

ORDINANCE NO. 79

**TREE PRESERVATION ORDINANCE
OF THE
VILLAGE OF FLAT ROCK,
NORTH CAROLINA**

Adopted: September 12, 2013

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FLAT ROCK TREE PRESERVATION ORDINANCE

ARTICLE I GENERAL PROVISIONS

Section 101 Authority.

The Village Council of the Village of Flat Rock, pursuant to the authority conferred by the North Carolina General Statutes, specifically Chapter 160A, Article 8 and Article 19, hereby enacts this ordinance into law.

Section 102 Title.

This ordinance shall be known and may be cited as the Tree Preservation Ordinance of the Village of Flat Rock, NC.

Section 103 Purpose.

The Village of Flat Rock enjoys unique characteristics as a historic, residential community with forested landscapes and scenic vistas along its scenic byways, designated public roads and elsewhere in the Village, and it is necessary to preserve the quality and health of the trees and natural vegetation that form so much of the traditional appearance of the Village. This is particularly true of trees that form the canopy over the state designated scenic byways and other public roads within the Village, some of which are over two hundred years old. The purpose of this ordinance is to maintain these unique characteristics and to monitor timber harvesting activities and control general land clearing and land clearing for future development by reviewing all timber harvesting operations that occur on parcels of two acres or more, while not discouraging exempted forestry activities.

Section 104 Jurisdiction.

This ordinance shall be applicable within the corporate limits of the Village of Flat Rock.

ARTICLE II INTERPRETATION AND DEFINITIONS

Section 201 Word interpretation.

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein shall be interpreted as follows:

The word “Village” means the Village of Flat Rock, North Carolina.

The words “Village Council” mean the Council of the Village of Flat Rock, North Carolina.

The words “Tree Preservation Board” mean the Village of Flat Rock Tree Preservation Board.

The word “ordinance” means the Village of Flat Rock Tree Preservation Ordinance.

The words “Planning Board” mean the Village of Flat Rock Planning Board.

The word “shall” is mandatory, and the word “may” is permissive.

The word “person” includes an individual, a firm, association, organization, partnership, corporation, company, trust, governmental unit, limited liability company or any combination thereof.

Section 202 Definitions.

Applicant. The owner, or a person acting with a power of attorney from an owner, who submits an application for any permit, approval, or relief for any purpose under this ordinance.

Clear cutting. Removal of all or substantially all of the trees on a tract of land.

Designated public roads. Highland Lake Road (SR 1825), Erkwood Drive (SR 1164), West Blue Ridge Road (SR 1812), and Kanuga Road (SR 1127) within the corporate limits of the Village.

DBH (diameter at breast height). The diameter of a tree four and one-half feet above the average ground level.

Exempted forestry activities. Forestry activities on forestland that is taxed on the basis of its present use value as forestland under Article 12 of Chapter 105 of the NCGS, and forestry activities that are conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the NCGS.

Forest management plan. A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

Forestry activities. Any activities associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing state rules and regulations pertaining to forestry.

Land Development Ordinance. The Village of Flat Rock Land Development Ordinance.

Native vegetation. Mountain laurel, rhododendron and native hollies.

NCGS. North Carolina General Statutes.

Preservation area. The land area for a depth of one hundred feet from the edge of the traveled way along scenic byways and the land area for a depth of seventy-five feet from the edge of the traveled way along designated public roads. Excepted from the preservation area are those tracts of land lying within the Village commercial district.

Preservation tree. Any tree over six inches in DBH, located in a preservation area or a riparian buffer area.

Riparian buffer area. A natural or replanted area along a perennial stream or around a lake or designated wetland, as more particularly described in Section 911 (B) of the Land Development Ordinance.

Scenic byways. The Greenville Highway (NC 225) within the corporate limits of the Village, Rutledge Drive (SR 1166) within the corporate limits of the Village and Little River Road (SR 1123) for its entire length. These byways are those included in the Historic Flat Rock Scenic Byway designated by the North Carolina Department of Transportation.

Selective cutting. The harvesting of timber that involves the removal of trees that are eight inches or greater in DBH, in a way that smaller trees are preserved and can continue to flourish and substantial tree canopy is retained.

Tree canopy. The combined crown areas of all trees on a tract of land.

Variance. A modification of the terms of this ordinance as described in Article V.

Tree Preservation Administrator. An official and his or her designated deputies appointed by the Village Council and charged with enforcing this ordinance.

ARTICLE III PRESERVATION OF TREES AND NATIVE VEGETATION

Section 301 Timber harvesting and forestry operations.

