

Ashe County
Planning Department
Staff Report

Date: 9/26/2016

RE: High Impact Land Use Ordinance

Summary:

If the Board of Commissioners is inclined to approve the final draft of the ordinance, three actions will be required to move forward. All three of these can be made in one motion.

1. Repeal Ordinance Chapter 159 – Polluting Industries Ordinance
2. To approve Ordinance Chapter 166 – High Impact Land Use Ordinance
3. Cancel the Polluting Industries Ordinance Moratorium

All actions to take effect immediately.

Attachments:

1. High Impact Land Use Ordinance (final draft)
2. Jefferson Post – Public Notice



Ashe County Planning Department
150 Government Cir, Suite 2400
Jefferson, NC 28640

CHAPTER 166: High Impact Land Use

Section

- 166.01 Title
- 166.02 Purpose
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§ 166.01 TITLE.

This chapter shall be known and may be cited as the Ashe County High Impact Land Use Ordinance.

§ 166.02 PURPOSE.

For the purpose of promoting the health, safety, and general welfare of its citizens and the peace and dignity of the county, the County Commissioners hereby establish certain criteria relating to high impact land uses to accommodate those activities as identified and defined in this Chapter. High impact land uses, by their very nature, create potential danger from explosions, produce objectionable levels of noise, odors, vibrations, fumes, light, or smoke and have impacts upon the areas adjacent to them. These ordinance provisions are intended to allow for the placement and growth of high impact land uses while attempting to support the health, safety and general welfare standards of established residential and commercial areas in Ashe County.

§ 166.03 AUTHORITY.

This chapter is adopted under the authority granted to Ashe County in North Carolina General Statutes Chapter 153A.

§ 166.04 JURISDICTION.

In accordance with North Carolina General Statute 153A-122, this ordinance shall apply to all unincorporated areas of Ashe County in which no town or city is exercising extraterritorial jurisdiction under Article 19 of Chapter 160A of the North Carolina General Statutes.

§ 166.05 DEFINITIONS.

Words and phrases defined in this section shall have the following meanings when used in this Chapter:

ADMINISTRATOR - The Planning Director of Ashe County, or other individual designated by the County Manager to be the person in charge of issuing the permits provided for in this Chapter and supervision of the regulatory activities needed to carry out the purposes of this Chapter.

AREA OF OPERATION - The portion of a tract of land on which a high impact land use is situated that is actually in use or is planned for use to conduct the activities for which this Chapter requires a permit, and shall include any area occupied by buildings, structures, equipment, storage and stationary equipment used or planned for use in the conduct of these activities.

ASPHALT PLANT - A commercial facility for the manufacture and production of a thick, dark tar-like variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving or roofing.

ASSISTED LIVING CENTER - A group housing and services program for two or more unrelated adults that makes available for its residents no less than one meal a day, provides housekeeping services, and provides personal care services directly or through a formal written agreement with one or more North Carolina licensed home care or hospice agencies.

CONCRETE MIXING PLANT - A commercial facility utilizing equipment that combines materials including, but not limited to, sand, water, aggregate, ash, and cement to form concrete and shall include both "ready mix" and "central mix" facilities.

CHEMICAL MANUFACTURER - A commercial facility involved in the production, synthesis, formation, processing, or refining of chemical products.

CHEMICAL STORAGE CENTER - A commercial facility used primarily for the storage of chemical compounds.

CHILD CARE CENTER - A facility, whether or not operated for profit and without regard to the time of day, where three or more children of school age receive supervised care away from their residences and parents.

CHIP MILL - A commercial facility that grinds logs into wood chips for production of paper, particle board and other similar products.

DAY CARE CENTER - A facility, whether or not operated for profit and without regard to its hours of operation, where six or more individuals are afforded opportunity for temporary provision of activities designed to assist persons with disabilities or elderly persons without daytime home care.

DWELLING UNIT - A permanent structure constructed for the purpose of housing natural persons that has not been classified by government authority as uninhabitable.

EDUCATIONAL CENTER - An elementary school, secondary school, charter school, private school, community college, college, university, or similar institution providing for the education of individuals. Its area shall include all spaces utilized for educational instruction and spaces actually needed for related activities regularly conducted for the benefit of its students.

