

Revised
As Recommended by the Planning Commission

1 VIRGINIA:

2 AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF
3 TAZEWELL COUNTY, VIRGINIA, HELD AT THE COUNTY ADMINISTRATION
4 BUILDING, 108 EAST MAIN STREET IN THE TOWN OF TAZEWELL,
5 VIRGINIA, ON THE _____ DAY OF _____, 2009, THE FOLLOWING
6 ORDINANCE WAS ADOPTED, FOLLOWING A PUBLIC HEARING UPON
7 DULY ADVERTIZED NOTICE TO THE PUBLIC AND UPON NOTICE TO THE
8 AFFECTED PROPERTY OWNERS AS REQUIRED BY STATUTE, UPON A
9 MOTION AND SECOND:

10 Ordinance No.: _____ Date: _____

11 **AN ORDINANCE TO REGULATE CONSTRUCTION OF TALL STRUCTURES**
12 **ON CERTAIN RIDGELINES IN TAZEWELL COUNTY, VIRGINIA**

13 **WHEREAS**, the Board desires to protect the scenic beauty of the County's
14 Ridgelines;

15 **WHEREAS**, the Board finds that the County's ridgelines are a great resource to
16 the county's economic development because the majestic views they provide attract
17 tourism and encourage residential development in the County;

18 **WHEREAS**, Section 15.2-2295.1 of the Code of Virginia (1950) as amended,
19 permits localities to regulate construction of tall structures on ridgelines;

20 **WHEREAS**, Section 15.2-2280(2) of the Code of Virginia (1950) as amended,
21 permits localities to regulate the height of buildings and structures in the County;

22 **NOW THEREFORE, be it ORDAINED**, pursuant to Sections 15.2-2295.1 and
23 15.2-2280 *et seq* of the Code of Virginia (1950) as amended, that Chapter 15 of the
24 County Code hereby is amended to include the following ordinance as Section 110 *et*
25 *seq* thereof:

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1 **15-110** **Regulation of Mountain Ridge Construction**

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

9 **15-111** ***Definitions.***

10
11 As used in this chapter, unless the context requires a different meaning:

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

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

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

18 “Elevation” means elevation measured from sea level.

19 “Height” means the vertical distance from the base on the ground to the utmost
20 vertical extension of the structure.

21 “Protected mountain ridgeline area” means areas above 3200 feet in elevation on
22 property designated on the protected mountain ridgeline area map.

23 "Protected mountain ridge" means a ridge within the protected mountain area
24 shown on the protected mountain area map with (i) an elevation of 3,200 feet or
25 more and (ii) an elevation of 500 feet or more above the elevation of an adjacent
26 valley floor.

27 "Ridgeline" or “Ridge” means the elongated crest or series of crests at the apex
28 or uppermost point of intersection between two opposite slopes or sides of a
29 mountain and includes all land within 100 feet below the elevation of any portion
30 of such line or surface along the crest.

31 "Tall buildings or structures" means any building, structure or unit within a multi-
32 unit building with a vertical height of more than forty feet measured from the top
33 of the natural finished grade of the crest or the natural finished grade of the high
34 side of the slope of a ridge to the uppermost point of the building, structure or
35 unit. "Tall buildings or structures" do not include (i) water, radio,
36 telecommunications or television towers or any equipment for the transmission of
37 electricity, telephone or cable television; (ii) structures of a relatively slender

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1 nature and minor vertical projections of a parent building, including, but not
2 limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas,
3 antennas, poles, wires or windmills; or (iii) any building or structure designated as
4 a historic landmark, building or structure by the United States or by the Board of
5 Historic Resources; or any device designed to generate less than 250 Kilowatts
6 of electric power for a single residence.

7 **15-112 *Protected Mountain Ridgeline Area Map***

8 A map of the County's Protected Mountain Ridgeline Areas hereby is adopted and
9 incorporated into this ordinance by reference. The County Building Inspectors Office
10 shall maintain said map, showing Protected Mountain Ridgeline Areas within the County
11 and shall maintain a list of property parcel numbers where any part of the parcel is
12 located in a protected mountain ridgeline area identified on the map.

