

Chapter 4

BUILDINGS; CONSTRUCTION AND RELATED ACTIVITIES*

* **Cross References:** Creation of noise in construction operation, § 9-3(2); manufactured home park construction permit, § 11-9; historic properties commission, § 16-60 et. seq.

Art. I. In General, §§ 4-1--4-19

Art. II. Codes, §§ 4-20--4-39

Art. III. Permits and Inspections, §§ 4-40--4-59

Art. IV. Flood Damage Control, §§ 4-60--4-100

Art. V. Mountain Ridge Protection, §§ 4-101--4-109

Art. VI. Telecommunications Tower Moratorium, §§ 4-110--4-113

ARTICLE I.

IN GENERAL

Sec. 4-1. Administration and enforcement of state building codes by county officials.

(a) Initial responsibility for administration and enforcement of the state building code under the general supervision of the commissioner of insurance, the bureau of boiler inspection, and the department of labor, is hereby allocated to the county building inspection department. This department shall have jurisdiction over unincorporated areas outside any city's jurisdiction, over any portion of a city or town's jurisdiction wherein the governing officials have requested the county to enforce the code, and over any areas as to which the county has contracted with another unit to enforce the code.

(b) Except as specifically exempted in subsection (4) [below] of this section, the provisions of this chapter and of the regulatory codes herein adopted shall apply to the following:

- (1) The location, design, construction, materials, equipment, maintenance of building and site, public safety, use, and occupancy of all new buildings or structures and any appurtenances thereof.
- (2) The repair, alteration, addition, conversion, reconstruction, moving, demolition, removal, maintenance, public safety, use, and type of occupancy for all existing buildings, structures, and appurtenances thereof.
- (3) The installation, alteration, repair, addition, safety, and maintenance of electrical systems, plumbing systems, sprinkler systems, heating, ventilating, air conditioning, and refrigerating systems, fuel burning equipment, insulation

applications, and all fixtures and appurtenances thereof for new and existing buildings.

- (4) The code shall not apply to:
- a. Farm buildings located outside the building regulation jurisdiction of any municipality. Farm buildings shall include those structures other than residence and structures appurtenant thereto, for on-farm use (barns, sheds, poultry houses, etc.).
 - b. The design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing liquified petroleum gasses for fuel purposes or anhydrous ammonia or other liquid fertilizers.
 - c. The design, construction, location, installation, or operation of equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation, poles, towers, and other structures supporting electric or communication lines. [G.S. 143-138(b), (c).]

(Ord. of 7-24-73, § 1-1; Ord. of 8-27-90)

Sec. 4-2. Department of inspections--Organization; general duties; assignment of duties.

(a) *Organization:* The department of inspections shall consist of a building inspector, a plumbing inspector, a heating-air conditioning inspector, an electrical inspector, a housing inspector, and such other inspectors or deputy or assistant inspectors as may be authorized by the governing body. Separate functions may be combined under one (1) inspector.

(b) *General duties:* It shall be the duty of the department of inspections to enforce all of the provisions of this chapter and of the regulatory codes adopted herein, and to make all inspections necessary to determine whether or not the provisions of this chapter and such codes are being met. It shall be an additional duty of the department of inspections to enforce provisions of subdivision regulations and other ordinances as may be prescribed.

(c) *Assignment of duties:* The building code, residential building code, flood damage control regulations and the mountain ridge protection law, shall be enforced by the building inspector. The plumbing code shall be enforced by the plumbing inspector. The heating code shall be enforced by the heating-air conditioning inspector. The electrical code shall be enforced by the electrical inspector.

(Ord. of 7-24-73, §§ 2-1, 2-2; Ord. of 8-27-90)

State Law References: Mountain Ridge Protection Law, G.S. 113A-205 et seq.

Sec. 4-3. Same--Records and reports.

The department of inspections, and each inspector, shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, and reinspection made, and all other work and activities of the department of inspections. Periodic reports shall be

submitted to the governing body, and to other agencies, as required.
(Ord. of 7-24-73, § 2-4; Ord. of 8-27-90)

Sec. 4-4. Same--Conflict of interest.

No officer or employee of the department of inspections shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building or any part thereof, or in the making of plans or specifications therefor, unless such person is the owner of such building. No officer or employee of the department of inspections shall engage in any work which is inconsistent with such person's duties or with the interests of the county.

(Ord. of 7-24-73, § 2-3; Ord. of 8-27-90)

Sec. 4-5. Same--Powers in making inspections.

(a) *Enforcement:* Inspectors are hereby authorized, empowered, and directed to enforce all the provisions of this chapter and the regulatory codes herein adopted.

(b) *Right-of-entry:* Inspectors shall have the right-of-entry on any premises within the jurisdiction of the regulatory codes herein adopted at reasonable hours for the purpose of inspection or enforcement of the requirements of this chapter and the regulatory codes, upon presentation of proper credentials.

(c) *Stop work orders:* Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in violation of any provision of this chapter or any other ordinance, or in violation of any provision of any regulatory code herein adopted, or in violation of the terms of the permits issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order such work to be immediately stopped. Such order shall be in writing to the owner of the property or to the owner's agent, or to the person doing the work, and shall state the reasons therefor and the conditions under which the work may be resumed.

(Ord. of 7-24-73, § 2-7; Ord. of 8-27-90)

Sec. 4-6. Same--Inspection procedure, scope, etc.

(a) *Inspections required:* The department of inspections shall inspect all buildings and structures and work therein for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this chapter and the appropriate codes. When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of such organizations unless the same are in writing and certified by a responsible officer of such organization. If the work performed, or any part thereof, is required by statute to be done by a state licensed contractor, then that contractor shall call for the inspection of his respective portion of work so that approval may be given before work is continued.

