

Adopted 12/5/83

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1983 SEP -7 PM 3:24

ROBERT L. WINFIELD
REGISTER OF DEEDS
AVERY COUNTY, N.C.

AVERY COUNTY

NORTH CAROLINA

MOUNTAIN RIDGE PROTECTION ORDINANCE

AVERY COUNTY BOARD OF COMMISSIONERS

DECEMBER 5, 1983

12-5-83

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MOUNTAIN RIDGE PROTECTION ORDINANCE
COUNTY OF AVERY, N. C.

AN ORDINANCE OF THE COUNTY OF AVERY, 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 Avery, North Carolina."

ARTICLE II

PURPOSE

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;

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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 Avery, North Carolina, hereby ordains and enacts into law these articles and sections.

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 Avery County, and outside the territorial jurisdiction of any municipality within Avery County. This ordinance may also apply to any or all areas lying within the territorial jurisdiction of any municipality within Avery County if the municipality by resolution requests such application. Protected mountain ridges are further identified by the maps entitled "Identification of Protected Mountain Ridges in the County of Avery" and is on file in the office of the enforcement officer and with the Register of Deeds of Avery County.

ARTICLE V
INTERPRETATION AND DEFINITIONS 1050197

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 Avery, North Carolina.
- 500.02 The words "County Commissioners" shall mean the County Commissioners of the County of Avery, North Carolina.
- 500.03 The words "Planning Board" shall refer to the Avery County Planning Board.
- 500.04 The word "ordinance" shall mean the Mountain Ridge Protection Ordinance of the County of Avery, 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 Land Use Ordinance or Subdivision Ordinance all applicable definitions in said ordinances shall apply to this ordinance.

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- 500.10 The words "enforcement officer" shall mean the Avery County building inspector, 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 words "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 Agency. Shall be the Avery County Board of Commissioners.
- 501.05 Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- 501.06 Protected mountain ridges. All mountain ridges whose elevation is at least three thousand (3,000) feet and whose elevation is five hundred (500) or more feet above the elevation of an adjacent valley floor.

1979199

- 501.07 Resident. Any person, as defined in this section, residing, doing business or maintaining an office within Avery 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 side 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:

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- (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, bellfries, cupolas, antennas, poles, wires or windmills.
- (3) Buildings and structures designated as National Historic Sites on the National Archives Registry.

ARTICLE VI
ADMINISTRATION AND ENFORCEMENT

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 the 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.

602.01 All applications for permits shall be submitted to the enforcement officer and shall be accompanied by a devel-

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ment 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 proposed 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

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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 permits 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

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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 Avery County 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

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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 ten (10) 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 five (5) 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.

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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 five (5) 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.

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- (4) Adequate consideration to protecting the natural beauty of the mountains as determined by the Board of Commissioners.

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.

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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 five (5) days. A copy of the approved permit shall be filed with the Register of Deeds of Avery 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 four (4) 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.

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.

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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

VIOLATION, PENALTIES AND REMEDIES

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 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 G.S. 113A-211 to prevent the unlawful construction, reconstruction, alteration or expansion, to

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restrain, correct or abate the violation, or to prevent occupancy of the building.

ARTICLE VIII

LEGAL STATUS PROVISIONS AND EFFECTIVE DATE

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 Avery, 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 _____

August 8, 1985

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I do hereby certify that the above is a true and correct copy of an Ordinance adopted by the Avery County Board of Commissioners at the December 8, 1983 meeting of the Board, at which the following Commissioners were present: Charles B. Vendinon, Robert C. Wincan, Grover Winman and Rowland E. Johnson.

This Ordinance to be found in Avery County Ordinance Book #1, Page 39.

This the 01st day of September, 1983.

Pat V. Eller
Pat V. Eller, Chairman
Avery County Board of Commissioners

ATTEST:

Nancy H. Cook
Nancy H. Cook
Clerk to the Board

STATE OF SOUTH CAROLINA
COUNTY OF AVERY

I, Pat V. Eller, a Mayor of the County of Avery, State of South Carolina do hereby certify that Nancy H. Cook personally appeared before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Avery County, South Carolina, and that by the authority duly given, on the part of the said Board of Commissioners, the foregoing instrument was signed in her name by the undersigned, sealed with the seal, and attested by myself as the Clerk.



and Notarial Seal, this the 1st day of Sept, 1983.
Pat V. Eller
Mayor
By Commission Expires 10-1-86

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NORTH CAROLINA } OFFICE OF REGISTER OF DEEDS
ANDY COUNTY }

THE FOREGOING DEED, OR ANALYSE COPY OF
Map of Streets
OF SAID CO. & STATE IS HEREBY
FILED FOR REGISTRATION AT 12:00 O'CLOCK
ON THE 4 DAY OF Sept 1920
AND REGISTERED IN THIS OFFICE IN BOOK 115
AT PAGE 114 THIS 4th
DAY OF Sept 1920

W. T. Dyer
REGISTER OF DEEDS

162