

CHAPTER 153: MOUNTAIN RIDGE PROTECTION

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GENERAL PROVISIONS

§ 153.01 DEFINITIONS.

Except as specifically defined herein, all words used in this chapter shall have their customary dictionary definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular include the plural, and words used in the plural include the singular. Where this chapter references a locally adopted

subdivision ordinance or zoning ordinance, all applicable definitions in the ordinances shall apply to this chapter.

BUILDING. Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for 50% of its perimeter. The word **BUILDING** shall be construed as if followed by the words "or part thereof." Includes the word **STRUCTURE**.

CHAPTER. The Mountain Ridge Protection Ordinance.

CONSTRUCTION. Any new construction, reconstruction, alteration, or expansion.

COUNTY. Haywood County.

COUNTY COMMISSIONERS. The County Commissioners of Haywood County.

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.

ENFORCEMENT OFFICER/AGENCY. The employees of the County Inspection Department. **ENFORCEMENT OFFICER** may mean the Building Inspector, Development Services Director, Planning Board, or any other person or agency designated by the County Commissioners.

MAY. Is permissive.

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 and its agencies and political subdivisions, or other legal entity.

PLANNING BOARD. The Haywood County Planning Board.

PROTECTED MOUNTAIN RIDGES. All mountain ridges whose elevation is at least 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor.

RESIDENT. Any person, as defined in this section, residing, doing business or maintaining an office within the county.

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 100 feet below the elevation of any portion of such line or surface along the crest.

SHALL. Is mandatory.

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.

TALL BUILDINGS OR STRUCTURES. Any building structure or unit within a multi-unit building, with a vertical height of more than 40 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the 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 feet, then such measurement in excess of three 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 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.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

Statutory reference:

Similar definitions, see G. S. § 113A-206

§ 153.02 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 chapter therefore is to regulate the construction of tall buildings or structures on mountain ridges to insure that: adequate water supply is available to the 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.

(Ord. passed 12-5-83)

§ 153.03 AUTHORITY AND ENACTMENT.

(A) Pursuant to the authority conferred by G.S. § 153A-448 and § 160D-924, the Board of Commissioners of the county ordains and enacts into law this Chapter.

(B) This chapter was originally effective on January 1, 1984.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

§ 153.04 JURISDICTION.

The provisions of this chapter shall apply to the construction of tall buildings or structures, as defined in this chapter, on protected mountain ridges, as defined in this chapter, within the county and outside the territorial jurisdiction of any municipality within the county. This chapter may also apply to any or all areas lying within the territorial jurisdiction of any municipality within the 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" which is on file in the office of the enforcement officer (Building Inspector), Development Services Director, and the Register of Deeds.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

PERMITS

§153.20 PERMIT REQUIRED.

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 subchapter. No permit shall be issued that would not be in compliance with the provisions of this chapter.

(Ord. passed 12-5-83) Penalty, see §10.99

§ 153.21 APPLICATION FOR PERMIT.

(A) 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 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, the development showing rights-of-way pavement widths, and road names. 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.

(11) Landscaping and provisions showing the type of vegetation to be used to stabilize slopes and to beautify the site. The landscape plan shall indicate that natural vegetation has been preserved wherever possible during site development. Landscaping shall include types of vegetation native to the soils of the area and easily adaptable to the conditions of the site.

(B) 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 State 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 State Department of Transportation (or other appropriate public agency).

(c) The developer shall meet all other requirements of G.S. §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 the 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, and the like, on the existing system.

(3) If individual wells and/or septic tanks are to be utilized, a written statement from the 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 appropriate State Department 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.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

§153.22 APPLICATION PROCESS.