(b) *Calls for inspection:* Requests for inspections may be made to the office of the department of inspection, provided work is ready for inspection at the time the request is made. Such inspection shall be made as soon as practicable after the request is received.

(c) *Re-inspections:* Re-inspections may be made at the convenience of the inspector. No work shall be inspected until it is in proper and completed condition ready for inspection. All work which is concealed at the time of inspection shall be uncovered at the request of the inspector. Approval or rejection of the work shall be furnished by the appropriate inspectors in the form of a notice posted on the building or given verbally or in writing to the permit holder or the permit holder's agent. Failure to call for inspections or proceeding without approval at each stage of construction shall be deemed a violation of this chapter.

(d) *Street or alley lines:* Where the applicant for a permit proposes to erect any building or structure on the line of any street, alley, or other public place, such applicant shall secure a survey of the line of such street, alley, or other public property, adjacent to the property upon which such building or structure is to be erected before proceeding with construction of such building or structure. It shall be the duty of the building inspector to see that the building does not encroach upon such street, alley, or other public place.

(e) *Certificate of occupancy:* No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the department of inspections has issued a certificate of occupancy therefor. A limited occupancy approval may be issued at the department's option, permitting occupancy for a stated period of time of specified portions of the building or structure that the department finds may safely be occupied prior to final completion of the entire building or structure. Application for a certificate of occupancy for new buildings shall be made by the owner or the owner's agent only after all final inspections have been complete and approved by the department; and for existing buildings, after the department has determined by inspection of the building or structure and review of the owner's pertinent data that the building or structure is in current compliance for the intended occupancy. The department shall then issue a certificate of occupancy after determining that the building or structure conforms to the provisions of this chapter, the regulatory codes, and any zoning ordinance for the type of occupancy intended.

(f) *Unauthorized occupancy:* Unauthorized occupancy of any new building or structure by any person or their belongings prior to issuance of a certificate of occupancy or limited occupancy approval by the department of inspections shall constitute a misdemeanor under G.S. 153A-363. Neither the county, state, nor its governing officials, nor any county code enforcement officials shall be responsible for damages to any persons or property which may occur during or as a result of any unauthorized occupancy. Penalties established for unauthorized occupancy may include, but not be limited to, the following: Forfeiture of temporary and/or permanent electric service to the building or structure, [and] revocation of the building permit. After complying with notification from the department of inspections to vacate the building or structure, the electric service (for construction purposes only) and the building permit may be reinstated.

(Ord. of 7-24-73, § 2-5; Ord. of 8-27-90; Amd. of 3-22-99)

Sec. 4-7. Same--Effect of oversight.

No oversight or dereliction of duty on the part of any inspector or other official or employee of the department of inspections shall be deemed to legalize the violation of any provision of this chapter or any provision of any regulatory code herein adopted. (Ord. of 7-24-73, § 2-6; Ord. of 8-27-90)

Sec. 4-8. Reserved.

Editors Note: An amendment of Mar. 22, 1999 repealed § 4-8, which pertained to registration of contractors and derived from Ord. of 7-24-73, § 3-1; Ord. of 8-27-90.

Sec. 4-9. Adoption by municipalities.

Municipalities within the county may, by resolution of their governing bodies, adopt all or part of the provisions of this chapter. The county department of inspections will then assume responsibility for inspections and enforcement of such codes within the respective municipalities. (Ord. of 7-24-73, § 5-1; Ord. of 8-27-90)

Secs. 4-10--4-19. Reserved.

ARTICLE II.

CODES*

* **Editors Note:** An ordinance of August 27, 1990, was treated in part as amending Art. II, §§ 4-20--4-31 by deleting Art. II in its entirety and providing a new Art. II to read as set forth herein. Former §§ 4-20--4-31 contained similar provisions and derived from §§ 1-1--1-9, 4-1, 4-2 of an ordinance of July 24, 1973; Art. I of an ordinance of Dec. 19, 1977; and an ordinance of June 27, 1983.

State Law References: Mountain ridge protection, formerly afforded by county ordinance, is now afforded by G.S. 113A-205 et seq.

Sec. 4-20. Building code adopted.

The following editions of the North Carolina State Building Codes, as adopted by the North Carolina Building Code Council and as amended, are hereby adopted by reference as though they were copied herein fully:

2004 Regulations for Manufactured Homes
2004 Accessibility Code
2006 Rehabilitation Code
2008 NEC Code
2009 Fire Code
2009 Energy Conservation Code
2009 Fuel Gas Code
2009 Plumbing Code
2009 Mechanical Code

2009 Residential Code
2009 Building Code

(Ord. of 8-27-90; Amd. of 3-22-99)

Sec. 4-21. Amendments to codes.

Amendments to the regulatory codes adopted by reference herein, which are from time to time adopted and published by the agencies or organizations referred to herein shall be effective in the county at the time such amendments are filed with the department of inspections as provided in section 4-23.

Sec. 4-22. Compliance with codes.

(a) All buildings or structures which are hereafter constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of either the building code, or the residential building code, whichever is applicable, or of both if both are applicable.

(b) Every building or structure intended for human habitation, occupancy, or use shall have plumbing, plumbing systems, or plumbing fixtures installed, constructed, altered, extended, repaired, or reconstructed in accordance with the minimum standards, requirements, and other provisions of the plumbing code.

(c) All mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel-burning equipment, and appurtenances shall be installed, erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the heating code.

(d) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the electrical code.
(Ord. of 8-27-90)

Sec. 4-23. Copies of codes filed with inspector.

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the department of inspections. Such copies shall be the official copies of the codes and the amendments.
(Ord. of 8-27-90)

Sec. 4-24. Enforcement of housing code and condemnation procedures--Duty of inspection department.

