



ORDINANCE AMENDING CHAPTER 40 AND CHAPTER 54 OF THE CODE OF ORDINANCES OF THE TOWN OF WOODFIN TO CONSOLIDATE STEEP SLOPE STANDARDS UNDER ZONING (CH. 54)

Ordinance: 2023-022

Passed 9-19-23

WHEREAS, the Town of Woodfin has the authority pursuant to Article 1 of Chapter 160D of the North Carolina General Statutes to adopt development regulations; and

WHEREAS, the Woodfin Town Council may amend said regulations from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, the Town initiated a recommendation to amend Chapters 54-Zoning and 40-Steep Slope of the Town of Woodfin Code of Ordinances; and

WHEREAS, the public hearing for this text amendment has been noticed in compliance with the North Carolina General Statutes; and

WHEREAS, the Woodfin Planning Board reviewed this text amendment recommendation at its September 5, 2023, public meeting and voted 7-0 to find the amendment a reasonable request considering the potential benefits to development of the Town of Woodfin and surrounding community; and

WHEREAS, the Woodfin Town Council held the public hearing on September 19, 2023 and, after hearing such, made the following required findings:

The development code text amendment is consistent with the comprehensive plan in the following ways:

1. Provides additional clarity and predictability to development requirements, thereby supporting economic development; and
2. Ensures that the Town's planning, zoning, and permitting processes facilitate sustained and positive development and support the needs of business and industry.
3. Preserve and enhance Woodfin's open space, natural environment, and community character.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Woodfin, that Chapters 40-Steep Slope and Chapter 54-Zoning are hereby amended as follows:

Section 1:

- a. Delete **Chapter 40-Steep Slope** in its entirety.
- b. Amend Chapter 54, **ARTICLE X. – FLOODWAY DISTRICT REGULATIONS** to read as follows:

ARTICLE X. – ENVIRONMENTAL STANDARDS

- c. Replace **Sec. 54-213** to read as follows:

Sec. 54-213. Floodway District Regulations

(a) *Statutory authorization, finding of fact, purpose, and objective.*

(1) *Finding of fact.*

- a. The flood hazard areas of the town are subject to periodic inundation which potentially can result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other properties which are inadequately elevated, floodproof or otherwise protected from flood damages.

(2) *Statement of purpose.* It is the purpose of this section to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- a. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion in flood heights or velocities;
- b. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- d. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- e. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(3) *Objectives.* The objectives of this section are:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize long business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and street and bridges located in floodplains;
- f. To help maintain a stable tax base by providing the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and
- g. To ensure that potential home buyers are notified that property is in a flood area.

(b) *Definitions.*

The following definitions are directly related to the flood management regulations and shall supplement the definitions listed in section 54-10. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Addition (to an existing building) means any walled or roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls in new construction.

Appeal means a request for a review of the local administrator's interpretation of any provision of article IX or a request for a variance.

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

Area of special flood hazard means the land in the floodplain within a community subject to a 15 percent or greater chance of being equaled or exceeded in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means the lowest level or story which has its floor below grade on all sides.

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

Building means any structure built for support shelter or enclosure for any occupancy or storage.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

Existing manufactured home parks or manufactured home subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum, the installation of utilities, whether final site grading or the pouring of concrete pads, or the construction of streets) is completed before September 16, 1973.

Flood, 100-year recurring interval means a hypothetical flood anticipated to be reached or exceeded on the average of once during a 100-year period. For the purpose of this section, the 100-year recurring interval flood shall be as shown on the flood insurance rate maps.

Flood fringe areas means those areas outside the F-1 Floodway District that lie below the elevation of the 100-year recurring interval flood.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

Flood insurance rate map (FIRM) means the most recent adopted version of an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

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

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;

- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood profile means a graph showing the relationship of the floodwater surface elevation for a flood event of a specific recurrence interval to the streambed and other significant natural and manmade features along a stream.

Flood stage means the elevation of the floodwater surfaces above an officially established datum plane.

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

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

Functionally-dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding ship repair, or seafood processing facilities. The term "functionally-dependent facility" does not include long-term storage, manufacture, sales, or service facilities.

Habitable floor means any floor useable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed wall of the structure.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee and associated structures, such as closure and drainage devices, which are reconstructed and operated in accordance with sound and engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, unable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this section.

A manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means the average height of the sea for all stages of the tide. Mean sea level is used as a reference for establishing various elevations within the floodplain. For purposes of this section, the term "mean sea level" is synonymous with National Geodetic Vertical Datum (NGVD).

National Geodetic Vertical Datum (NGVD), as corrected in 1929, means a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the start of construction commenced on or after September 16, 1973.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance ways that impacts may be reduced, substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

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

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

Substantial improvement means:

- (1) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, either:
 - a. Before the improvement or repair is started; or
 - b. If the structure has been damaged and is being restored before the damage occurred.
- (2) For the purposes of this definition, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term "substantial improvement" does not, however, include either:
 - a. Any project for improvement of a structure to comply with existing state and local health, sanitary, or safety code specifications which are solely necessary to ensure safe living conditions; or
 - b. Any alterations of a structure listed on the National Register of Historic Places or a state inventory of historic places.
- (3) The term "substantial improvement" shall be cumulative for the life of the structure.