EXPLOSIVES MANUFACTURER - A commercial facility used for manufacturing of a

chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, and shall include, but is not limited to: dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks. Facilities not included in this category are those producing only hand-loaded small arms ammunition.

EXPLOSIVES STORAGE WAREHOUSE - A commercial facility used for the storage of products created by an explosives manufacturer.

FUEL STORAGE CENTER - A commercial facility used for the storage, distribution, mixing, or transfer of flammable or combustible liquids, gases, or solids, including propane, methane, ethanol, gasoline, kerosene, oil, coal, and other fuels, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank, portable containers, or by similar method, and stored in quantities greater than a one-day supply for a customer of this facility. Facilities not included in this category are gasoline dispensing facilities used solely for distribution to individual consumers, and any fuel storage center at an agricultural farm, residence, business, or other facility where use of the product is limited to on-site consumption.

HIGH IMPACT LAND USE - An activity which creates potential danger from explosions or produces levels of noise, odors, vibrations, fumes, light, smoke, air pollution or water pollution that have an adverse effect on the health, safety or general welfare of the citizens of Ashe County, which include asphalt plants, quarries, stone crushing operations, incinerators, sawmills, chip mills, tub grinding operations, explosives manufacturers, explosives storage warehouses, fuel storage centers, concrete mixing plants, chemical manufacturers, chemical storage centers and medical waste disposal centers.

HISTORIC SITE- An area of land determined by the Secretary of the Interior to qualify as a registered historic district, or (1) a structure listed individually in the National Register of Historic Places - as maintained by the US Department of the Interior, or (2) a structure preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or (3) a structure certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district.

INCINERATOR - A facility designated as a "hazardous waste incinerator" and having its operation regulated by the U.S. Environmental Protection Agency.

MEDICAL CENTER – A facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services.

MEDICAL WASTE DISPOSAL CENTER – A facility that stores or treats medical waste at a location separate from the facility where it was generated.

NURSING HOME - A facility maintained for the provision of nursing or convalescent care for three or more persons unrelated to the operator, and which operates under a license from the State of North Carolina.

PERSON - An individual, corporation, partnership, business entity or a named group organized to advocate a public position related to an existing or proposed high impact land use.

PLACE OF WORSHIP - A church or similar facility used on a regular basis for the primary purpose of serving as a place of public worship. Its area shall include all spaces utilized for worship services and spaces actually needed for related activities regularly conducted for the benefit of its congregation members.

PROTECTED SITE - A location in Ashe County used by its citizens for activities that are expected to be conducted without interruption by loud noise, noxious odors, smoke or fumes, disturbing vibrations, or pollution of air or water. Designated sites deserve to be protected by regulated distances and by buffers from any high impact land use, based on the classification of that use. The following are protected sites: educational centers, day care centers, assisted living centers, nursing homes, medical centers, places of worship, dwelling units, public outdoor recreational facilities, historic sites, the New River (including its North Fork and South Fork) and the Blue Ridge Parkway.

PULP MILL - A commercial facility engaged in activities classified by the U.S. Environmental Protection Agency as belonging to a "pulp and paper mill" with its operation regulated by that agency.

PUBLIC OUTDOOR RECREATION FACILITY – A tract of land owned by a government agency or a non-profit community group intended for public use as active or passive recreation. Its area shall include all spaces regularly utilized for its intended purposes.

QUARRY – A commercial facility for the dredging, digging, extraction, or mining of minerals, ores, soils, and other solid matter. Facilities not included in this category are tracts of land less than one acre in size when used either: (1) for excavation or grading when conducted solely in aid of on-site farming or on-site construction of commercial or residential buildings, or (2) removal of ores or mineral solids when done solely for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit.

SAWMILL - A commercial facility where logs are customarily processed into lumber, finished wood products or mulch. Facilities not included in this category are those employing less than three full-time employees, and in operation for a duration of less than six months at the same area of operation.

STONE CRUSHING OPERATION – A commercial facility engaged in the use of mechanized equipment or machinery to reduce the size of stone material or material having the qualities of stone.

