

Ashe County, NC Ordinance Chapter 163: Regulation of Wind Energy Systems

Section 1 Authority and Purpose

Inasmuch as Ashe County has determined that certain windmills are possibly exempt under the North Carolina Mountain Ridge Protection Act, and pursuant to the authority granted to counties by NC General Statute 153A-121 *et seq.* and other pertinent statutes and amendments thereto, it is the purpose of this ordinance to regulate the use of wind energy systems and to describe the conditions by which a permit for installing a system could be obtained.

Section 2 Findings

Wind power is a clean, inexhaustible, reliable, and economical source of energy that can help us reduce our dependence on fossil fuels, help to preserve and protect the environment, and help to create new jobs and sustainable forms of development. As a result of these benefits, wind power has become the fastest growing energy source in the world and is helping to satisfy the growing demand for electricity cleanly and affordably.

The State of North Carolina has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems including a state tax credit, net metering law, property tax exemptions, and a state wide green power program.

Section 3 Definitions

Large Wind Energy System: A wind energy conversion system consisting of one or more wind turbine(s), a tower(s), and associated control or conversion electronics, which has a rated capacity of more than 20 kW. Small Wind Energy System: A wind energy conversion system consisting of a single wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 20 kW and whose primary intent is to generate power to on-site consumption. Multiple systems located on agricultural farms are considered small wind energy systems even if the aggregate kW exceeds 20, provided the primary intent is to generate power to reduce on-site consumption. Wind Turbine Height: The height above grade to the tip of the turbine blade when it reaches its highest elevation.

Section 4 Small Wind Energy Systems

Small wind energy systems shall be a permitted use by right subject to the requirements set forth in this section:

4.1. Wind Turbine Height: Height shall be limited to 135 feet.

4.2. Setback: The base of the wind turbine shall not be closer to surrounding property lines than the height of the wind turbine unless a NC Registered Professional Engineer certifies the fall zone of the wind turbine and appurtenances will be within the setback area proposed. In addition, no wind turbine shall be located closer to an inhabited structure on adjacent property than 1.5 times the height of the wind turbine. Relief from this section may be granted if the applicant can secure a permanent easement from the adjoining property owner(s) providing for a fall zone.

4.3. Building Permit Requirements: A building permit shall be required and building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer which includes standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer. Wet stamps shall not be required.

4.4. Compliance with FAA Regulations: Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.

4.5. Utility Notification: No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

4.6. Appearance: Small wind energy towers shall maintain a galvanized finish or be painted to conform the tower color to the surrounding environment to reduce visual obtrusiveness. No wind tower should have any signage, or writing or pictures that may be construed as advertising placed on it at any time. In addition no flags, streamers or decorative items may be attached to the wind energy system tower or turbine.

4.7. Removal of Defective or Abandoned Wind Energy Systems: Any wind energy system that is not functional shall be repaired by the owner or removed. In the event that the County becomes aware of any wind energy system that is not operated for a continuous period of 6 months, the County will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action as unreasonable, the County shall notify the landowner and such landowner shall remove the turbine with 120 days of receipt of said notice.

Section 5 Large Wind Energy Systems

Large wind energy systems shall be a use permitted by review subject to the requirements of this Section 5 as well as Section 4, except that the height limits in 4.1 may be increased

if recommended as necessary by the Planning Board and subsequently approved by the Board of Commissioners.

5.1. Permit Application: A person seeking a site permit for a wind turbine over 20 KW shall file an application with the County Planning Board for review as follows.

An applicant for a site permit must provide the following background information regarding the applicant:

- (1) A letter of transmittal signed by an authorized representative or agent of the applicant.
- (2) The complete name, address, telephone number, and e-mail address of the applicant and any authorized representative.
- (3) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.
- (4) The role of the permit applicant in the construction and operation of the wind power project.
- (5) The identity of any other wind power project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the wind power project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.

(a) The applicant shall state in the application whether a certificate of public convenience and necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The County may ask the Utilities Commission to determine whether a certificate of public convenience and necessity is required for a particular wind power project for which the County has received a site permit application. The County shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated.

(b) The applicant shall describe in the application how the proposed wind power project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

(c) The permit applicant shall include the following information about the site proposed for the wind power project and any associated facilities:

- (1) The surveyed boundaries of the site proposed for the wind power project.
- (2) The location of other wind turbines in the general area of the proposed wind power project.
- (3) The applicant's land rights within the boundaries of the proposed site.

(d) The permit applicant shall provide the following information regarding the design of the proposed wind power project:

- (1) A project layout, prepared by a design professional, including a map showing the proposed location of the turbine(s).
- (2) A description of the turbine(s) and tower(s) and other equipment proposed to be used in the wind power project, including the name of the manufacturers of the equipment.
- (3) A description of the project electrical system, including transformers at both low voltage and medium voltage.
- (4) A description and location of associated facilities.