13 **15-113 *Regulation of Certain Buildings or Structures***

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

- 17 A. No tall building or structure over forty feet (40') in height may be built on a
18 protected mountain ridgeline on property located within the protected mountain
19 ridgeline area without a variance.
20
- 21 B. No tall building or structure over one hundred and twenty feet (120') in height
22 may be built on a base set at an elevation of more than 3,200 feet on any
23 property located in a protected mountain ridgeline area without a variance.
24
- 25 C. No tall building or structure over one hundred and twenty (120') feet in height
26 may be built at an elevation of more than 3,200 feet on any property located in a
27 protected mountain ridgeline area unless it is located a distance of more than
28 three times its height from a dwelling or the owner's property boundary. The
29 proposed structure may nevertheless be built within a distance of less than three
30 times its height of the property owner's boundary line, provided the affected
31 adjacent property owner signs a waiver. The set back requirement contained
32 herein, however, may not be waived with respect to a dwelling.
33
- 34 D. No tall building or structure over one hundred and twenty (120') feet in height
35 may be built at an elevation of more than 3200 feet on any property located in a
36 protected mountain ridgeline area, unless the applicant agrees in writing to
37 remove such building or structure when it ceases to function, functions in an
38 unintended manner due to malfunction or lack of maintenance such that it
39 threatens public health and safety or becomes defaced and provides bond, letter
40 of credit, corporate guarantee, or other reasonable security to provide for the
41 expense of removal under such circumstances.

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1 (1) Should the Ordinance Administrator determine that such
2 circumstances exists he shall provide the property owner notice by certified mail.
3 If the property owner does not respond within thirty (30) days, or if the property
4 owner's response is inadequate, or is inaccurate, the Ordinance Administrator
5 may proceed in accordance with 15.2-906 of the Code of Virginia as may be
6 amended and in accordance with the County's nuisance procedures.

7 (2) The amount of any security required hereunder for removal of such
8 buildings or structures shall be reviewed every five years to determine whether the
9 amount of such security remains sufficient to fund such removal. Should the
10 Ordinance Administrator deem the amount of such security to be insufficient, he
11 may require such additional security as is necessary to fulfill the purpose of this part
12 D. Such review and request for additional security may be appealed as herein
13 provided.

14
15 E. Nothing in this ordinance shall prevent a property owner from erecting a structure
16 on his property for generation of electricity, for personal use. Such structure may
17 not be erected for non-agricultural, commercial use. The landowner must notify
18 the Ordinance Administrator in writing of his intent to build such structure. No
19 bonding shall be required for removal of such structure. The property owner
20 must remove the structure when it ceases to function as herein required. No
21 permit application fee shall be charged to such property owner.

22
23 F. No tall building or structure may be built on a protected mountain ridgeline on
24 property located within the protected mountain ridgeline area, unless the
25 proposed building or structure plan (i) provides for sewerage, water, and
26 drainage facilities, adequate for the building or structure proposed, including, but
27 not limited to, facilities for drinking water and the adequate supply of water for fire
28 protection and (ii) provides for compliance with all applicable Erosion and
29 Sediment Control Laws.

30
31
32 **15-114 Permuting Procedure**

33
34 A. No Tall Building or structure may be built in a protected ridgeline area without a
35 permit issued by the Ordinance Administrator or the Board of Appeals.

36 B. The Board of Supervisors shall, by resolution, designate and appoint an Ordinance
37 Administrator who may grant or deny permits as provided herein.

38 **15-115 Construction Permuting**

39 No tall building or structure shall be constructed in the Protected Mountain Ridgeline
40 Area without a permit issued by the Administrator. Applications for permits shall be
41 submitted to the County Engineer who shall forward the same to the Ordinance
42 Administrator.