- A. *General.* Except as provided herein, forestry activities involving harvesting trees and clear cutting of trees shall be subject to review by the Tree Preservation Administrator to determine if a permit is required under this ordinance or if the Land Development Ordinance applies to the activities.
- B. *Exempted forestry activities.* The applicant shall file a forest management plan or other documentation with the Tree Preservation Administrator at least thirty days prior to the desired start of timber harvesting activities that comply with the requirements of this subsection. Unless the Village Council approves a

reimbursement plan under Section 405, that is accepted by the landowner, if the following requirements are met the landowner shall be given a written statement by the Tree Preservation Administrator that a permit is not required:

- (1) Proof that the planned forestry activities qualify for exemption under NCGS §160A-458.5 as exempted forestry activities.
 - (2) A plan drawing of the site that includes the areas to be harvested, if not contained in a forest management plan.
 - (3) A full description of the forestry operations to be conducted during the harvest and a statement of the planned use of the property after the harvest.
 - (4) Evidence that the forestry activities are being conducted in accordance with the North Carolina Forest Practices Guidelines Related to Water Quality, Administrative Code 15A NCAC 01I .0100-.0209.
- C. *Selective cutting permitted.* Subject to Section 302, forestry activities that are not exempted forestry activities, involving the harvesting of trees by selective cutting on parcels of two acres or more, may be permitted over reasonable periods of time if the tract of land subject to the selective cutting will retain a substantial number of other trees and vegetation such that the existing tree canopy is not reduced by more than 30 % of its original canopy and that the forestry activities are conducted in accordance with the North Carolina Forest Practices Guidelines Related to Water Quality. If these forestry activities are being done in preparation for development, the Land Development Ordinance shall also apply.
- D. *Clear cutting permitted.* Forestry activities that are not exempted forestry activities, involving the harvesting of trees by clear cutting on parcels of two acres or more, may be permitted if the tract of land subject to the clear cutting is not visible from a scenic byway or designated public road in the Village, does not otherwise create blighted area visible from higher elevations and passersby and the forestry activities are conducted in accordance with the North Carolina Forest Practices Guidelines Related to Water Quality.

Section 302 Preservation areas and riparian buffer areas.

- A. *General.* Except as provided herein, the removal of existing native vegetation and any preservation tree from a preservation area or a riparian buffer area shall be prohibited unless a permit has been issued by the Tree Preservation Administrator.
- B. *Development activities.* Plans for all proposed development or expansion of existing improvements on public and private property that involve tree or native vegetation removal shall provide for the retention and preservation of all existing native vegetation and preservation trees in any preservation area or any riparian buffer area. The preservation areas and riparian buffer areas of a site planned for development shall be shown on the site plan submitted to the Zoning Administrator

with an application for a certificate of zoning compliance or land development permit under the Land Development Ordinance.

- C. *Timber harvesting.* Timber harvesting shall be conducted in such a way as to provide for the retention and preservation of all existing native vegetation and preservation trees in any preservation area or any riparian buffer area. The preservation areas and riparian buffer areas shall be shown on the site plan or forest management plan submitted to the Tree Preservation Administrator with an application for a permit.

Section 303 Permits.

- A. Except as provided herein, a permit shall be required for the removal of any preservation tree or native vegetation from a preservation area and any forestry activities that involve harvesting of trees or any clear cutting of trees. The removal of a preservation tree or native vegetation or harvesting of trees, including clear cutting, without an approved permit shall be subject to a civil penalty as provided in Section 406.
- B. The Tree Preservation Administrator is hereby authorized to grant permits in accordance with this ordinance for the removal of live or dead native vegetation or trees in a preservation area, riparian buffer area or in an area where forestry activities are being conducted.
- C. No tree removal permit shall be required if:
 - (1) Removal of the tree or trees and native vegetation is required to implement site development plans for the property as approved by the Zoning Administrator in accordance with the Land Development Ordinance,
 - (2) Tree removal is required for construction or maintenance within public utilities easement areas or public road right of ways,
 - (3) A tree is within twenty feet of a building or within ten feet of a driveway, or
 - (4) The tree or trees are not in a preservation area and tree removal involves harvesting of trees or clear cutting on parcels of less than two acres.

Section 304 Maintenance of protected areas.

Nothing contained in this ordinance shall be construed to prevent a property owner from ordinary and customary maintenance of a preservation area, riparian buffer area or any other forested area, such as the cutting or removal of dead trees in any area, the cutting or removal of dead trees smaller than preservation trees in a preservation area or the cutting and removal of other dead plant materials, the trimming of brush, the mowing of grass, and other similar grounds maintenance activities. Such maintenance by the property owner is encouraged.

**ARTICLE IV
ADMINISTRATION AND ENFORCEMENT**

Section 401 Tree Preservation Administrator and Tree Preservation Board.

The Zoning Administrator is hereby designated as the Tree Preservation Administrator. The Mayor and the members of the Village Council are hereby appointed as a seven member Tree Preservation Board.

