



MEMORANDUM

Community Development Division

To: Grayson County Planning Commission
From: Michael Zehner, AICP, CFM, ENV SP, Director of Planning and
Community Development
Linds Edwards, ENV SP, Planner II
Date: June 13, 2024
Subject: Regulation of Mountain Ridge Construction Zoning Ordinance
Provision

Attached for the Planning Commission's review is a draft Regulation of Mountain Ridge Construction provision as a potential amendment to the Grayson County Zoning Ordinance. As drafted, this would be inserted as Section 3-17 of the Zoning Ordinance, within Article 3, *General Requirements for All Zone Districts*.

As previously discussed with the Planning Commission, this provision is based upon the authorizations granted by § 15.2-2295.1. *Regulation of mountain ridge construction*, of the Code of Virginia, attached for the Commission's consideration. Additionally, examples of similar regulations from the Town of Bluefield, Floyd County, and Tazewell County have been attached for the Commission's review.

Based upon discussion and feedback from the Planning Commission, we will assist County staff in making further revisions as requested to present back to the Planning Commission for further consideration and discussion, or for review at a public hearing as an amendment of the Zoning Ordinance.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2295.1. Regulation of mountain ridge construction.

A. As used in this section, unless the context requires a different meaning:

"Construction" means the building, alteration, repair, or improvement of any building or structure.

"Crest" means 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.

"Protected mountain ridge" means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

"Ridge" means 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.

"Tall buildings or structures" means any building, structure or unit within a multi-unit building with a vertical height of more than 40 feet, as determined by ordinance, measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" does not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

B. Determinations by the governing body of heights and elevations under this section shall be conclusive.

C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the regulation of the height and location of tall buildings or structures on protected mountain ridges. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

D. An ordinance adopted under this section may include criteria for the granting or denial of permits for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance shall provide that permit applications shall be denied if a permit application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

E. Any locality that adopts an ordinance providing for the regulation of the height and location of tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the Secretary of Natural and Historic Resources.

F. Nothing in this section shall be construed to affect or impair a governing body's authority under this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts regulating uses on mountainous areas as defined by the governing body.

2000, c. 732; 2013, cc. 516, 756, 793; 2021, Sp. Sess. I, c. 401.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

6/10/202

DIVISION 6. - ZONING DISTRICT OVERLAYS

Sec. 74-891. - Intent; boundaries.

An overlay district is intended to supplement traditional zoning by adding additional regulations to a specified area. Zoning district overlays may not follow property lines, but may be related to geological factors, floodplain, water pressure zones and historic areas.

(Ord. of 6-26-2000, § 20-155(a); Ord. of 2-26-2001, § 20-155(a); Ord. of 6-11-2001, § 20-155(a))

Sec. 74-892. - Overlays as supplement to underlying zoning districts.

These zones are established as overlays to be superimposed over the existing base zoning districts and as such, the provisions for that overlay shall serve as a supplement to the underlying zoning district provisions.

(Ord. of 6-26-2000, § 20-155(b); Ord. of 2-26-2001, § 20-155(b); Ord. of 6-11-2001, § 20-155(b))

Sec. 74-893. - Conflicts.

In the event of any conflict between the provisions or requirements of an overlay district and those of any underlying zoning district or ordinance, the more restrictive provisions or requirements shall apply.

(Ord. of 6-26-2000, § 20-155(c); Ord. of 2-26-2001, § 20-155(c); Ord. of 6-11-2001, § 20-155(c))

Sec. 74-894. - Severability.

In the event any provision concerning an overlay district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions and the remaining provisions shall remain applicable.

(Ord. of 6-26-2000, § 20-155(d); Ord. of 2-26-2001, § 20-155(d); Ord. of 6-11-2001, § 20-155(d))

Sec. 74-895. - Documentation.

A supporting document to the zoning map shall be maintained detailing all overlays and their provisions.

(Ord. of 6-26-2000, § 20-155(e); Ord. of 2-26-2001, § 20-155(e); Ord. of 6-11-2001, § 20-155(e))

Sec. 74-896. - Enforcement of restrictive covenants.