The department of inspections shall be responsible for the enforcement of any ordinances or codes adopted by the governing body relating to the repair, closing, and demolition of

dwellings unfit for human habitation, pursuant to sections 160A-441 through 160A-450 of the General Statutes of North Carolina.
(Ord. of 8-27-90)

Sec. 4-25. Duty of building inspector.

Any building or structure or part thereof, partially or fully destroyed, which is found by the building inspector to be in such a dilapidated state of disrepair or other substandard condition as to be dangerous to life, health, or other property, or to constitute a fire or safety hazard or a public nuisance shall be declared by the building inspector to be unsafe, pursuant to sections 153A-350 through 153A-375 of the General Statutes of North Carolina.

(Ord. of 8-27-90)

Cross References: Inspection of manufactured homes, § 11-16.

Secs. 4-26--4-39. Reserved.

ARTICLE III.

PERMITS AND INSPECTION

Sec. 4-40. Permits required; bond in certain cases.

(a) *Miscellaneous:*

- (1) *Building permit:* No person shall commence or proceed with the construction, reconstruction, rebuilding, alteration, repair, conversion, moving, demolition removal, or change in type of occupancy, of any building or structure, or any part thereof, without a written permit therefor from the department of inspections. Local board of health approval of property for septic tank installation is required where sewage system cannot be connected to a municipal type sewer system.
- (2) *Erosion/Sediment Control Permit:* No person shall create a disturbance of land greater than 4000 (four thousand) square feet, but less than one acre, related to activity requiring a building permit without obtaining an erosion / sediment control permit issued by the Transylvania County Planning Department. For the purpose of this ordinance, agriculture, forestry, or any other use of the land not related to activity requiring a building permit does not require an erosion/sediment control permit.

A sketch plan on 8.5" x 11" paper or larger shall be required to obtain an erosion and sediment control permit. The sketch plan shall show: the property to be disturbed and adjacent property, existing and proposed structures, streets and drives; drainage ditches, streams or other bodies of water; the proposed land disturbance area including its dimensions; and measures to be installed to control erosion, sedimentation pollution and storm-water run off. The permit and sketch

plan shall be posted at the job site.

Best management practices, such as wire reinforced silt fences, silt socks, berms or diversions, check dams, catch basins, buffer zones, temporary gravel entrances, and establishment of vegetation, mulch and compost blankets or other groundcover, or any other North Carolina Department of Environment and Natural Resources approved Best Management Practices found in the North Carolina Erosion and Sediment Control Planning and Design Manual to be used for erosion/sediment control shall be selected by the property owner, and listed on the Transylvania County Erosion/Sediment Control Permit. Best Management Practices selected shall be sufficient to control sediment on the property being disturbed and to prevent sedimentation in water-bodies and on adjoining properties.

If the best management practices selected by the applicant are not effective as evidenced by sedimentation in water bodies or neighboring properties originating from the disturbed area subject to this regulation, the applicant shall be required to correct the failure and install additional control measures to effectively control erosion and sedimentation. Final structure approval or certificate of occupancy shall require completion and stabilization of the land disturbance.

Disturbances of land greater than 1 acre will require an erosion and sedimentation control plan approved by the NC Department of Environment and Natural Resources.

- (3) *Signs:* No outdoor advertising sign shall hereafter be erected, constructed, altered, or maintained except as provided in the building code, until after a permit for same has been issued by the department of inspections and the fee paid.

EXCEPTION: No permit shall be required for a shingle-type sign over a show window or door of a store or business establishment, announcing without display or elaboration, only the name of the proprietor and nature of the business; nor shall a permit be required for a ground sign advertising property for sale or rent; providing such sign is not over fifteen (15) feet square in area.

- (4) *Marquees, awning, etc.:* A permit shall be required to install marquees, awnings, and similar type structures.
- (5) *Tents:* A temporary permit shall be required for any outdoor tent used for assembly of persons. All temporary wiring and lighting of same shall also require a permit prior to installation.
- (6) *Reserved.*

(b) *Electrical, plumbing, gas piping, heating, and air conditioning permit:* No person shall commence or proceed with the installation, replacement, extension, alteration, or general repair of any electrical, plumbing, gas piping, heating, or air conditioning system without a written permit therefore from the department of inspections.

(c) *Approval for septic tank installation:* Local board of health approval of property for septic tank installation is required where the sewage system cannot be connected to a municipal type sewer system.

(d) *When permit not required:* No permit shall be required for the installation, alteration, or repair of the electrical wiring, devices, appliances, and equipment installed by or for an electrical public utility corporation in the generation, transmission, distribution, or metering of electrical energy, or for the use of such corporation in the operation of signals, or from the transmission of intelligence.

(Ord. of 7-24-73, § 3-3; Ord. of 8-27-90; Amd. of 3-22-99; Amd. of 4-27-09)

Cross References: Building permit in development, §§ 4-74, 16-52.

Sec. 4-41. Application for permit.

Written application shall be made for all permits required by this article, and shall be made on forms provided by the department of inspections. Such application shall be made by the general contractor, and, in addition to such other information as may be required by the appropriate inspector to enable such inspector to determine whether the permit applied for should be issued, shall show the following:

- (1) Name, residence, and business address of owner;
- (2) Name, residence, and business address of authorized representative or agent, if any;
- (3) Name and address of the contractor, if any, together with evidence that such contractor has obtained a certificate from the appropriate state licensing board for such contractors, if such be required for the work involved in the permit for which application is made.

(Ord. of 7-24-73, § 304; Ord. of 8-27-90)

Sec. 4-42. Plans and specifications.

Detailed plans and specifications shall accompany each application for permit for any building or structure where plans and specifications are deemed necessary by the appropriate inspector in order for the inspector to determine whether the proposed work complies with the appropriate regulatory codes. Plans shall be drawn to scale with sufficient clarity to indicate the

nature and extent of the work proposed, and the plans and specifications together shall contain information sufficient to indicate that the work proposed will conform to the provisions of the appropriate regulatory codes. Where plans and specifications are required, a copy of the same shall be kept at the work site until all authorized work has been completed and approved by the appropriate inspector.