(A) The enforcement officer shall review the application for compliance with the provisions of § 153.21. Any application not containing all information required in § 153.21 shall be returned to the applicant for correction and resubmission. After the enforcement officer has determined the application contains all information required in § 153.21, the enforcement officer shall have ten days to recommend to the Planning Board either approval or disapproval of the application. In making his or her recommendation, the enforcement officer may include any appropriate conditions he or she feels should be placed on the issuance of the permit. The decision of the enforcement officer shall be considered a staff decision for the purposes of N.C. G.S. 160D and an administrative determination for the purposes of N.C. G.S. 160D-403. A denial shall be appealable in accordance with the procedures of N.C. G.S. 160D-405.

(B) 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 process of the Planning Board shall be considered a quasi-judicial one, in accordance with N.C. G.S. 160D-406. The Planning Board shall take action on the application at its first consideration or within 45 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. Following the processes of N.C. G.S. 160D-405 and -406, the Board of

Commissioners shall approve or disapprove the application, and if approved, authorize the enforcement officer to issue a permit within 30 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.

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

(1) Wastewater treatment 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.

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

(D) In its consideration of whether or not adequate consideration has been given to protecting the natural beauty of the mountains, the following factors shall be among those considered:

(1) Does the development plan show the natural vegetation will be preserved wherever possible?

(2) Does the development plan indicate that slopes will be stabilized by use of vegetation or by other means?

(3) Does the proposed landscaping utilize types of vegetation native to and compatible with the soils of the area?

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

(F) The Board of Commissioners shall, if it disapproves the application, make findings of fact to justify the 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 chapter with which the application does not comply shall be prepared. One copy of the letter shall be sent to the applicant, one copy shall be sent to the enforcement officer, and one copy shall be retained by the Board of Commissioners. The letter shall be sent within five days of disapproval of the applications. If the application is disapproved, the applicant may make such changes as will bring the application into compliance with this chapter and resubmit same for reconsideration by the enforcement officer as provided in § 153.21. Appeals of the decision of the Board of Commissioners shall be in accordance with the provisions of N.C. G.S. 160D-406.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

§ 153.23 ISSUANCE OF PERMIT.

Upon receipt of a letter from the Board of Commissioners approving the application for a permit, the enforcement officer shall issue the permit for construction within ten days. A copy of the approved permit shall be filed with the Register of Deeds of County. The issuance of the permit shall be subject to any conditions imposed by the Board of Commissioners as authorized in subsection § 153.22(C) 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 three 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 chapter for all permits.

(Ord. passed 12-5-83)

ADMINISTRATION AND ENFORCEMENT

§ 153.40 ENFORCEMENT OFFICER.

It shall be the duty of the Enforcement Officer to administer and enforce the provisions of this chapter.

(Ord. passed 12-5-83; Am. Ord. passed 9-5-23)

§153.41 APPLICATION TO EXISTING BUILDINGS.

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

(A) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with this chapter upon its effective date.

(B) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with this chapter upon its effective date.

(Ord. passed 12-5-83)

§ 153.42 CONFLICT WITH OTHER LAWS.

In interpreting and applying the provisions of this chapter, the provisions shall be held to be the minimum requirements for promoting the intent of this chapter. This chapter is not intended to interfere with or abrogate or annul other rules, regulations, or ordinances of the county. However, if the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances of the county, the more restrictive or that imposing the higher standards shall govern.

(Ord. passed 12-5-83)

§ 153.98 VIOLATIONS.

(A) Whenever, by the provisions of this chapter, 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 the provisions of this chapter shall constitute a separate violation and a separate offense.

(B) In addition, any person injured by a violation of this chapter 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).

(C) If a building or structure is constructed, reconstructed, altered, or expanded in violation of this chapter, 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 restrain, correct, or abate the violation, or to prevent occupancy of the building.

(Ord. passed 12-5-83; Am. Ord. passed 1-3-22) Penalty, see Sec. §10.99)

§ 153.99 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE

This revised ordinance revises and supplants the ordinance in Chapter 153 originally adopted December 5, 1983, and all subsequent amendments, and shall be effective on and after September 5, 2023.