The establishment of zoning district overlays and the granting or denial of zoning, building or other use permits by the town shall not enhance, restrict or impair the rights of landowners to enforce the restrictive covenants created by deed or certificate of record in the circuit court clerk's office.

(Ord. of 6-26-2000, § 20-155(f); Ord. of 2-26-2001, § 20-155(f); Ord. of 6-11-2001, § 20-155(f))

Sec. 74-897. - Inapplicable restrictive covenants.

Provisions of the restrictive covenants that are no longer reasonably applicable, as determined by the zoning administrator or the agent of the town, may not be enforced by the town.

(Ord. of 6-26-2000, § 20-155(g); Ord. of 2-26-2001, § 20-155(g); Ord. of 6-11-2001, § 20-155(g))

Sec. 74-898. - Mountain ridge overlay district.

The purpose of the mountain ridge overlay district is to regulate the development of property located above 3,000 feet in the Town of Bluefield as provided in Code of Virginia, § 15.2-2295.1, regulation of mountain ridge construction.

The mountain ridge overlay district shall require the following:

- (1) A conditional use permit must be obtained for tall structures 3,000 feet above sea level.
- (2) Plans must be submitted to the Town of Bluefield and Virginia Health Department regarding the placement of any septic tanks, wells, and springs within the town limits.
- (3) A detailed plan must be submitted to the zoning and building office, Town of Bluefield Fire Department and State Fire Marshal's Office regarding measures that will be in place to prevent, contain, and control a fire in the new building or structure and surrounding area. The plan must show that there is an adequate supply of water to contain and prevent the spread of fire.
- (4) Erosion and sediment control plans must be submitted regarding the proposed development and a detailed study showing that stormwater runoff will not be increased and downstream property will not be adversely affected by stormwater runoff from the development. The proposed development must abide by all state and town regulations regarding erosion and sediment and stormwater management.
- (5) As a condition of granting a conditional use permit, a bond shall be required in an amount equal to the reasonably estimated cost of removal of any and all tall structures at the end of their useful life. The amount of such bond shall be reviewed every five years after its inception and adjusted as necessary to cover any changes in such "reasonably estimated cost of removal."
- (6) All requirements of the zoning district in which the property is located shall be complied with.

(Ord. of 6-22-2009)

Sec. 74-899. - Revision to height regulations.

Crest means 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.

Ridge means 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.

Tall buildings means any building or structure exceeding a height of 100 feet.

Public building or *semi-public building* means a building used or operated by a unit of government to serve public needs, such as police (with or without jail), fire service, ambulance, courts or government offices.

(Ord. of 3-23-2009)

**AN ORDINANCE REGULATING AND PROHIBITING
TALL STRUCTURES ON CERTAIN RIDGELINES IN FLOYD
COUNTY, VIRGINIA**

WHEREAS, the Board of Supervisors of Floyd County, Virginia (the "Board") is concerned about the protection of mountain ridges in Floyd County in order to protect the health, safety and welfare of the citizens of the County; and,

WHEREAS, the Board is aware of the potential for numerous detrimental impacts which may be expected from the construction of tall structures on mountain ridges, which include but are not limited to pollution or rerouting of surface water courses, pollution or alteration of groundwater courses, erosion, disruption or injury to wildlife, including birds, noise pollution and the possibility of structural collapse; and,

WHEREAS, the Board has determined, after receiving the comments of the public and consideration thereof at public meetings, that certain regulations and limitations on the construction of tall structures on mountain ridges is necessary for the protection of public health, safety and public welfare; and,

WHEREAS, tourism is an important and vital economic force in the County with many residents of the County dependent on their livelihood and income from tourism and tourists attracted to the County because of the natural beauty of Floyd County; and,

WHEREAS, the County of Floyd relies on revenue generated by tourism to operate and provide necessary public services such as public schools, fire and rescue, and police protection; and,

WHEREAS, after public hearing had, duly advertised, the Board of Supervisors has determined and **hereby finds** that it is necessary to adopt an ordinance as permitted and authorized by §15.2- 2295.1 of the Code of Virginia, 1950, as amended, to protect the views and vistas of the County and promote and protect the health, safety and welfare of the citizens of the County of Floyd, including the economic welfare of the County and its citizens.