43 A. *Permit Approval-* the Ordinance Administrator shall, within ten days of
44 submission of an application, (1) determine whether the proposed building or

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1 structure is within the jurisdiction of this ordinance and (2) whether the proposed
2 building or structure would be permitted by this ordinance.

- 3
4 1. If the building or structure as proposed is not within the jurisdiction of this
5 ordinance the Ordinance Administrator shall provide a certificate to the
6 applicant advising that the structure is not within the jurisdiction of this
7 ordinance and advising the building inspector that such construction is not
8 regulated by the ordinance
9
10 2. If the proposed tall building or structure is within the jurisdiction of this
11 ordinance, the Ordinance Administrator shall, notify the applicant in writing
12 and advise him that the application is either approved or that it is not
13 approved. If the application is denied the notice shall state the reasons for
14 the denial.

15
16 B. Any notice given pursuant to this section shall advise the applicant of their right
17 to request a variance from or to appeal to the Board of Appeals and include the
18 date, location and approximate time when the application for variance or for an
19 appeal must be submitted to the Administrator. Such notice to the applicant shall
20 be in writing delivered by Certified Mail. Failure to provide the applicant notice or
21 any defect in notice shall be remedied by tolling the time in which the applicant
22 may request a variance or an appeal until proper notice is given.

23
24 C. *Application Fees* The Administrator may charge a fee for analysis of an
25 application. Such fee shall not exceed Fifty Dollars (\$50.00) for structures less
26 than one hundred and twenty feet (120') tall, Three Hundred Dollars (\$300.00) for
27 structures less than two hundred forty feet (240") tall. The fee for structures more
28 than two hundred forty feet (240') tall shall be no less than Six Hundred Dollars
29 (\$600.00).
30

15-116 *Building Permits Not To Be Issued*

31
32 The Building inspector's office shall not issue a permit for construction of any tall
33 building or structure on any parcel where any part of such parcel is located on a
34 protected mountain ridgeline area without a letter of authorization from the Ordinance
35 Administrator or Appeals Board. The building inspector may accept applications for
36 such approval and forward the same to the County Engineer .

15-117 *Effect of Ordinance*

37
38 Nothing in this ordinance shall be deemed to repeal, replace, pre-empt or otherwise
39 displace any other authority the County may already have under existing ordinances to
40 zone or regulate mountain ridgelines or specific structures.

15-118 *Board of Appeals*

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1 There is, hereby, established a Board of Appeals (BA) that shall consist of five
2 members, who shall be appointed by the Tazewell County Circuit Court. Composition
3 and terms of office of the BA shall be as set forth in Section 15.2-2308 of the Code of
4 Virginia (1950), as amended.

5
6 **15-119 Powers and Duties**

- 7
8 A. The BA shall have the power and duty to hear and decide appeals from any
9 written order, requirement, decision, or determination made by the administrator
10 in the administration or enforcement of this ordinance, or any other ordinance for
11 which the Board of Supervisors may assign such authority. No such appeal shall
12 be heard except after notice and hearing as provided by Section 15.2-2204 of the
13 Code of Virginia, as amended.
14
- 15 B. The BA shall have the power and duty to authorize upon appeal or original
16 application in specific cases a variance from the terms of this ordinance as will
17 not be contrary to the public interest, when, owing to special conditions a literal
18 enforcement of this ordinance will result in unnecessary hardship. No such
19 variance shall be granted unless the spirit of the ordinance shall be observed and
20 substantial justice done. To legally grant a variance, the BA must be presented
21 evidence and make a finding that:
22
- 23 a. A property owner acquired the property in good faith and where by reason
24 of the exceptional narrowness, shallowness, size or shape of the property
25 at the time of the adoption of this ordinance, or where by reason of
26 exceptional topographic conditions or other extraordinary situation or
27 condition of the property, the strict application of this ordinance would
28 effectively prohibit, or unreasonably restrict the use of the property, or;
29
 - 30 b. Due to the condition, situation, or development of immediately adjacent
31 property, the strict application of this ordinance would effectively prohibit,
32 or unreasonably restrict the use of the property, or;
33
 - 34 c. That the granting of the variance will alleviate a clearly demonstrable
35 hardship approaching confiscation, as distinguished from a special
36 privilege or convenience sought by the applicant.
37
- 38 C. All variances granted must be in harmony with the intended spirit and purpose of
39 this ordinance. Specifically, the BA must find that the strict application of the
40 ordinance would produce undue hardship. This hardship must not be shared by
41 other similarly situated properties and in the same vicinity. The BA must find that
42 the granting of the variance will not be of substantial detriment to adjacent
43 property and that the character of the area will not be changed by the granting of
44 the variance.
45