(Ord. of 7-24-73, § 3-5; Ord. of 8-27-90)

Sec. 4-43. Limitations on issuance of permits.

(a) Where any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for such work shall be issued unless it is to be performed by such licensed specialty contractor.

(b) Any person or persons who receive a violation notice regarding their work from the department of inspections, either before or after a certificate of occupancy has been issued, and fails to comply with said notice within a reasonable period of time, shall be denied any further permits until the outstanding violations are corrected and have been inspected and approved by the appropriate inspector.

(c) The department of inspections shall have the right to require any unlicensed permit applicant intending to perform framing, electrical, plumbing, mechanical, or insulation work for their own use and upon their own property, to pass a written or oral test given by the department in order to determine the applicant's ability to perform the work according to the code.

(Ord. of 7-24-73, § 3-6; Ord. of 8-27-90)

Sec. 4-44. Issuance of permit.

When proper application for a permit has been made, and the appropriate inspector is satisfied that the application and the proposed work will comply with the provisions of the appropriate regulatory codes, the inspector shall issue such permit, upon payment of the proper fees as hereinafter provided in the current fee schedule.

(Ord. of 7-24-73, § 3-7; Ord. of 8-27-90)

Sec. 4-45. Permit and inspection fees.

(a) *[Establishment and review:]* Permit fees shall be established by the board of commissioners and duly posted at the office of the department of inspections. They shall be reviewed periodically by the board of commissioners.

(b) *Applicability to churches within county limits:* Churches located within the county jurisdiction shall be required to pay fifty (50) percent of the required fees. However, these

reduced rates shall only apply to the construction of a church sanctuary and shall not apply to any other properties. For the purposes of this subsection, a church sanctuary shall be deemed to include those parts of a church structure which are customarily used for Sunday school and worship.

(c) *Applicability of county and related facilities:* Rescue squads, volunteer fire departments and county schools within the inspection jurisdiction of the county shall be required to pay fifty (50) percent of the required permit fees. Permit fees for county government buildings and facilities shall be waived. Permit fees for Community Centers shall be waived.

(d) *Emergency inspections:* While it is the county's policy that inspections be called and completed during regular office hours, it is recognized that from time to time emergency situations may arise requiring an inspection either during off-hours or on holidays. Whenever an emergency inspection is performed, the inspection fee shall be charged at a rate of one hundred and fifty (150) percent of the regular fee.

(e) *Rate review:* The inspection fees shall be reviewed periodically within the framework of the county's annual budget preparation and adoption procedures.

(Ord. of 7-24-73, §§ 3-11, 5-2; Ord. of 4-29-85, § 1; Ord. of 8-27-90; Amd. of 9-8-97; Amd. 2-11-13)

Sec. 4-46. Revocation of permits.

(a) The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any material departure from the approved application, plans, or specifications; for refusal or failure to comply with requirements of this chapter and the appropriate regulatory codes; or for false statements or misrepresentations made in securing such permit.

(b) If it is determined by the department of inspections that an unlicensed applicant has made false statements or misrepresentations in securing a permit to act as owner-builder in order to build a residence or building for sale purposes only, the department shall have the right to revoke the permit and issue a stopwork order until such time as a licensed building contractor is employed to complete the building a new building permit is issued. No additional permits shall be issued to the unlicensed applicant until the applicant has obtained a valid state building contractor's license.

(Ord. of 7-24-73, § 3-8; Ord. of 8-27-90)

Sec. 4-47. Time limitations on validity of permits.

All permits issued under this chapter shall expire by limitation six (6) months after the date of issuance if the work authorized by the permit has not been commenced. If after

commencement the work is discontinued for a period of twelve (12) months, the permit therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been issued.

(Ord. of 7-24-73, § 3-9; Ord. of 8-27-90)

Sec. 4-48. Changes in work.

After a permit has been issued, changes or deviations from the plans or specifications involving any work under the jurisdiction of this chapter or of any regulatory code adopted herein, shall not be made until specific written approval of such changes or deviations has been obtained from the appropriate inspector.

(Ord. of 7-24-73, § 3-10; Ord. of 8-27-90)

Secs. 4-49--4-59. Reserved.

ARTICLE IV.

FLOOD DAMAGE CONTROL*

* **Editors Note:** An ordinance adopted March 27, 1995, was treated as superseding Art. IV in its entirety. Formerly, Art. IV consisted of §§ 4-60--4-81, which contained similar provisions and derived from ordinances adopted Nov. 19, 1979; May 26, 1987; and Sept. 14, 1987.

Sec. 4-60. Title.

This article shall be known and cited as the Flood Damage Control Ordinance of Transylvania County, North Carolina.
(Ord. of 3-27-95)

Sec. 4-61. Statutory authorization.

Pursuant to the authority conferred by Part 6, Article 21 of Chapter 143; Parts 3 and 4 of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes, the county board of commissioners hereby ordain and enact into law these articles and sections.
(Ord. of 3-27-95)

Sec. 4-62. Jurisdiction.

This article shall apply to all areas of special flood hazard within the county's jurisdiction.
(Ord. of 3-27-95)

Sec. 4-63. Purpose.

The purpose of this article [shall be] to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by:

- (1) Restricting or prohibiting uses that are dangerous to human health and safety, and to personal property due to flooding;
 - (2) Requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Preventing or regulating the filling, grading, dredging and other alteration of stream channels, and natural protective barriers that may increase erosion or flood damage to other lands;
 - (4) Minimizing expenditure of public money for costly flood control projects and the need for rescue and relief efforts associated with flooding;
 - (5) Minimizing damage to public facilities and utilities, such as gas mains, electric and telephone lines, water and sewer lines, streets and bridges;
 - (6) Maintaining a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
 - (7) Ensuring that potential home buyers are notified that property is in a flood area.
- (Ord. of 3-27-95)

Sec. 4-64. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory structure: A structure that is located on the same parcel or property as the principal structure and that is incidental to the principal structure's use (i.e., garages, carports, storage sheds, pole barns, hay sheds.).