NOW THEREFORE, BE IT ORDAINED, that the Board of Supervisors hereby **ADOPTS**

the following Ordinance to establish protected mountain ridgelines in Floyd County and to regulate the construction of tall structures on those protected mountain ridgelines, to wit:

**AN ORDINANCE REGULATING AND PROHIBITING CONSTRUCTION
OF TALL STRUCTURES ON CERTAIN PROTECTED
MOUNTAIN RIDGELINES IN FLOYD COUNTY, VIRGINIA**

Regulation of mountain ridge construction.

Protected mountain ridges, as defined herein, identified and designated upon the county's protected ridgeline map shall be protected by prohibiting construction of tall buildings and structures that may obstruct the views of their crests or endanger the persons, property or natural resources of residents located in the vicinity of those protected ridgelines.

Definitions.

As used in this ordinance, unless the context requires a different meaning:

Construction means the building, alteration, repair, or improvement of any building or structure.

Crest means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two (2) sides to a lower elevation or elevations.

Elevation means elevation measured from sea level.

Height means the vertical distance from the base on the ground to the utmost vertical extension of the structure.

Protected mountain ridge means a ridge within the county as shown upon the protected mountain ridgeline map with (i) an elevation of two thousand three hundred (2,300) feet or more and (ii) an elevation of five hundred (500) feet or more above the elevation of an adjacent valley floor.

Ridgeline or *ridge* means the elongated crest or series of crests at the apex or uppermost point of intersection between two (2) opposite slopes or sides of a mountain and includes all land within one hundred (100) feet, measured vertically, below the elevation of any portion of such line or surface along the crest.

Tall buildings or structures means 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 natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. For buildings, structures or units with rotating or moving projections, the uppermost point shall be measured from the highest possible extension or rotation point of such projection. "Tall buildings or structures" do not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity,

telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

Protected mountain ridge map.

A map of the county's protected mountain ridges having elevations in excess of two thousand three hundred (2,300) feet or more is hereby adopted and incorporated into this ordinance by reference. The county building inspector's office shall maintain said map, showing protected mountain ridges within the county and shall maintain a list of property parcel numbers where any part of the parcel is located upon a protected mountain ridge identified on the map.

Prohibition of certain buildings or structures.

No tall buildings or structures in excess of three hundred (300) feet may be built on any parcel of real estate located on a protected mountain ridge containing an elevation of two thousand three hundred (2,300) feet or more.

Building permits not to be issued.

The building inspector's office shall not issue a permit for construction of any tall building or structure in excess of three hundred (300) feet on protected mountain ridges containing an elevation of two thousand three hundred (2,300) feet or more. Moreover, no permit shall be issued for construction of any tall building or structure in excess of three hundred (300) feet on any parcel of real estate where any part of such parcel is located on a protected mountain ridge, unless the property owner presents satisfactory evidence that the portion of such parcel upon which the tall building or structure is proposed to be constructed does not lie at an elevation of two thousand three hundred (2,300) feet or more. No variances to the provisions of this ordinance shall be granted. Appeals from a decision of the building inspector under the provisions of this ordinance may be taken by filing a written appeal to the County Administrator setting forth the grounds for appeal within thirty (30) days of the building inspector's decision. The County Administrator shall render a decision on the appeal within thirty (30) days of the filing of the appeal. Any decision of the County Administrator may be taken by filing a written appeal to the Floyd County Board of Supervisors setting forth the grounds for appeal within thirty (30) days of the County Administrator's decision.

Effect of ordinance.

This ordinance is effective immediately upon adoption by the Floyd County Board of Supervisors. Nothing in this ordinance shall be deemed to repeal, replace, pre-empt or otherwise displace any other authority the county may already have under existing ordinances to regulate mountain ridges or specific structures.