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1 Finally, the BA must not grant a variance unless it finds that the condition or
2 situation of the property is not so general or recurring a nature as to make
3 reasonably practical the formulation of a general regulation to be adopted as an
4 amendment to this ordinance.
5

6 D. No variance request shall be evaluated by the BA until after notice and hearing
7 as set forth in Section 15.2-2204 of the Code of Virginia, as amended. In
8 addition, notice of application for a variance shall be posted on the property.
9

10 E. In granting a variance, the BA may impose such conditions regarding the
11 location, character and other features of the proposed structure or use as it may
12 deem necessary in the public interest, and may require a guarantee or bond to
13 ensure that the conditions imposed are being and will continue to be complied
14 with.
15

16 F. In deciding whether to grant a variance the BA shall consider a finding of public
17 interest issued by the Planning Commission, should the Commission transmit
18 such finding to the BA prior to the hearing date.
19

20 G. The BA shall have the power and duty to hear and decide appeals from any
21 written decision of the administrator. No such appeal shall be heard except after
22 notice and hearing as set forth in Section 15.2-2204 of the Code of Virginia, as
23 amended.
24

25 H. The BA shall have the power and duty to hear and decide applications for
26 interpretation of the official map where the administrator believes there is
27 uncertainty as to the location of a boundary. No such determination shall be
28 made except after notice and hearing as set forth in Section 15.2-2204 of the
29 Code of Virginia, as amended. Any property owner affected by a determination of
30 the location of the boundary must be notified by first class mail prior to any such
31 determination. After notice and hearing the BA may interpret the map in such a
32 way to carry out the intent and purpose of this ordinance, however the BA shall
33 not have the power to change substantially the locations of the area boundaries
34 as established by this ordinance. This authority of the BA to determine the
35 location of boundaries shall not be construed as the power to substantively
36 redefine the area boundary.
37

15-120-Variances In Certain Areas

38
39 In considering granting variances the BA shall determine whether such proposed
40 building or structure would be contrary to the public interest. In determining the public
41 interest the BA shall:

42 1. In areas designated as "A" on the protected mountain ridgeline area map,
43 presume any tall buildings or structures more than forty feet (40') in height proposed
44 to be built on a protected mountain ridgeline to be contrary to public interest and
45 contrary to the intent of this ordinance.

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- 1 2. In areas designated as “B” on the protected mountain ridgeline area map,
2 presume tall buildings or structures more than one hundred and twenty feet (120’) in
3 height to be against public interest and contrary to the intent of this ordinance.

- 4 3. In areas designated as “C” on the protected mountain ridgeline area map,
5 presume tall buildings or structures more than two hundred and forty feet (240’) in
6 height to be against public interest and contrary to the intent of this ordinance.

- 7 4. In areas designated as “D” on the protected mountain ridgeline area map,
8 presume no particular height should be deemed contrary to public interest;
9 however, the Board shall give great weight to a finding of public interest by the
10 Tazewell County Planning Commission if submitted by the Commission prior to the
11 hearing.

