 feet above mean sea level.
- 6. EXCEPTED HEIGHT LIMITATIONS - Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height up to 50 feet above the surface of the land.

SECTION V: USE RESTRICTION

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

SECTION VI: NONCONFORMING USES

- 1. REGULATIONS NOT RETROACTIVE - The regulations prescribed in this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted and completed within one year thereof.
- 2. OBSTRUCTION MARKING AND LIGHTING - Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Ordinance Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Avery County Airport.

SECTIONS VII: PERMITS

1. FUTURE USES - Except as specifically provided in a, b, and c hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established and no tree shall be planted in any zone hereby created unless a permit thereof shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this ordinance shall be granted unless a variance has been approved in accordance with Section VII, 4.
 - a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
 - b. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
 - c. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section IV, 6.
2. EXISTING USES - No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
3. NONCONFORMING USES ABANDONED OR DESTROYED - Whenever the Ordinance Administrator determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the ordinance regulations.

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4. VARIANCES -- Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Airport Authority Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of the Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Airport Authority Board of Adjustment unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. The Avery County Airport Authority shall respond to the application within 30 days after receipt.
5. OBSTRUCTION MARKING AND LIGHTING -- Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Airport Authority Board of Adjustment, this condition may be modified to require the owner to permit the Avery County Airport Authority, at its own expense, to install, operate, and maintain the necessary markings and lights.

SECTIONS VIII: ENFORCEMENT

It shall be the duty of the Ordinance Administrator to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Avery County Planning & Inspections Office and/or the Avery County Airport Authority upon a form published for that purpose. Applications required by this Ordinance to be submitted to the said organizations shall be promptly considered and granted or denied. Application for action by the Airport Authority Board of Adjustment shall be forthwith transmitted by the Ordinance Administrator.

SECTION IX: BOARD OF ADJUSTMENTS

1. There is hereby created an Airport Authority Board of Adjustment to have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the Ordinance Administrator in the enforcement of this Ordinance; (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Airport Authority Board of Adjustment under such regulations may be required to pass, and (3) to hear and decide specific variances.
2. The Airport Authority Board of Adjustment shall consist of three members, and each shall serve for a term of three years until a successor is duly appointed and qualified. Of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Members shall be removable by the appointing authority for cause, upon written charges, after a public hearing.

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3. The Airport Authority Board of Adjustments shall adopt rules for its governance and in harmony with the provisions of this Ordinance. Meetings of the Airport Authority Board of Adjustments shall be held at the call of the Chairperson and at such other times as the Airport Authority Board of Adjustment may determine. The Chairperson or, in the absence of the Chairperson, the Acting Chairperson may administer oaths and compel the attendance of witnesses. All hearings of the Airport Authority Board of Adjustments shall be public. The Airport Authority Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Ordinance Administrator and on due cause shown.
4. The Airport Authority Board of Adjustment shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination that comes before it under the provisions of this Ordinance.
5. The concurring vote of a majority of the members of the Airport Authority Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the Ordinance Administrator or decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect variation to this Ordinance.

SECTION X: APPEALS

1. Any person aggrieved, or any taxpayer affected, by any decision made in the administration of the Ordinance, may appeal to the Airport Authority Board of Adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Airport Authority Board of Adjustment, by filing with the Ordinance Administrator a notice of appeal specifying the grounds thereof. The Ordinance Administrator shall forthwith transmit to the Airport Authority Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Ordinance Administrator certifies to the Airport Authority Board of Adjustment, after the notice of appeal has been filed with it, that by reason or the facts stated in the certificate a stay would, in the opinion of the Ordinance Administrator, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Airport Authority Board of Adjustment or notice to the Ordinance Administrator and on due cause shown.
4. The Airport Authority Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The Airport Authority Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as may be appropriate under the circumstances.