Appeal: A request for a review of the administrator's interpretation of any provision of this article or a request for a variance.

Area of shallow flooding: A designated AO zone on a community's flood insurance rate map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard: Lands subject to a one-percent or greater chance of flooding in any given year. The areas are identified by the Federal Emergency Management

Agency through a scientific and engineering report titled "The Flood Insurance Study for Transylvania County," dated September 26, 1997, with accompanying flooding insurance rate maps, flood boundary and floodway maps. Any revisions thereto are hereby adopted by reference.

Base flood: The flood having a one-percent chance of being equalled or exceeded in any given year.

Basement: For flood damage control management and flood insurance purposes, that portion of a building having its floor subgrade (below ground level) on all sides.

Breakaway wall: A wall that is not part of a building's structural support and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. A wall with loading resistance of more than twenty (20) pounds per square foot requires an architect's or professional engineer's certificate.

Building: Any structure built for support, shelter, or enclosure for any occupancy or storage.

Building addition: Any walled and roofed expansion to an existing building. Any building addition that is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

Development: Any manmade change to improved or unimproved real estate, including, but not limited to, buildings, building additions, other structures; mining, dredging, filling, grading, paving, excavating, drilling operations; or storage of materials or equipment.

Elevated building: For insurance purposes, a nonbasement building that has its lowest floor raised above ground level by foundation walls, pilings, columns (posts and piers), shear walls, or any combination thereof.

Existing manufactured home park: A manufactured home park completed prior to November 19, 1979.

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of surface runoff waters.

Flood hazard boundary map (FHBM): A map issued by the Federal Emergency Management Agency showing where the boundaries of special flood hazard are defined as Zone A.

Flood insurance rate map (FIRM): A map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones

applicable to the community.

Flood insurance study: The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood hazard boundary-floodway map and the water surface elevations of the base flood.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floor: The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Functionally dependent facility: A facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a boat dock.

Highest adjacent grade: The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

Historic structure: Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of the interior, or the state department of cultural resources; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that are certified by an approved state program, as determined by the secretary of interior.

Lowest floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or storage in an area other than a basement, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

Manufactured home: A structure, transportable in one (1) or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities.

Manufactured home park: A parcel (or contiguous parcels) of land divided into three (3) or more manufactured home lots for rent or lease (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets).

Mean sea level: A reference for establishing various elevations within the floodplain. The term is synonymous with National Geodetic Vertical Datum (NGVD), as corrected in 1929.

New construction: Structures for which the start of construction commenced on or after November 19, 1979.

New manufactured home park: A manufactured home park built after November 19, 1979.

Nonconforming building or use: Any legally existing building or development that fails to comply with this article.

Recreational vehicle: A vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Remedy a violation: To bring the structure or other development into compliance with this article or, if this is not possible, to reduce the impacts of its noncompliance.

Start of construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means

the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the building's external dimensions.

Structure: A walled and roofed building that is principally above-ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

Subdivision: All divisions of a tract or parcel of land, as defined by Sections 153A-330 through 153A-339 of North Carolina General Statutes and the county subdivision control ordinance, as amended.

Substantial improvement: Any repair, reconstruction, or improvement to a structure or other development, the cost of which equals or exceeds fifty (50) percent of its market value before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not include:

- (1) Any structure or other development improvement project necessary to comply with existing state or local health or safety codes that are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance: A grant of relief from the requirements of this article which permits construction in a manner otherwise prohibited by this article.

Violation: The failure of a structure or other development to fully comply with this article.

Watercourse: Any stream or river located in an area of special flood hazard.
(Ord. of 3-27-95; Amd. of 2-9-98)

Sec. 4-65. Administrator--Appointed.

The building inspections director, or his appointee, is hereby appointed to administer and implement the provisions of this article.
(Ord. of 3-27-95)

Sec. 4-66. Same--Duties.

Duties of the administrator shall include, but not be limited to:

- (1) Review all development permits to assure that the permit requirements of this article are satisfied.
- (2) Advise applicant that additional federal or state permits may be required, and if

specific federal or state permits are known, require that copies of such permits be provided prior to permit issuance and maintained on file with the development permit.

- (3) Notify adjacent communities and the state department of crime control and public safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any known alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of such watercourse so that the flood carrying capacity is not diminished.
- (5) Prevent encroachments within floodways unless certification and flood hazard reduction provisions are met.
- (6) Obtain from the applicant and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in accordance with this article.
- (7) Obtain from the applicant and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed in accordance with this article.
- (8) Obtain from the applicant certification from a registered professional engineer or architect when floodproofing is utilized for a particular structure.
- (9) Interpret the approximate areas of special flood hazard boundaries where there appears to be a conflict between the flood insurance rate and floodway maps and actual field conditions.
- (10) When base flood elevation data has not been provided in accordance with this section 4-66, then the building inspector may obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other source, in order to administer the provisions of sections 4-77 through 4-81.
- (11) Make on-site inspections of projects.
- (12) Serve violation notices, issue stop work orders, revoke permits and take corrective actions as provided for in this article.
- (13) Maintain for public inspection all records pertaining to the provisions of this article.

(Ord. of 3-27-95)

Sec. 4-67. Application permit and certification requirements.