Section 402 Duties and Function; Village Council, Tree Preservation Administrator and Tree Preservation Board.

The duties of the Village Council in connection with this ordinance shall be to act as the Tree Preservation Board, hold public hearings, and to vote upon any proposed amendment or repeal of this ordinance as provided by law. The administration, enforcement and interpretation of this ordinance shall be the responsibility of the Tree Preservation Administrator. The function of the Tree Preservation Board in connection with this ordinance is to hear, on appeal, decisions of the Tree Preservation Administrator, and to hear and approve or deny variances.

Section 403 Application for permits.

Except for applications submitted in accordance with Section 301 B, applications for permits required by Section 303 of this ordinance shall be submitted on forms prescribed by the Tree Preservation Administrator, along with applicable fees, and shall be accompanied by such supporting documentation as may, in the reasonable judgment of the Tree Preservation Administrator, be required to protect health, safety and welfare and identify the area affected and the preservation tree or trees and native vegetation or other trees or timber planned for removal. If the stated reason for removal is that a tree or native vegetation in a preservation area is dead or diseased, or that the tree poses a significant threat to people or property, the Tree Preservation Administrator may, if he or she deems it appropriate, require the applicant to retain a certified arborist or other qualified consultant to determine the health of such tree or native vegetation or give his opinion regarding the threat that the tree poses and to report his findings in writing to the Tree Preservation Administrator. When the Tree Preservation Administrator has verified that the application and conditions meet the requirements of this ordinance, a permit shall be issued. In the event that a permit is denied, the Tree Preservation Administrator shall provide the applicant with a written explanation for such denial.

Section 404. Technical review advisors.

The Tree Preservation Administrator may establish a roster of technical advisors who, on the basis of their professional or licensing background, have expertise and experience in areas that may include forestry, engineering, land planning and surveying, real estate, natural resources or law. The Zoning Administrator or the Village Council, may employ such advisors to review and make recommendations on the technical sufficiency of proposed plans and improvements within their respective areas of expertise.

Section 405 Reimbursement plan.

The Village Council may, in its sole discretion, approve a reimbursement plan for part or all of any timber harvesting that complies with Section 301 B as exempted forestry activities as follows:

- A. *Timber appraisal.* The fair market value of the timber on the subject forestland, less reasonable harvesting costs, shall be determined by an appraisal process agreed to by the landowner and the Village Council and conducted by timber appraisers licensed by the State of North Carolina. The Village shall pay the cost of the appraisal.
- B. *Reimbursement of landowner.* The Village shall reimburse the owner of the subject forestland in the amount determined by the appraisal process.
- C. *Easement.* As consideration for the reimbursement under subsection B, the land owner shall grant to the Village an exclusive easement that provides that no timber harvesting activities are to be conducted on the subject forestland for a period of forty years, unless otherwise approved by the Village Council.
- D. *Future development.* The easement shall also provide that if the landowner or his grantee seeks to develop the forestland within the forty year easement period, the Village shall have a lien on the subject forestland and be entitled to a refund equal to a prorated share of the reimbursement made to the landowner under subsection B, determined by dividing the number of years remaining of the forty year period by forty and multiplying that ratio times the reimbursement.

Section 406 Recapture and Penalties for violations.

- A. *Recapture.* The Zoning Administrator may deny a certificate of zoning compliance or a land development permit for a period of up to five years if a timber harvest results in the removal of trees that were protected under the Land Development Ordinance or this ordinance.
- B. *Penalties.* Failure to file an application or submit a forest management plan, failure to obtain a permit as required by this ordinance, failure to follow the terms of a permit or a forest management plan or the violation of any other part of this ordinance shall result in the assessment of a civil penalty:
 - (1) Violations involving removal of any preservation tree or native vegetation under Section 302 shall result in a civil penalty of \$500 for each tree so removed, and up to \$100 for each native shrub or plant so removed.
 - (2) Violations involving tree harvesting or forestry operations under Section 301 shall result in a civil penalty of \$500, plus \$500 for each acre of land actually affected.

**ARTICLE V
APPEALS AND VARIANCES**

Section 501 Appeals to the Tree Preservation Board.

The Tree Preservation Board shall be authorized to interpret this ordinance and to hear and decide appeals from and review any final and binding order, requirement, determination or other decision made by the Tree Preservation Administrator under this ordinance, and to employ counsel as required in the fulfillment of their duties. An appeal may be taken by any person aggrieved or by an officer, department or board of the Village. Appeals shall be taken within the times and in accordance with the procedures prescribed in Section 503.

Section 502 Variances.