Enforcement.

(a) The County Administrator shall have responsibility for enforcing the provisions of this

ordinance, and may, as necessary, solicit the assistance of other local and state officials and agencies with this enforcement. The County Administrator may delegate enforcement duties to the building inspector's office or other appropriate official, provided the County Administrator retains ultimate oversight of the enforcement process.

(b) Violators of the provisions of this ordinance shall be notified in writing of observed violations. The designated officer shall state, in the written notice, the nature of the violation, the date that the violation was observed, and the remedy or remedies necessary to correct the violation. A reasonable time period will be established for the correction of the violation.

(c) If the designated officer is not able to obtain compliance with these provisions, civil and or criminal procedures may be initiated in accordance with criminal and or civil law and procedures. Such actions may include a suit for injunctive and other equitable relief.

(d) Enforcement under this section shall not preclude enforcement for violations of any other provision of this Code, including but not limited to enforcement for violations of the building code.

Penalties.

Pursuant to the Code of Virginia, § 15.2-1429, as amended, in addition to any civil proceeding brought for enforcement, any violation of any provision of this ordinance shall be a Class 1 misdemeanor punishable as provided in §18.2-11 of the Code of Virginia, 1950, as amended.

This Ordinance was duly adopted this 11th of August, 2020.

	Aye	Nay
Lauren D. Yoder	<u>✓</u>	_____
Joe D. Turman	<u>✓</u>	_____
Jerry W. Boothe	<u>✓</u>	_____
Justin Coleman	_____	<u>✓</u>
Linda DeVito Kuchenbuch	_____	<u>✓</u>

I, TERRI MORRIS, HEREBY ATTEST THAT THIS IS A TRUE AND ACCURATE COPY OF SAID ORDINANCE.

Terri W Morris

TERRI MORRIS
County Administrator

3-17 **Regulation of Mountain Ridge Construction.** The purpose of this section is to regulate the development of property located above 3,000 feet in the Grayson County as provided and authorized in Code of Virginia, § 15.2-2295.1, Regulation of mountain ridge construction.

3-17.1 **Definitions.** The following terms, as used in this section, shall be defined as indicated, unless the context requires a different meaning:

"Construction" means the building, alteration, repair, or improvement of any building or structure.

"Crest" means 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.

"Protected mountain ridge" means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

"Ridge" means 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.

"Tall buildings or structures" means any building, structure or unit within a multi-unit building with a vertical height of more than 40 feet, as determined by ordinance, measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" does not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources; the exclusion of "equipment for the transmission of electricity" and

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“windmills” from this definition does not include equipment for the generation of electricity or towers or turbines associated with a wind energy generating facility.

- 3-17.2 Applicability.** The provisions and regulations of this section shall apply to any parcel or portions thereof wherein a protected mountain ridge is located.
- 3-17.3 Permitting.** Tall buildings and structures proposed to be located on a protected mountain ridge shall require the issuance of a Special Use Permit pursuant to Section 5-11, Special Use Permit, of this Zoning Ordinance. In addition to the criteria contained in Section 5-11 to be considered by the Planning Commission and Board of Supervisors in their respective recommendation and action on Special Use Permits, any Special Use Permit under this section shall be denied if the application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law.
- 3-17.4 Prohibitions.** The following buildings and structures shall be prohibited entirely and are not eligible to seek a Special Use Permit for location on a protected mountain ridge:
- 1) Towers or turbines associated with a wind energy generating facility.
- 3-17.5 Administration.** The Zoning Administrator shall make determinations regarding the height and elevations under this section based upon the best available information and information provided by an applicant.

ARTICLE VI. - CONSTRUCTION OF TALL STRUCTURES ON CERTAIN RIDGELINES

Sec. 15-110. - Regulation of mountain ridge construction.

Certain mountain ridgelines identified in the county's comprehensive plan shall be protected by limiting construction of tall buildings and structures that may obstruct the views of their crests or endanger the persons or property of residents located below those ridgelines. Additional areas surrounding the ridgelines shall be included in the protected areas to prohibit excessively tall buildings or structures that, though not built on the ridgeline, would extend to a height such that they nevertheless would endanger protected mountain ridgelines.