TUB GRINDING OPERATION - A commercial facility engaged in the use of mechanized equipment to produce organic mulch from natural inert or organic material such as tree stumps, tree branches, brush and other type of natural forestry waste material. Facilities not included in this category are those employing less than three full-time employees, and in operation for duration of less than six months at the same area of operation.

VEGETATIVE BARRIER - Plant material on a strip of land having a designated width along a specified land feature with the purpose of separating that land feature from view or pollution.

§ 166.06 PROHIBITIONS.

A facility defined by this ordinance as a "High Impact Land Use" shall not begin construction of or operate that facility without a High Impact Land Use Operational Permit issued by the Ashe County Planning Department, and no area of operation, building or structure subject to or regulated by this Chapter shall be erected, moved, added to, or structurally altered without approval of a revised High Impact Land Use Operational Permit from the Ashe County Planning Department.

§ 166.07 LOCATION DISTANCE RESTRICTIONS.

A high impact land use shall not be located nearer to a protected site than 2,000 feet, measured from the area of operation to the protected site.

The area of operation shall also be setback 1,000 feet from the property line of the high impact land use.

§ 166.08 SETBACKS, BUFFERS AND DUST CONTROLS.

For all High Impact Land Use Facility, a Operational Permit shall be issued only when the applicant has included in its plan of operation and fully described in its application for a permit the following mandatory provisions:

- (1) A vegetative barrier, approved by the Administrator, sufficient in width and all-year existence, to serve as a buffer to lessen the visual impact of the area of operation both at road grade level and from all sides, and provide noise and particulate matter reduction.
- (2) Inclusion of a dust-alleviation surface material for roads within, and leading to, the area of operation.
- (3) Permanent paving material applied along any exit onto a public roadway for a distance of one hundred feet.
- (4) A security fence which surrounds the entire area of operation. The material shall be chain link, nine gauge or better, and seven feet in height with one or more strands of barbed or razor wire above the top. A gate that is closed and locked when the facility is not in operation shall be part of the security fence.

§166.9 HIGH IMPACT LAND USE PERMITS.

(A) A High Impact Land Use Operational Permit is required from the Planning Department for the establishment and operation of a facility designated by this Chapter as a "High Impact Land Use."

(B) Uniform fees for all applications shall be set in the Planning Department schedule of fees, and must be paid at the time of application for a permit.

(C) The application shall include such information as may reasonably be required by the Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings; the exact location within a tract upon which the area of operation will be placed; conditions existing on that tract; list of names and addresses of adjacent property owners; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this ordinance.

(D) In the discretion of the Administrator, there will be consultation with other local, State, and Federal agencies when a report from such agency would be relevant in determining whether the applicant is able to comply with applicable laws. These contacts may include the Regional Superintendent of the Blue Ridge Parkway upon receipt of an application for a high impact land use which is to be located within a view area of the Blue Ridge Parkway (as determined by the National Park Service). Upon receipt of a written report from a local, State or Federal agency, that report will be presented to the applicant for comment or acceptance. Upon receipt of a written request from a local, State or Federal agency that the permit be denied, the administrator may deny or reject the application as a violation of the duty to protect the welfare of the citizens of Ashe County.

(E) Upon receipt of an application, the Administrator shall send written notice to adjacent property owners to advise them of the application and provide to them a summary of the ordinance provisions.

(F) The Administrator shall review the permit application and other relevant information, and shall notify the applicant in writing as to action taken with respect to the permit. The notice shall be one of the following:

1. The Administrator has determined that the permit application, or the proposed high impact land use, or both, failed to meet one or more of the requirements of this Chapter, or that one or more of the certifications required in the permit application cannot truthfully and correctly be made, and therefore the application for a High Impact Land Use Permit is denied.

The notice shall be issued no later than forty-five days after receipt of a permit application, shall describe all reasons for the denial, and shall refer to specific sections of this Chapter with which the application or proposed high impact land use does not comply. The applicant shall have sixty days from receipt of that written notification to comply with the unmet requirements described in the notice. The permit application shall expire at the end of that time unless the applicant has complied with all unmet requirements described in the notice or an appeal of the Administrator's decision is pending.