When unnecessary hardships would result from carrying out the strict letter of this ordinance, the Tree Preservation Board shall have the power, in acting upon appeals or otherwise, to vary or modify any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted in a case of unnecessary hardship upon a finding by the Tree Preservation Board that the following conditions exist:

- A. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.
- B. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the Village with similar circumstances.
- C. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the Village.
- D. The requested variance will be in harmony with the purpose and intent of this ordinance, and will not be injurious to the neighborhood or the general welfare.
- E. The special circumstances are not the result of actions of the applicant.

Section 503 Procedures for appeals and variances.

- A. *Filing Notices of Appeal and Variance Applications.* No appeal shall be heard by the Tree Preservation Board unless written notice thereof is filed within thirty calendar days after the interested party or parties receive notice of the decision by the Tree Preservation Administrator. Both notices of appeal and variance applications shall be filed with the Tree Preservation Administrator, who shall act as clerk for the board in receiving such notices and applications. All notices of appeal and variance applications shall be upon the forms specified for such purposes by the Tree Preservation Administrator and shall include a list identifying all abutting property owners by name and mailing address. The Tree Preservation

Administrator shall notify the chairman of the board that a notice of appeal or a variance application has been received.

- B. *Hearings.* Upon receipt of a notice of appeal or a variance application, the chairman of the Tree Preservation Board shall schedule a time for a hearing that shall be within thirty calendar days of the filing of such notice of appeal or application.
- C. *Notice of Hearing.* For all appeals and variance applications, the Tree Preservation Administrator shall mail a notice of the hearing to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Village may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than twenty-five days, prior to the date of the hearing. Within that same time period, the Tree Preservation Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. All notices shall state the location of the tract of land, the type and nature of the appeal or application and the time, date and place of the hearing.
- D. *Conduct of Hearing.* Any party may appear at the hearing in person, by agent or by attorney. All testimony shall be given under oath or affirmation, and any party shall have the right to confront and cross-examine another party's witnesses.
- E. *Voting.* The concurring vote of a majority of the members of the Tree Preservation Board shall be necessary to reverse any decision of the Tree Preservation Administrator, to grant a variance or otherwise to render a decision on matters arising in the administration of this ordinance. An abstention shall constitute a vote to affirm a decision of the Tree Preservation Administrator or to deny a variance.
- F. *Conflicts of interest.* A member of a hearing board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself, the remaining members shall by majority vote rule on the objection.
- G. *Decisions.* A decision by the Tree Preservation Board shall be made within forty-five calendar days of the date of conclusion of the public hearing and be given by the secretary of the Tree Preservation Board, by first class mail, to the appellant or applicant, no later than the close of business the day following the date of such

decision and by personal delivery, electronic mail or first class mail to any other person who has made a written request for such notification.

Section 504 Appeals from decisions by the Tree Preservation Board.

Any person or persons jointly or severally aggrieved by any decision of the Tree Preservation Board, or any officer, official, department or board of the Village may, within thirty calendar days after the written copies of the decision are delivered to the aggrieved parties as required by Section 503 F, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of illegality. Every decision of the board shall be subject to review by proceedings in the nature of certiorari.

Section 505 Fee schedule.

The Village Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this ordinance. Fees may include expenses for technical advisors when needed to evaluate an application. In order to be deemed complete, all applications and appeals shall be accompanied by payment of applicable fees.

**ARTICLE VI
AMENDMENTS**

Section 601 Authority to amend.

This ordinance may be amended by the Village Council in accordance with the provisions of this article.

Section 602 Planning Board action.

Before taking any action on a proposed amendment to this ordinance, the Village Council may consider the Planning Board's recommendation on such proposed amendment.

Section 603 Public hearing.

Before enacting any amendment to this ordinance, the Village Council shall hold a public hearing on the proposed amendment. Prior to the public hearing, the village shall publish a notice of public hearing in a local newspaper with general circulation in the Village once a week for two consecutive weeks. The first such publication shall appear not less than ten or more than twenty-five calendar days prior to the date fixed for the public hearing. In computing such period, the day of the publication shall not be counted, but the date of the hearing shall be counted. The notice shall include the time, place and date of the hearing and the nature of the amendment. The notice of public hearing shall also conform to the requirements in Article 19, Chapter 160A-364 of the North Carolina General Statutes.

**ARTICLE VII
LEGAL STATUS**

Section 701 Conflict of laws.

Whenever this ordinance imposes more restrictive standards than are required in or under any North Carolina statute or any other Village ordinance, the requirements of this ordinance shall govern. Whenever any statute or any other Village ordinance requires more restrictive standards than are required by this ordinance, the provisions of such statute or ordinance shall govern.

Section 702 Severability.

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction in the subject matter, such declaration shall not affect the validity of the ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 703 Effective date.

This ordinance shall take effect and be in force on and after October 1, 2013.

Michelle Parker, CMC
Village Clerk

Robert V. Staton
Mayor

Approved as to form:

Sharon B. Alexander, Village Attorney