12
13 **15.1-121 Applications for Variances**

14
15 Applications for variances may be made by any property owner, tenant, government
16 official, department, or board or bureau of the county. All applications shall be
17 submitted to the administrator in accordance with By-Laws adopted by the BA. All
18 applications and accompanying maps, plans or other information shall be
19 transmitted promptly to the secretary of the BA who shall place the application on
20 the agenda to be acted upon by the BA within ninety (90) days of the filing of the
21 application. No such application shall be heard except after notice and hearing as
22 set forth in Section 15.2-2204 of the Code of Virginia, as amended. The
23 administrator shall transmit notice of the variance application to the Planning
24 Commission, which may send a recommendation reflecting a finding of public
25 interest to the BA and may appear as a party at the hearing.

26
27 **15-122 Applications for Appeals**

28
29 Appeals to the BA may be taken by any person aggrieved or by any officer,
30 department, board, or bureau of the county affected by any decision of the
31 administrator, or from any order, requirement, decision, or determination made by
32 any other administrative officer in the administration or enforcement of this
33 ordinance. Appeals must be made within thirty (30) days after the entry of the
34 decision appealed from by filing with the administrator, a notice of appeal,
35 specifying the grounds thereof. The administrator shall forthwith transmit to the BA
36 all of the papers constituting the record upon which the action appealed from was
37 taken. An appeal shall stay all proceedings in furtherance of the action appealed
38 from unless the administrator certifies to the BA that by reason of facts stated in the
39 certificate a stay would cause imminent peril to life or property. In such cases,
40 proceedings shall not be stayed unless a restraining order is granted by the BA, or
41 by a court of record, on application and on notice to the administrator and for good
42 cause shown.

43
44 **15-123 Procedures for Variances and Appeal**

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- 1
2 A. The BA shall fix a reasonable time for the hearing of an appeal, give public notice
3 thereof, as well as due notice to all parties of interest, and decide the
4 same within ninety (90) days of the filing of the appeal. In exercising its power,
5 the BA may reverse or affirm, wholly or partly, or may modify an order,
6 requirement, decision, or determination appealed from.
7
8 B. The concurring vote of the majority of the BA shall be necessary to reverse any
9 order, decision, requirement, or determination of an administrative officer, or to
10 decide in favor of the applicant on any matter upon which the BA is required to
11 pass under the terms of this ordinance, or to effect any variance from this
12 ordinance.
13
14 C. The BA shall keep minutes of its proceedings and other official actions which
15 shall be filed in the office of the administrator. All records shall be public records.
16 The chairman of the BA, or in his absence, the acting chairman, may administer
17 oaths, and compel the attendance of witnesses.
18

19 **15-124 *Certiorari to Review Decision of BA***

- 20
21 A. Any person jointly or separately aggrieved by any decision of the BA, or any
22 taxpayer or any officer, department, board or bureau of the county, may present
23 to the Tazewell County Circuit Court a petition specifying the grounds on which
24 aggrieved. This petition must be filed within thirty (30) days of the BA's decision.
25
26 B. Upon the presentation of such petition, the court shall allow a writ of certiorari
27 to review the decision of the BA and shall prescribe therein the time within which
28 a return thereto must be made and served upon the relater's attorney, which shall
29 not be less than ten (10) days and may be extended by the court. The allowance
30 of the writ shall not stay proceedings upon the decision appealed from, but the
31 court may, on application, on notice to the BA and on due cause shown, grant a
32 restraining order.
33
34 C. The BA shall not be required to return the original papers acted upon by it but it
35 shall be sufficient to return certified or sworn copies thereof or of such portions
36 thereof as may be called for by such writ. The return shall concisely set forth
37 such other facts as may be pertinent and material to show the grounds appealed
38 from and shall be verified.
39
40 D. If upon the hearing, it shall appear to the court that testimony is necessary for the
41 proper disposition of the matter, it may take evidence or appoint a commissioner
42 to take such evidence as it may direct, and report the same to the court with his
43 findings of fact and conclusions of law, which shall constitute a part of the
44 proceedings upon which the determination of the court shall be made. The court
45 may reverse or affirm, wholly or in part, or may modify the decision brought up for
46 review.