(Ord. of 2-2-10)

Sec. 15-111. - Definitions.

As used in this chapter, unless the context requires a different meaning:

Construction means the building, alteration, repair, or improvement of any building or structure.

Crest means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two (2) sides to a lower elevation or elevations.

Dwelling means a structure suitable for immediate human habitation including power, water, food and furniture.

Elevation means elevation measured from sea level.

Height means the vertical distance from the base on the ground to the utmost vertical extension of the structure.

Protected mountain ridgeline area means areas above three thousand two hundred (3,200) feet in elevation on property designated on the protected mountain ridgeline area map.

Protected mountain ridge means a ridge within the protected mountain area shown on the protected mountain area map with (i) an elevation of three thousand two hundred (3,200) feet or more and (ii) an elevation of five hundred (500) feet or more above the elevation of an adjacent valley floor.

Ridgeline or *ridge* means the elongated crest or series of crests at the apex or uppermost point of intersection between two (2) 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.

Tall buildings or structures means 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 natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building,

structure or unit. "Tall buildings or structures" do not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the board of historic resources; or any device designed to generate less than two hundred fifty (250) Kilowatts of electric power for a single residence.

(Ord. of 2-2-10)

Sec. 15-112. - Protected mountain ridgeline area map.

A map of the county's protected mountain ridgeline areas hereby is adopted and incorporated into this article by reference. The county building inspectors office shall maintain said map, showing protected mountain ridgeline areas within the county and shall maintain a list of property parcel numbers where any part of the parcel is located in a protected mountain ridgeline area identified on the map.

(Ord. of 2-2-10)

Sec. 15-113. - Regulation of certain buildings or structures.

Certain buildings or structures built on property located within the protected mountain ridgeline area shall be regulated, in addition to any building codes or other ordinances, as follows:

- (1) No tall building or structure over forty (40) feet in height may be built on a protected mountain ridgeline on property located within the protected mountain ridgeline area without a variance.
- (2) No tall building or structure over one hundred and twenty (120) feet in height may be built on a base set at an elevation of more than three thousand two hundred (3,200) feet on any property located in a protected mountain ridgeline area without a variance.
- (3) No tall building or structure over one hundred and twenty (120) feet in height may be built at an elevation of more than three thousand two hundred (3,200) feet on any property located in a protected mountain ridgeline area unless it is located a distance of more than three (3) times its height from a dwelling or the owner's property boundary. The proposed structure may nevertheless be built within a distance of less than three (3) times its height of the property owner's boundary line, provided the affected adjacent property owner signs a waiver. The set back requirement contained herein, however, may not be waived with respect to a dwelling.

(4)

No tall building or structure over one hundred and twenty (120) feet in height may be built at an elevation of more than three thousand two hundred (3,200) feet on any property located in a protected mountain ridgeline area, unless the applicant agrees in writing to remove such building or structure when it ceases to function, functions in an unintended manner due to malfunction or lack of maintenance such that it threatens public health and safety or becomes defaced and provides bond, letter of credit, corporate guarantee, or other reasonable security to provide for the expense of removal under such circumstances.

- a. Should the ordinance administrator determine that such circumstances exists he shall provide the property owner notice by certified mail. If the property owner does not respond within thirty (30) days, or if the property owner's response is inadequate, or is inaccurate, the ordinance administrator may proceed in accordance with the Code of Virginia, § 15.2-906 as may be amended and in accordance with the county's nuisance procedures.
 - b. The amount of any security required hereunder for removal of such buildings or structures shall be reviewed every five (5) years to determine whether the amount of such security remains sufficient to fund such removal. Should the ordinance administrator deem the amount of such security to be insufficient, he may require such additional security as is necessary to fulfill the purpose of this subsection (4). Such review and request for additional security may be appealed as herein provided.
- (5) Nothing in this article shall prevent a property owner from erecting a structure on his property for generation of electricity, for personal use. Such structure may not be erected for nonagricultural, commercial use. The landowner must notify the ordinance administrator in writing of his intent to build such structure. No bonding shall be required for removal of such structure. The property owner must remove the structure when it ceases to function as herein required. No permit application fee shall be charged to such property owner.
- (6) No tall building or structure may be built on a protected mountain ridgeline on property located within the protected mountain ridgeline area, unless the proposed building or structure plan (i) provides for sewerage, water, and drainage facilities, adequate for the building or structure proposed, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) provides for compliance with all applicable erosion and sediment control laws.