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SECTION XI: JUDICIAL REVIEW

Any person aggrieved, or any taxpayer affected, by any decision of the Airport Authority Board of Adjustment, may, within 60 days after the decision is filed in the Office of the Board petition the Avery County Superior Court to review said decision as provided in the Constitution of the State of North Carolina

SECTION XII: PENALTIES

1. **Enforcement and Regulations of Laws pertaining to this Ordinance:** The Avery County Inspections and Planning Department is hereby authorized to enforce all applicable regulations enumerated in this ordinance. In addition, such other county officials and departments as the Avery County Inspections and Planning Department Director may designate are hereby charged with the administration, supervision, and enforcement of provisions contained in this ordinance, if not administered and enforced by the Avery County Inspections and Planning Department
2. **Criminal Penalties:** Any violation of the provisions of this ordinance shall constitute a Class III Misdemeanor pursuant to N.C.G.S. 14-4 and shall subject the violator to a fine not to exceed \$500.00. Enforcement shall be administered through the issuance of a citation on the North Carolina Uniform Citation Form (ASC-CR-501)
3. **Civil Penalty in Lieu of Criminal Penalties:** In addition to all other remedies herein, or in lieu thereof, the violation of this ordinance shall subject the violator to a civil penalty as set forth herein
 - a. The violator shall be issued a written notice of violation and penalty which shall require payments to be made to the Avery County Department of Inspections and Planning within 72 hours of receipt on notice of the violator. Notice of civil penalty and violation shall be delivered in person to the violator or mailed by certified mail. Return receipt requested, to the owner's last known address
 - b. Upon the violator's failure to pay the required amount within the designated 72-hour period, the enforcement officer acting through the County Attorney may institute a civil action in the nature of a debt to recover such amount
 - c. It is the expressed intent of this section to be in lieu of and in the alternative to the criminal penalties stated herein.
 - d. Violation of this ordinance shall subject the owner to a civil penalty not to exceed \$500.00, the specific amount to be determined by the enforcement officer taken into consideration the nature and severity of the offense and prior violations
4. **Injunctions:** Any provision of this ordinance which makes unlawful conditions existing upon or use made of real property may be enforced by injunction and order of abatement. When a violation of such a provision occurs, the enforcement officer acting either through the County Attorney or applicable municipality attorney, if any, or any resident of the county or applicable municipality, if any, may apply to the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful use of the property.
5. **Entry:** Any authorized personnel, representative, or official of the county charged with the enforcement of this ordinance shall have the right, after exhibiting proper identification, to peacefully enter and inspect property for the purpose of determining if a violation or violations of such ordinance exist due to conditions existing upon the property, provided that such entry shall

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5. continued

be with the permission, freely given, of the owner or occupant of said property, and if such owner or occupant shall refuse to grant the right to enter and inspect, said personnel, representative, or official of the county shall all the remedies allowed and provided by law, including Ordinance 4A of chapter 15 of the North Carolina General Statutes entitled "Administrative Search and Inspections Warrants" and any amendments or successor statutes thereto. No application for a warrant shall be made under this section without the approval of the County Attorney

SECTION XIII: CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION XIV: SEVERABILITY

"It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and actions of this ordinance, since the same would have been enacted by the Board of County Commissioners without the incorporation into this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section."

SECTION XV: EFFECTIVE DATE

This Ordinance shall take effect 11-18-99

Avery County Board of Commissioners

Sam Laws
Sam Laws, Chairman

Attest:

Nancy H. Cook
Nancy H. Cook, Clerk

Approved As To Form:

Doug Hall
Doug Hall, County Attorney

Witness my hand and notarial seal this the 18th day of November, ~~2000~~ ¹⁹⁹⁹

Therinda D. House
Notary Public

My Commission Expires: August 19, 2003

NORTH CAROLINA } OFFICE OF REGISTER OF DEEDS
AVERY COUNTY }

THE FOREGOING CERT OR ANNEXED CERT. OF
Wendna O. Baise N.P.
OF SAID CO., & STATE IS CERTIFIED TO BE CORRECT.
FILED FOR REGISTRATION AT 12:09 O'CLOCK P. M.
ON THE 27th DAY OF January 2008
AND REGISTERED IN THIS OFFICE IN BOOK 326
AT PAGE 1097

James O. Sims BY Rhonda Hallifield
REGISTER OF DEEDS (ASSISTANT/DEPUTY)