A development permit is required in conformance with the provisions of this article. Application for a development permit shall be made to the administrator on forms furnished by the inspector prior to any development activities. The development permit shall include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required by the development permit applicant:

- (1) A plot plan showing the floodway, if applicable, and the base flood contour or a statement that the entire area is within the area of special flood hazard if the subject location appears to be partially or entirely within the area of special flood hazard. The plot plan shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
- (2) Where the base flood elevation data is provided as set forth in this article, the application for a development permit within the flood hazard area shall show:
 - a. The lowest floor (including basement) elevation in relation to mean sea level of all new and substantially improved structures; and
 - b. If a nonresidential structure is to be floodproofed in accordance to section 4-72(2), the elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (3) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two (2) feet above the highest adjacent grade or, for nonresidential structures, floodproofing in accordance with section 4-72(2) to an elevation of two (2) feet above the highest adjacent grade.
- (4) Where any watercourse may be altered or relocated as a result of proposed development, the development permit application shall include:
 - a. A description of the extent to which any watercourse will be altered or relocated;
 - b. An engineering report on the proposed project's effects on the flood-carrying capacity and the effects to properties located both upstream and downstream; and
 - c. A map showing the proposed watercourse alteration or relocation.
- (5) Provide a flood elevation or floodproofing certification after the lowest floor is completed. Within twenty-one (21) calendar days of establishment of the lowest floor elevation or floodproofing by whatever construction means, whichever is

applicable, it shall be the duty of the permit holder to submit to the local administrator a certification of the elevation of the lowest floor or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, such certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the twenty-one-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The local administrator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make such corrections required hereby shall be cause to issue a stop work order for the project.

(Ord. of 3-27-95)

Sec. 4-68. Administrative procedures.

(a) *Work in progress inspections.* As the work pursuant to a permit progresses, the administrator shall make as many inspections as necessary to reasonably ensure that the work is being done according to this article and the terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credentials, to enter on any premises during normal work hours for the purposes of inspection or other enforcement action.

(b) *Stop work orders.* Whenever any building or development is being constructed, reconstructed, altered, or repaired in violation of this article, the administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may resume. Violation of a stop work order constitutes a misdemeanor.

(c) *Permit revocation.* The local administrator may revoke a development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal to comply with requirements of this article; or for false statements or misrepresentations made in securing the permit.

(Ord. of 3-27-95)

Sec. 4-69. Administration fee.

A fee schedule for reviewing and permitting flood damage control applications may be established and periodically revised by the county commissioners and posted in the inspections department.

(Ord. of 3-27-95)

Sec. 4-70. Appeals and variances.

(a) The board of commissioners shall hear and decide appeals and requests for variances from the requirements of this article or when it is alleged there is an error in any requirement, decision, or determination made by the administrator in the enforcement or administration of this article.

(b) Any person aggrieved by the decision of the board of commissioners may appeal such decision to the superior court, as provided in Chapter 7A of the North Carolina General Statutes.

(c) Variances may be issued for the reconstruction, rehabilitation or restoration of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(d) When considering a variance, the board of commissioners shall consider all technical information and all relevant factors or standards specified in this article, and:

- (1) The danger to life and property due to flooding, erosion damage, or materials being swept onto other lands;
- (2) The proposed facility and its contents' susceptibility to flood damage and the effect of such damage on the individual owner;
- (3) The importance of the service provided by the proposed facility to the community;
- (4) The necessity to locate a functionally dependent facility on a waterfront location, where applicable;
- (5) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (6) The compatibility of the proposed use with existing and anticipated development and the comprehensive plan;
- (7) The safe access to property by emergency vehicles in times of flooding;
- (8) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (9) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Upon consideration of the factors listed above and the purposes of this article, the

board of commissioners may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(g) Variances may not be issued when they will knowingly make the structure violate other federal, state, or local ordinances.

(h) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

(Ord. of 3-27-95)

Sec. 4-71. Provisions for flood hazard reduction--General standards.

In all areas of special flood hazard, the following provisions are required:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during flooding.
- (5) All new and replacement water supply systems shall be designed and constructed to state department of environment, health and natural resources regulations.
- (6) New and replacement sanitary sewage systems and on-site water disposal systems shall be designed and constructed to state department of environment, health and natural resources regulations.

(Ord. of 3-27-95)

Sec. 4-72. Same--Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided, the following provisions are required:

- (1) [*Lowest floor.*] New construction or substantial improvement of any structure shall have the lowest floor, including basement, no lower than one (1) foot above the base flood elevation unless otherwise permitted for nonresidential structures in this article.
- (2) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
 - a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 1. Provide a minimum of two (2) opening having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
 2. The bottom of all openings shall be no higher than one (1) foot above grade; and
 3. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
 - b. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation; and
 - c. Access to the enclosed area shall be the minimum necessary to allow for vehicle parking (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- (3) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided.
- (4) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure shall have the lowest floor, including basement, elevated no lower than one (1) foot above the level of the base flood elevation. Structures may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads

and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the administrator as set forth in section 4-66(6).

- (5) *Standards for manufactured homes.* All manufactured homes that are to be placed or substantially improved in an area of special flood hazard shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than one (1) foot above the base flood elevation. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement in accordance to state building code provisions for manufactured housing. When the elevation would be met by an elevation of the chassis at least thirty-six (36) inches or less above-grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (6) *Recreational vehicle standards.* All recreational vehicles to be located in an area of special flood hazard shall be fully licensed and ready for highway use and shall be on-site for fewer than one hundred eighty (180) consecutive days. A recreational vehicle is ready for highway use if it is on its wheels or a jacking system, attached to the site only by quick-disconnect-type utilities, and has no permanently attached structures. Recreational vehicles not meeting these standards shall meet the requirements of this article for manufactured homes.
- (7) *Accessory structures.* When accessory structures are to be placed in an area of special flood hazard, the following criteria shall be met:
 - a. Accessory structures shall not be used for human habitation (including sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters in accordance with section 4-72(2);
 - c. Service facilities such as electrical and heating equipment shall be installed in accordance with section 4-71(4); and
 - d. Openings to relieve hydrostatic pressure during a flood shall be installed in accordance with section 4-72(2).