(Ord. of 2-2-10)

Sec. 15-114. - Permitting procedure.

- (a) No tall building or structure may be built in a protected ridgeline area without a permit issued by the ordinance administrator or the board of appeals.
- (b) The board of supervisors shall, by resolution, designate and appoint an ordinance administrator

who may grant or deny permits as provided herein.

(Ord. of 2-2-10)

Sec. 15-115. - Construction permitting.

No tall building or structure shall be constructed in the protected mountain ridgeline area without a permit issued by the administrator. Applications for permits shall be submitted to the county engineer who shall forward the same to the ordinance administrator.

- (1) *Permit approval.* The ordinance administrator shall, within ten (10) days of submission of an application, (1) determine whether the proposed building or structure is within the jurisdiction of this article and (2) whether the proposed building or structure would be permitted by this article.
 - a. If the building or structure as proposed is not within the jurisdiction of this article the ordinance administrator shall provide a certificate to the applicant advising that the structure is not within the jurisdiction of this article and advising the building inspector that such construction is not regulated by the ordinance.
 - b. If the proposed tall building or structure is within the jurisdiction of this article, the ordinance administrator shall, notify the applicant in writing and advise him that the application is either approved or that it is not approved. If the application is denied the notice shall state the reasons for the denial.
- (2) Any notice given pursuant to this section shall advise the applicant of their right to request a variance from or to appeal to the board of appeals and include the date, location and approximate time when the application for variance or for an appeal must be submitted to the administrator. Such notice to the applicant shall be in writing delivered by certified mail. Failure to provide the applicant notice or any defect in notice shall be remedied by tolling the time in which the applicant may request a variance or an appeal until proper notice is given.
- (3) *Application fees.* The administrator may charge a fee for analysis of an application. Such fee shall not exceed fifty dollars (\$50.00) for structures less than one hundred and twenty (120) feet tall, three hundred dollars (\$300.00) for structures less than two hundred forty (240) feet tall. The fee for structures more than two hundred forty (240) feet tall shall be no less than six hundred dollars (\$600.00).

(Ord. of 2-2-10)

Sec. 15-116. - Building permits not to be issued.

The building inspector's office shall not issue a permit for construction of any tall building or structure on any parcel where any part of such parcel is located on a protected mountain ridgeline area without a letter of authorization from the ordinance administrator or appeals board. The building inspector may accept

applications for such approval and forward the same to the county engineer.

(Ord. of 2-2-10)

Sec. 15-117. - Effect of ordinance.

Nothing in this article shall be deemed to repeal, replace, pre-empt or otherwise displace any other authority the county may already have under existing ordinances to zone or regulate mountain ridgelines or specific structures.

(Ord. of 2-2-10)

Sec. 15-118. - Board of appeals.

There is, hereby, established a board of appeals (BA) that shall consist of five (5) members, who shall be appointed by the Tazewell County Circuit Court. Composition and terms of office of the BA shall be as set forth in the Code of Virginia (1950), § 15.2-2308 as amended.

(Ord. of 2-2-10)

Sec. 15-119. - Powers and duties.