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- 1
2 E. Costs shall not be allowed against the BA, unless it shall appear to the court that
3 it acted in bad faith or with malice in making the decision appealed from. In the
4 event the decision of the BA is affirmed, and the court finds that the appeal was
5 frivolous, the court may order the person or persons who requested the issuance
6 of the writ of certiorari to pay the costs incurred in making a return of the record
7 pursuant to the writ of certiorari.
8

9 **15-125 Enforcement**

- 10
11 A. The administrator shall have responsibility for enforcing the provisions of this
12 ordinance, and may, as necessary, solicit the assistance of other local and state
13 officials and agencies with this enforcement.
14
15 B. Violators of the provisions of this ordinance shall be notified in writing of
16 observed violations. The administrator shall state, in the written notice, the nature
17 of the violation, the date that the violation was observed, and the remedy or
18 remedies necessary to correct the violation. A reasonable time period will be
19 established for the correction of the violation.
20
21 C. If the administrator is not able to obtain compliance with these provisions, civil
22 and or criminal procedures may be initiated in accordance with criminal and or
23 civil law and procedures. Such Actions may include a suit for injunctive and other
24 equitable relief.
25

26 **15-126 Penalties**

27
28 Pursuant to Section 15.2-2286 (5) of the Code of Virginia, as amended, any
29 violation of any provision of this ordinance shall be a misdemeanor punishable by
30 a fine of not less than \$10.00 nor more than \$1000.00.
31
32

33 **15-127 Civil Penalties**

- 34
35 A. Any owner of a building or premises where a violation of any provisions of this
36 ordinance has been committed or shall exist, or the lessee or tenant of an entire
37 building or entire premises where such violation has been committed or shall
38 exist, or the general agent, architect, builder, contractor, or any other person who
39 commits, takes part or assists in any such violation or who maintains any building
40 or premises in which any such violation shall exist, shall be punishable by a civil
41 penalty.
42
43 B. Any violation of the provisions of this ordinance shall be subject to a civil penalty
44 in an amount and timing not to exceed that below set forth:
45

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1 a. Each day during which a violation is found to exist shall be a separate
2 offense. However, the same violation arising from the same operative set
3 of facts may be charged not more than once in a ten (10) day period, and
4 the total civil penalties from a series of such violations arising from the
5 same set of operative facts shall not exceed five thousand dollars
6 (\$5,000.00)
7

8 b. The issuance of a civil penalty for a particular violation of this ordinance
9 pursuant to this section shall be *in lieu* of criminal sanctions except when
10 such violation results in injury to any person or persons. However, where
11 a violator persists in violating the ordinance for more than ten days after
12 an award of the maximum civil penalty, such violation shall be deemed a
13 separate offence then punishable by criminal penalty.
14

15 C. The administrator, or the administrator's designee, may issue a civil summons for
16 a violation. Any person summoned or issued a ticket for a violation may make an
17 appearance in person or in writing by mail to the County Administrator prior to the
18 date fixed for trial in court. Any person so appearing may enter a waiver of trial,
19 admit liability, and pay the civil penalty established for the offence charged. Such
20 persons shall be informed of their right to stand trial and that a signature to an
21 admission of liability will have the same force and effect as a judgment of court.
22

23 D. If a person charged with a violation does not elect to enter a waiver of trial and
24 admit liability, the violation shall be tried in the general district court in the same
25 manner and with the same right of appeal as provided for by law. A finding of
26 liability shall not be deemed a criminal conviction for any purpose.
27

28
29 **IT IS SO ORDAINED** this the ____ day of _____, 200__.
30

31 RECORDED VOTE:

32 MEMBERS PRESENT: _____

33 MEMBERS ABSENT: _____

34 AYES: _____

35 NAYES: _____

36 ABSTENTIONS: _____
37

38
39 _____
40 DAVID R. ANDERSON, CHAIRMAN
41 TAZEWELL COUNTY BOARD OF SUPERVISORS
42

43 ATTEST:
44 _____
45 COUNTY ADMINISTRATOR