Accessory structures do not have to meet elevation requirements.

- (8) *Floodways.* Encroachments, including fill, new construction, substantial improvements, and other developments shall not be permitted in the designated floodway unless it has been demonstrated, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that the

proposed encroachments will not result in any rise in the base flood elevation. A impact certification, prepared by a registered engineer, shall be provided for any encroachment in the designated floodway.

- a. If a impact certification is provided, all new construction and substantial improvements shall comply with all applicable hazard reduction provisions of this article.
- b. No manufactured homes shall be permitted in designated floodways except in an existing manufactured home park. A replacement manufactured home may be placed on a lot in an existing manufactured home park, provided the anchoring and the elevation standards of this article are met.

(Ord. of 3-27-95; Amd. of 2-9-98)

Sec. 4-73. Same--Standards for streams without established base flood elevations and/or floodways.

Located within the areas of special flood hazard where small streams exist, but where no base flood or floodway data has been provided, the following provisions apply:

- (1) No encroachments including fill material or structures, shall be located within twenty (20) feet each side from top of bank, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) New construction or substantial improvements of structures shall be elevated or floodproofed in accordance with elevations established in accordance with this article. When base flood elevation data is not available from a federal, state or other source, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

(Ord. of 3-27-95)

Sec. 4-74. Same--Standards for areas of shallow flooding (AO zones).

Located within the areas of special flood hazard established in section 4-64 are areas designated as shallow flooding (AO zones). All new construction and substantial improvements of any structure shall:

- (1) Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade; or
- (2) Be completely floodproofed to or above the depth number specified on the FIRM,

in feet, above the highest adjacent grade so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified, the lowest floor, including basement, shall be waterproofed to at least two (2) feet above the highest adjacent grade.

(Ord. of 3-27-95)

Sec. 4-75. Compliance.

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this article.

(Ord. of 3-27-95)

Sec. 4-76. Penalties for violation.

Any violation of this article or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be punished as provided in section 1-8 and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the county from taking other lawful action as is necessary to prevent or remedy any violation.

(Ord. of 3-27-95)

Sec. 4-77. Abrogation.

This article is not intended to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law, however, where this article imposes greater restrictions, the provisions of this article shall govern.

(Ord. of 3-27-95)

Sec. 4-78. Warning and liability disclaimer.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the county or by any officer or employee thereof for any flood damages that result from reliance of this article or any administrative decision lawfully made thereunder.

(Ord. of 3-27-95)

Secs. 4-79--4-100. Reserved.

ARTICLE V.

MOUNTAIN RIDGE PROTECTION*

* **State Law References:** Mountain ridge protection, formerly afforded by county ordinance, is not afforded by G.S. 113A-205 et seq.

Sec. 4-101. Title.

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

Sec. 4-102. 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 article therefore is to regulate the construction of tall buildings or structures on mountain ridges to ensure that adequate water supply is available to such building or structure; the disposing of sewage will not infringe on the ground water rights and endanger the health of those persons living at lower elevations; adequate fire protection can be made available; such buildings or structures will not be a hazard to air navigation and to persons on the ground; and such tall buildings will not detract from the natural beauty of the mountains. (Ord. No. 12-12-83, Art. II)

Sec. 4-103. 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 Transylvania, North Carolina, hereby ordains and enacts into law these articles and sections. (Ord. of 12-12-83, Art. III)

Sec. 4-104. Jurisdiction.

The provisions of this article shall apply to the construction of tall buildings or structures, as defined in this article, on protected mountain ridges, as defined in this article, within the county, and outside the territorial jurisdiction of any municipality within the county. This article 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 of Transylvania" and is on file in the office of the building inspector and with the register of deeds of the county. (Ord. of 12-12-83, Art. IV)

Sec. 4-105. Interpretation and definitions.

(a) *Word interpretation:* Except as specifically defined herein, all words used in this article shall have their customary dictionary definitions. For the purpose of this article, certain

words or terms used herein are defined as follows and in subsection (b):

The word "county" shall mean the County of Transylvania, North Carolina.

The words "county commissioners" shall mean the county commissioners of the County of Transylvania, North Carolina.

The words "planning board" shall refer to the Transylvania County Planning Board.

The word "may" is permissive.

The word "shall" is mandatory.

The word "building" includes the word "structure."

Words used in the singular include the plural, and words used in the plural include the singular.

(b) *Definitions:*

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."

Construction: Any new construction, reconstruction, alteration or expansion.

Crest: 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.

Enforcement officer: The building inspector for Transylvania County, North Carolina.

Person: Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, interstate body, the state and its agencies and political subdivisions, or other legal entity.

Protected mountain ridges: All mountain ridges whose elevation is at least five hundred (500) or more feet above the elevation of an adjacent valley floor, and including Dunn's Rock.

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 (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.

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 multiunit 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 forty-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than thirty-five (35) feet. Tall buildings or structures do not include:

- (1) Structures of a relatively slender nature and minor vertical projections or a parent building, including chimneys, flag poles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills.
- (2) Buildings and structures designated as national historic sites on the National Archives Registry.
- (3) Firetowers.
(Ord. of 12-12-83, Art. V)

Sec. 4-106. Administration and enforcement.

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

(b) *Enforcement officer:* The board of commissioners shall appoint the county building inspector as enforcement officer. It shall be the duty of the enforcement officer to administer and enforce the provisions of this article.

(c) *Application for permit:*

- (1) 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:
 - a. Title block containing the name of the development, name of owner, name of developer, scale, and north arrow.
 - b. Existing site conditions, including contours, water courses, any unique natural or manmade features such as vegetation and groundcover.
 - c. Exact boundary lines of the property containing the proposed construction.