- (a) The BA shall have the power and duty to hear and decide appeals from any written order, requirement, decision, or determination made by the administrator in the administration or enforcement of this article, or any other ordinance for which the board of supervisors may assign such authority. No such appeal shall be heard except after notice and hearing as provided by the Code of Virginia, § 15.2-2204 as amended.
- (b) The BA shall have the power and duty to authorize upon appeal or original application in specific cases a variance from the terms of this article as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of this article will result in unnecessary hardship. No such variance shall be granted unless the spirit of the ordinance shall be observed and substantial justice done. To legally grant a variance, the BA must be presented evidence and make a finding that:
 - (1) A property owner acquired the property in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of the property at the time of the adoption of this article, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the property, the strict application of this article would effectively prohibit, or unreasonably restrict the use of the property;
 - (2) Due to the condition, situation, or development of immediately adjacent property, the strict application of this article would effectively prohibit, or unreasonably restrict the use of the property; or

- (3) That the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
- (c) All variances granted must be in harmony with the intended spirit and purpose of this article. Specifically, the BA must find that the strict application of the ordinance would produce undue hardship. This hardship must not be shared by other similarly situated properties and in the same vicinity. The BA must find that the granting of the variance will not be of substantial detriment to adjacent property and that the character of the area will not be changed by the granting of the variance.

Finally, the BA must not grant a variance unless it finds that the condition or situation of the property is not so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this article.

- (d) No variance request shall be evaluated by the BA until after notice and hearing as set forth in the Code of Virginia, § 15.2-2204 as amended. In addition, notice of application for a variance shall be posted on the property.
- (e) In granting a variance, the BA may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- (f) In deciding whether to grant a variance the BA shall consider a finding of public interest issued by the planning commission, should the commission transmit such finding to the BA prior to the hearing date.
- (g) The BA shall have the power and duty to hear and decide appeals from any written decision of the administrator. No such appeal shall be heard except after notice and hearing as set forth in the Code of Virginia, § 15.2-2204 as amended.
- (h) The BA shall have the power and duty to hear and decide applications for interpretation of the official map where the administrator believes there is uncertainty as to the location of a boundary. No such determination shall be made except after notice and hearing as set forth in the Code of Virginia, § 15.2-2204 as amended. Any property owner affected by a determination of the location of the boundary must be notified by first class mail prior to any such determination. After notice and hearing the BA may interpret the map in such a way to carry out the intent and purpose of this article, however the BA shall not have the power to change substantially the locations of the area boundaries as established by this article. This authority of the BA to determine the location of boundaries shall not be construed as the power to substantively redefine the area boundary.

(Ord. of 2-2-10)

Sec. 15-120. - Variances in certain areas.

In considering granting variances the BA shall determine whether such proposed building or structure would be contrary to the public interest. In determining the public interest the BA shall:

- (1) In areas designated as "A" on the protected mountain ridgeline area map, presume any tall buildings or structures more than forty (40) feet in height proposed to be built on a protected mountain ridgeline to be contrary to public interest and contrary to the intent of this article.
- (2) In areas designated as "B" on the protected mountain ridgeline area map, presume tall buildings or structures more than one hundred and twenty (120) feet in height to be against public interest and contrary to the intent of this article.
- (3) In areas designated as "C" on the protected mountain ridgeline area map, presume tall buildings or structures more than two hundred and forty (240) feet in height to be against public interest and contrary to the intent of this article.
- (4) In areas designated as "D" on the protected mountain ridgeline area map, presume no particular height should be deemed contrary to public interest; however, the board shall give great weight to a finding of public interest by the Tazewell County Planning Commission if submitted by the commission prior to the hearing.

(Ord. of 2-2-10)

Sec. 15-121. - Applications for variances.

Applications for variances may be made by any property owner, tenant, government official, department, or board or bureau of the county. All applications shall be submitted to the administrator in accordance with by-laws adopted by the BA. All applications and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the BA who shall place the application on the agenda to be acted upon by the BA within ninety (90) days of the filing of the application. No such application shall be heard except after notice and hearing as set forth in the Code of Virginia, § 15.2-2204 as amended. The administrator shall transmit notice of the variance application to the planning commission, which may send a recommendation reflecting a finding of public interest to the BA and may appear as a party at the hearing.

(Ord. of 2-2-10)

Sec. 15-122. - Applications for appeals.