2. The Administrator has determined that the application and proposed high impact land use meet all requirements of this Chapter, but necessary Federal and State permits have not been issued, the applicant has requested a conditional permit, and a Conditional High Impact Land Use Permit will be issued. This permit shall expire at the end of eighteen months from the issuance date, unless extended by the Administrator for good cause shown.

3. The Administrator has determined that that all requirements of this ordinance have been met and all necessary local, state and federal permits have been issued to the applicant, and an Operational High Impact Land Use Permit will be issued.

(G) An Operational High Impact Land Use Permit shall expire and shall be invalid in the event construction of the Area of Operation has not begun within twelve months of the date on which the permit was issued, unless this time period is extended by the Administrator for good cause shown. This permit shall remain valid so long as there is continued compliance with certifications contained in the application and with requirements of this Chapter. No permit may be assigned or transferred by the holder to any other person without approval from the Administrator.

(H) The Administrator may revoke a Conditional Permit or an Operational Permit for the following reasons, after due notice and an opportunity for the permit holder to be heard:

1. The holder has violated one or more terms or conditions of the permit or a requirement of the ordinance.
2. The application on which issuance of the permit was based contains a material misrepresentation, either of commission or omission.

§ 166.10 APPEALS AND VARIANCES.

(A) An appeal from a decision of the Administrator or the Ashe County Planning Department may be made to the Ashe County Planning Board.

(a) Any person who is directly affected may appeal a decision to the Planning Board by filing a notice of appeal with the Clerk to the Planning Board. The notice of appeal shall state the grounds for appeal.

(b) The Clerk to the Planning Board shall notify all persons identified as participants in the application process of the appeal, including the applicant and adjoining property owners. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the county 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.

(c) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Administrator certifies to the Planning Board that because of facts stated in affidavit format, a stay would cause imminent peril to life or property, or because the violation is transitory in nature and a stay would seriously interfere with enforcement of the ordinance. Upon filing of that certificate with the Clerk to the Board, enforcement proceedings may continue unless halted by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Clerk to the Board a request for an expedited hearing of the appeal, and the Planning Board shall meet to hear the appeal within 15 days after such a request is filed.

(d) By the vote of a majority of the board membership, the act of the Administrator may be upheld, modified, or overruled in part or in its entirety.

(B) When unnecessary hardship would result from carrying out the strict letter of this ordinance, the Planning Board, by a majority vote of its membership, may authorize, as a variance, a modified application to any of the provisions of the ordinance upon a showing of all of the following:

- (a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. A hardship resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (e) Appropriate conditions may be imposed on any allowed variance, provided that the conditions are reasonably related to the variance.

§ 166.11 NON-CONFORMING USE.

Any existing use that is not in compliance with the requirements of this Chapter at the time of its enactment may continue to operate as a non-conforming use, but may not expand the size of the area of operation existing at the time of this enactment without a variance permit.

§ 166.12 CONFLICT WITH OTHER LAWS.

Wherever the provisions of this ordinance or application of this ordinance impose higher standards than are required in any other local ordinance or regulation, other than Ashe County ordinances to control specific land uses, provisions and application of this ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulation, other than Ashe County ordinances to control specific land uses, impose higher standards than are required by the provisions of this ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

§ 166.13 SEPARABILITY.

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

§ 166.99 PENALTIES FOR VIOLATIONS.

- (A) *Misdemeanor.* Any person who violates a provision of this Chapter shall be guilty of a

misdemeanor and shall be subject to punishment as provided for by NC G.S. § 14-4. Each day of a violation of this chapter shall be a separate offense.

(B) *Financial penalties.* In addition to criminal penalties for a violation of this chapter, the Board of County Commissioners may impose civil penalties for each day's continuation of the offense. The amount shall be limited to \$500 per day. A penalty unpaid 30 days after the offender has been cited for violation of this chapter may be recovered in a civil action in the General Court of Justice.

(C) *Other remedies.* All appropriate remedies for relief authorized by G.S. § 153A-123, including orders for mandatory and prohibitory injunctions and for abatements, may be used to enforce this chapter.

Miscellaneous

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