(e) An applicant for a site permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

- (1) Demographics, including people, homes, and businesses.
- (2) Noise.
- (3) Visual impacts.
- (4) Public services and infrastructure
- (5) Cultural and archaeological impacts.
- (6) Recreational resources.
- (7) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.

- (8) Hazardous materials.
- (9) Land-based economics, including agriculture, forestry, and mining.
- (10) Tourism and community benefits.
- (11) Topography.
- (12) Soils.
- (13) Geologic and groundwater resources.
- (14) Surface water and floodplain resources.
- (15) Wetlands.
- (16) Vegetation.
- (17) Avian, impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.
- (18) Wildlife
- (19) Rare and unique natural resources.

(f) The permit applicant shall describe all of the following:

- (1) The manner in which the wind power project, including associated facilities, will be constructed.
- (2) How the wind power project will be operated and maintained after construction, including a maintenance schedule.
- (3) The anticipated schedule for completion of the wind power project, and shall identify the expected date of commercial operation.
- (4) The energy expected to be generated by the wind power project.

(g) The permit applicant shall include the following information regarding decommissioning of the wind power project and restoring the site:

- (1) The anticipated life of the wind power project.
- (2) The estimated decommissioning costs in current dollars.

(3) The method and schedule for updating the costs of decommissioning and restoration.

(4) The method of ensuring that funds will be available for decommissioning and restoration.

(5) The anticipated manner in which the wind power project will be decommissioned and the site restored.

(h) The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed wind power project.

(i) Blue Ridge Parkway: If a proposed wind energy site is within the Blue Ridge Parkway viewshed the applicant shall inform the National Park Service of the proposed wind turbine siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the County. The Park Service shall be afforded 30 days to respond to the applicant's written intention to erect a wind turbine. No answer to the notification within the 30 days shall be considered as an affirmation of the site as proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at NC State University and the Blue Ridge Parkway Division of Resource Planning and Professional Services.

(j) State and National Parks and Forests: If a proposed wind energy site is within the viewshed of a State of National Park or Forest, the applicant shall inform the National Park Service, the US Forest Service or appropriate State Park System of the proposed wind turbine siting. Recommendations from reviewing Departments and Agencies shall be given reasonable consideration and documentation of this consideration shall be provided to the County. Reviewing Departments and Agencies shall be afforded 30 days to respond to the applicant's written intention to erect a wind turbine. No answer to the notification within the 30 days shall be considered as an affirmation of the site proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at NC State University with consultation with the appropriate national or state department of agency.

5.2. Hearing Required: Prior to granting or denying a permit for a large wind energy system, the Planning Board shall conduct a public hearing. The purpose of the hearing shall be to receive comments and information pertinent to the issues listed in this section. Comments and information not pertinent shall not be considered.

Following the hearing, the Planning Board shall render a decision on the application based upon the following considerations:

1. Completeness of the application;
2. Compliance with applicable State and Federal regulations;
3. Compliance with all applicable development standards specified in this ordinance;
4. Compliance with other applicable County regulations;
5. The proposed large wind energy system is a desirable and/or necessary use, particularly considering the standards included in this ordinance;
6. The proposed large wind energy system is properly related to other uses and transportation and other public facilities in the vicinity;
7. The proposed large wind energy system would not adversely affect the health or safety of persons living or working in the vicinity, or be detrimental to the public welfare.

5.3 Setbacks: The location of a large wind energy system shall not be within 1,700 feet, in any direction, of a residential dwelling unit or commercial building. The location of a large wind energy system shall not be within 2,020 feet of any school, daycare, hospital or nursing home facility. These large wind energy systems shall also be subject to the requirements of the Mountain Ridge Protection Act.

Section 6 Appeals and Variances

6.1. Board of Commissioners: The Ashe County Board of Commissioners, as established by N.C.G.S. § 153A-25 et seq. shall hear all appeals, requests for variances, and all challenges to the decision or interpretation of the Ordinance Administrator. *** Definition of Ordinance Administrator currently would be Planning Director

6.2. Powers of Board of Commissioners: The Board shall have the following powers:

(a) To hear, decide and review appeals from any order, requirement, decision, or determination made by the Ordinance Administrator in the performance of its duties; and

(b) To hear and decide applications for variances from the requirements of this Ordinance in accordance with Article V, Section 5. Nothing in this Section shall be construed to broaden the power of the Board to permit a use by variance beyond that power given in Article V, Section 5 below.

6.3. Administration: The Board shall adopt rules of procedures and regulations for the conduct of its affairs.

All meetings of the Board shall be open to the public. The Board shall keep a record of its meetings, including of the vote of each member on every question, a fair and accurate summary of the evidence submitted to it, the documents (or accurate copies thereof) submitted to it and of all official actions. The Board shall give due notice of matters coming before it.

In presenting an appeal, the petitioner shall bear the burden of proof, which shall be by the greater weight of the evidence.