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

(2) In addition to the development plan, all applications for permits shall be accompanied by the following documentation:

- a. 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:
 - 1. 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).
 - 2. Street plans shall contain all data, calculations and information as required by the state department of transportation (or other appropriate public agency).
 - 3. The developer shall meet all other requirements of G.S. 136-102.6 if the development constitutes a subdivision.
- b. If the proposed water and/or sewer system is to connect onto an existing system, a letter of approval from the owner of said existing system for such connection shall be submitted. In addition, a letter of approval from the appropriate regulatory agency shall be submitted indicating that the proposed connection will not cause any problems related to overloads,

discharges, shortages, etc. on said existing system.

- c. 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.
- d. If an onsite package water and/or sewer treatment system is to be utilized, a letter of approval from the state department of human resources and/or the state department of natural resources and community development shall be submitted.
- e. Documentation of an approved sedimentation and erosion control plan shall be submitted where required.
- f. 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.
- g. 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.

(d) *Application approval:*

- (1) The enforcement officer shall review the application for compliance with the provisions of subsection (c). Any application not containing all information required in subsection (c) shall be returned to the applicant for correction and resubmission. After the enforcement officer has determined the application contains all information required in subsection (c), 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.
- (2) Consideration of the application shall be at the next regularly scheduled meeting of the planning board after receiving the recommendation of the enforcement officer. The planning board shall take action on the application at this time. In taking action, the planning board may include any appropriate conditions it feels should be placed on the issuance of the permit. 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 by the second regular commission meeting following the planning board's action.

- (3) The board of commissioners shall not approve an application until it has determined that the intent of this article 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:
- a. 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.
 - b. 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.
 - c. Compliance with applicable state and local sedimentation control regulations and requirements.
 - d. Providing for roads accessible for fire and emergency vehicles.
 - e. 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 an additional conditions on the permit it deems necessary.
- (4) 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.
- (5) 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 article with which the application does not comply shall be prepared. One (1) copy of said letter shall be sent to the applicant, one (1) copy shall be sent to the enforcement officer, and one (1) copy shall be retained by the board of commissioners. Said letter shall be sent within five (5) days of disapproval of the application. If the application is not approved, the applicant may make such changes as will bring the application into compliance with this article and resubmit same for reconsideration by the enforcement officer as provided in subsection (c).
- (e) *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 the county. The issuance of the permit shall be subject to any conditions imposed by the board of commissioners as authorized in subsection (d)(3) 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 six (6) months after the date of issuance of the permit, the permit shall expire. Construction shall be deemed to have begun when any grading or excavation has commenced. If a permit expires, it shall not be reissued except under the provisions outlined in this article for all permits.

(f) *Application to existing buildings:* The provisions of this article shall apply to buildings that existed upon the effective date of this article as follows:

- (1) No reconstruction, alteration or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with this article upon its effective date.
- (2) No reconstruction, alteration or expansion may cause or create a violation by an existing building or structure that did comply with this article upon its effective date.

(Ord. of 12-12-83, Ar. VI)

Sec. 4-107. Violation, penalties and remedies.

(a) *Violations:* Whenever, by the provisions of this article, 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 article shall constitute a separate violation and a separate offense.

(b) *Penalties:* Any person adjudged in violation of this article 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 article 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) *Remedies:* If a building or structure is constructed, reconstructed, altered or expanded in violation of this article, 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.

(d) *Appeals:* Appeals from the decisions of the board of commissioners may be made to the superior court.

(Ord. of 12-12-83, Art. VII)

Secs. 4-108, 4-109. Reserved.

ARTICLE VI.

TELECOMMUNICATIONS TOWER MORATORIUM*

* **Editors Note:** An ordinance adopted June 12, 2000 enacted provisions intended for use as §§ 4-108--4-111. At the editor's discretion, in order to preserve the style of the Code, these provisions have been set out herein as Article VI, §§ 4-110--4-113.

Cross References: Telecommunications towers, § 16-301 et seq.

Sec. 4-110. In general.

Authority and purpose: This article is enacted pursuant to the general police powers granted to Transylvania County by G.S. 153A-121. The planning board, planning staff and citizens have expressed concern regarding the need to review and possibly amend the telecommunications tower control ordinance that was adopted on October 28, 1996. The purpose of this article is to prohibit the construction/erection of new telecommunications towers for a period of time during which the planning board shall review the existing telecommunications tower control ordinance and develop recommendations, with public input, to revise the current regulations.

Definition: Telecommunications tower means any tower or structure erected for the purpose of supporting one (1) or more antennas designed to transmit or receive signals (e.g., telephonic, radio, television or microwave) that exceeds seventy-five (75) feet in height.

Jurisdiction of article: This article shall be applicable to all unincorporated areas of Transylvania County but shall not be applicable to and shall not be enforced within the corporate limit or jurisdiction of any municipality in the county.
(Ord. of 6-12-00)

Sec. 4-111. Moratorium on the permitting and the construction/erection of telecommunication towers.

The board of commissioners hereby places a moratorium on the permitting and the construction/erection of telecommunications towers as heretofore-defined in Transylvania County, excluding those areas in which the county does not have the necessary authority to implement such a moratorium. This article shall be in effect for a period of up to ninety (90) days following adoption.
(Ord. of 6-12-00)

Sec. 4-112. Variance.

The county commissioners will consider situations where a severe hardship may arise. Such reasons for hardship should be noted in written form and be brought before the commissioners for their review. Before the commissioners make a decision on the variance, they

will hold a public hearing on the subject and then at their next regular commissioner's meeting make a decision on the variance request.
(Ord. of 6-12-00)

Sec. 4-113. Effective date.

This article shall become effective upon adoption.
(Ord. of 6-12-00)