Appeals to the BA may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrator, or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this article. Appeals must be made within thirty (30) days after the entry of the decision appealed from by filing with the administrator, a notice of appeal, specifying the grounds thereof. The administrator shall forthwith transmit

to the BA all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the administrator certifies to the BA that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such cases, proceedings shall not be stayed unless a restraining order is granted by the BA, or by a court of record, on application and on notice to the administrator and for good cause shown.

(Ord. of 2-2-10)

Sec. 15-123. - Procedures for variances and appeal.

- (a) The BA shall fix a reasonable time for the hearing of an appeal, give public notice thereof, as well as due notice to all parties of interest, and decide the same within ninety (90) days of the filing of the appeal. In exercising its power, the BA may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from.
- (b) The concurring vote of the majority of the BA shall be necessary to reverse any order, decision, requirement, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the BA is required to pass under the terms of this article, or to effect any variance from this article.
- (c) The BA shall keep minutes of its proceedings and other official actions which shall be filed in the office of the administrator. All records shall be public records. The chairman of the BA, or in his absence, the acting chairman, may administer oaths, and compel the attendance of witnesses.

(Ord. of 2-2-10)

Sec. 15-124. - Certiorari to review decision of BA.

- (a) Any person jointly or separately aggrieved by any decision of the BA, or any taxpayer or any officer, department, board or bureau of the county, may present to the Tazewell County Circuit Court a petition specifying the grounds on which aggrieved. This petition must be filed within thirty (30) days of the BA's decision.
- (b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the BA and shall prescribe therein the time within which a return thereto must be made and served upon the relater's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the BA and on due cause shown, grant a restraining order.
- (c) The BA shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds appealed from and shall be verified.

- (d) If upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct, and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.
- (e) Costs shall not be allowed against the BA, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the BA is affirmed, and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.

(Ord. of 2-2-10)

Sec. 15-125. - Enforcement.

- (a) The administrator shall have responsibility for enforcing the provisions of this article, and may, as necessary, solicit the assistance of other local and state officials and agencies with this enforcement.
- (b) Violators of the provisions of this article shall be notified in writing of observed violations. The administrator shall state, in the written notice, the nature of the violation, the date that the violation was observed, and the remedy or remedies necessary to correct the violation. A reasonable time period will be established for the correction of the violation.
- (c) If the administrator is not able to obtain compliance with these provisions, civil and or criminal procedures may be initiated in accordance with criminal and or civil law and procedures. Such actions may include a suit for injunctive and other equitable relief.

(Ord. of 2-2-10)

Sec. 15-126. - Penalties.

Pursuant to the Code of Virginia, § 15.2-2286(5), as amended, any violation of any provision of this article shall be a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).

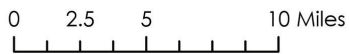
(Ord. of 2-2-10)

Sec. 15-127. - Civil penalties.

- (a) Any owner of a building or premises where a violation of any provisions of this article has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the general agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be punishable by a civil penalty.
- (b) Any violation of the provisions of this article shall be subject to a civil penalty in an amount and timing not to exceed that below set forth:
 - (1) Each day during which a violation is found to exist shall be a separate offense. However, the same violation arising from the same operative set of facts may be charged not more than once in a ten-day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00).
 - (2) The issuance of a civil penalty for a particular violation of this article pursuant to this section shall be in lieu of criminal sanctions except when such violation results in injury to any person or persons. However, where a violator persists in violating the ordinance for more than ten (10) days after an award of the maximum civil penalty, such violation shall be deemed a separate offence then punishable by criminal penalty.
- (c) The administrator, or the administrator's designee, may issue a civil summons for a violation. Any person summoned or issued a ticket for a violation may make an appearance in person or in writing by mail to the county administrator prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offence charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.
- (d) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

(Ord. of 2-2-10)

Secs. 15-128—15-140. - Reserved.



Municipal Boundaries and 100-foot DEP Contours (USGS)

- Grayson County
- Town and City Boundaries
- Index Contours

Content Item: U.S. Environmental Protection Agency, Office of Mission Support; Data Steward: U.S. Geological Survey, 3D Elevation Program