All evidence presented to the Board of Commissioners shall be sworn.

The person acting as Chairman of the Board is authorized to administer oaths to any witnesses in any matter coming before the Board.

Application for variances, requests for interpretations and appeals for review of decisions of the Ordinance Administrator shall be filed with the Clerk for the Board, as agent for the Board, on forms provided by the Clerk.

It shall be the responsibility of the Ordinance Administrator to notify by certified mail the applicant or appellant of the disposition which the Board makes of any matter before it. It shall be the responsibility of the Ordinance Administrator to issue a permit in accord with the Board's action on an appeal or application, if a permit is authorized by the Board action.

6.4. Quorum and Vote Required: A quorum of the Board, necessary to conduct any business of the Board, shall consist of four-fifths of the total membership of the Board. (at least four of five members must be present to conduct any business)

The concurring vote of a simple majority of the total membership of the Board shall be necessary in order to: only three must vote yes to do the following

- (a) Reverse any order, requirement, decision or determination of the Ordinance Administrator;
- (b) Decide in favor of the applicant any matter upon which it is required to pass by this Ordinance; or
- (c) Approve an application for a variance

6.5. Application of the Variance Power: A variance shall only be allowed by the Board of Commissioners in cases involving practical difficulties or unnecessary hardships. Any authorizing of a variance shall not destroy the intent of the ordinance. Any authorized variance shall be recorded in the minutes of the Ashe County Board of Commissioners. A hardship, as used in the context of this section, shall be considered to be some unique or unusual character of the proposed site, including but not limited to unique size, shape,

contour, or distance requirement. An economic hardship to the applicant is not to be considered for a variance.

The Board may grant a variance upon finding that the following conditions exist:

- 1) Extraordinary and exceptional conditions exist pertaining to the particular place or property in question because of its size, shape, or topography.
- 2) The variance will not confer upon the applicant any special privileges that are, or would be, denied to other similarly situated individuals.
- 3) This ordinance would deprive the applicant of rights commonly enjoyed by other similarly situated individuals.
- 4) The variance would not seriously deter from the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- 5) The special circumstances causing the need for variance(s) are not the fault of the applicant.

The Board may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions shall be a violation of this ordinance and subject to the penalties set forth in Article VI of this ordinance.

6.6. Application of Interpretation Power: An appeal from an order, requirement, or decision of the Ordinance Administrator shall be decided by the Board duly supported by competent evidence. In exercising this power, the Board shall act in a prudent manner so that the purposes and intent of the Ordinance shall be served.

No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

6.7. Appeal Stays Further Proceedings: An appeal to the Board of Commissioners from a decision or determination of the Ordinance Administrator stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

6.8. Exceptions to Stay of Action: An appeal to the Board of Commissioners of a decision or determination of the Ordinance Administrator shall not stay proceedings in furtherance of the decision or determination appealed from, if the Ordinance Administrator certifies either:

- (a) That a stay would cause imminent peril to life or property; or

(b) That the situation subject to the appeal is transitory in nature and therefore, an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Ordinance Administrator shall set forth in the certificate facts to support its conclusion.

6.9. Appeals of Board Actions: Every decision of the Board shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the filing of the decision in the office of the Ordinance Administrator or the delivery of the notice required in Article VI, Section 3, whichever is later. Appeals not received within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this ordinance during the pendency of an appeal from the decision of the Board of Commissioners upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County

Section 7 Enforcement and Penalties

7.1. Administration and Enforcement: The Ordinance Administrator shall be responsible for the administration and enforcement of this ordinance.

If the Ordinance Administrator shall determine that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to within ten (10) working days correct the violation. He may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of addition, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

7.2. Conflict with Other Laws: Wherever the provisions or application of this ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions or application this ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

7.3. Penalties: Any person, firm or corporation who violates any provision of any article of this ordinance; or who shall violate or fail to comply with any order made hereunder; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator to cease work, shall, upon conviction, be guilty of a Class 3 misdemeanor as provided by N.C.G.S. § 14-4 and shall be punishable by a fine not to exceed fifty (\$50.00) dollars, or imprisonment not to exceed twenty days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed to the owner, the agent of the owner, or the contractor and left at his known place of residence or place of business. In lieu of or in

addition to the criminal penalties outlined above, each person violating this ordinance shall be subject to a civil penalty, under N.C.G.S. 153A-123(c), in the amount of \$200.00 per day. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it shall be considered a separate offense. If the violator does not pay such penalty within 30 days of notification of its assessment by written citation it and any subsequently accruing penalty may be recovered by the County in a civil action in the nature of a debt. Any contest of said penalty shall be by appropriate action taken in the General Court of Justice for Ashe County.

7.4. Severability Clause: Should any section or provisions of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

7.5. Ordinance Amendments: This Ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Adopted this the ____ day of _____, 200__.

_____, Chairman

ATTEST:

_____, Clerk to the Board