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in sections 54-4 and 54-119 through 54-122 is presumed to be in violation until such time as that documentation is provided.

(c) *General provisions.*

- (1) *Lands to which this article applies.* This article shall apply to all areas of special flood hazard within the jurisdiction of the town.
- (2) *Basis for establishing the areas of special hazard.* The areas of special flood hazard identified by the Federal Insurance Administration in its flood hazard boundary map (FHBM) 370380 1 and 2, dated February 1, 1980, and any revisions thereto are adopted by reference and declared part of this article.
- (3) *Establishment of development permit.* A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.
- (4) *Compliance.* No structure or land shall hereafter be located, or extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.

- (5) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deeds restrictions. However, where this article and another law conflict or overlap, whichever imposes a more stringent restriction shall prevail.
 - (6) *Interpretation.* In the interpretation and application of this article, all provisions shall be:
 - a. Considered as minimum requirements.
 - b. Liberally construed in favor of the board of alderman; and
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.
 - (7) *Warning and disclaimer of liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the town or by any officer or employee thereof for any flood damages that result from reliance on this article, or any administrative decision lawfully made thereunder.
- (d) *Administration.*
- (1) *Designation of local administrator.* The zoning administrator is hereby appointed to administer and implement the provisions of this article.
 - (2) *Permit procedures.* Application for a development permit shall be made to the local administrators on forms furnished by him prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
 - a. Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures.
 - b. Elevation in relation to mean sea level to which any nonresidential structure will be floodproof.
 - c. A certificate from a registered professional engineer or architect that the nonresidential floodproof structure meets the floodproofing criteria in this article.
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
 - e. A floor elevation or floodproofing certification after the lowest floor is completed, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the local administrator certification of the elevation of the lowest floor, floodproof elevation, or the elevation of the bottom of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The local administrator shall review the holder's risk. The local administrator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required hereby, shall be caused to issue a stop work order for the project.
- (e) *Local administrator.* Duties of the zoning administrator shall include, but not be limited to:

- (1) Review of all development permits to ensure that the permit requirements of this article have been satisfied.
 - (2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
 - (3) Notify adjacent communities and the state department of crime control and public safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
 - (4) Ensure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.
 - (5) Prevent encroachments within flood fringes unless the certification and flood hazard reduction provisions of [chapter 14](#) are met.
 - (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with [section 54-216\(b\)](#).
 - (7) With assistance from the county building inspector verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with [section 54-216\(b\)](#).
 - (8) When floodproofing is utilized for a particular structure, the local administrator shall obtain certifications from a registered professional engineer or architect in accordance with [section 54-216\(b\)](#).
 - (9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions the local administrator shall make the necessary interpretation). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
 - (10) When base flood elevation data has not been provided in accordance with [section 54-216](#) then the local administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state, or other source, including data, floodway data and preliminary map developed in order to administer the provisions of this article.
 - (11) All records pertaining to the provisions of this article shall be maintained in the office of the local administrator and shall be open for public inspection.
- (f) *Variance procedures.*
- (1) The Planning Board of Adjustment, as established by the town, shall hear and decide appeals and requests for variances from the requirements of this article.
 - (2) The Planning Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local administrator in the enforcement or administration of this article.
 - (3) Any person aggrieved by the decision of the Planning Board of Adjustment, or any taxpayer may appeal such decision to superior court, as provided in G.S. Ch. 7A.
 - (4) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places without regard to the procedures set forth in the remainder of this section.
 - (5) In passing upon such applications, the Planning Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
 - a. The danger that materials may be swept onto other lands to the injury of others.
 - b. The danger to life and property due to flooding or erosion damage.

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - d. The importance of the services provided by the proposed facility to the community.
 - e. The necessity to the facility of a waterfront location, where applicable.
 - f. The availability of alternative locations, not subject to flooding or erosion damage for the proposed use.
 - g. The compatibility of the proposed use with existing and anticipated development.
 - h. The relationship of the proposed use to comprehensive plan and floodplain management program for that area.
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (6) Upon consideration of the factors listed above and the purposes of this article, the Planning Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this article.
- (7) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (8) Conditions for variances.
- a. ~~Variances shall only be issued upon a determination that the variance complies with the findings listed in N.C.G.S. 160D-705.~~
 - b. In addition to satisfying statutory findings, variances to flood protection shall only be issued upon providing sufficient material and competent evidence that demonstrates the following:
 - i. A showing of good and sufficient cause.
 - ii. A determination that failure to grant the variance would result in exceptional hardship; and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Any applicant to whom a variance is granted shall be given written notification of the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.
 - d. The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

d. Amend **Article X** by adding new subsections **Sec. 54-214** to read as follows:

Sec. 54-214. - Steep slopes.

- (a) *Purpose.* The purpose of this section is to regulate development in steep slope areas to preserve the Town of Woodfin's unique character, conserve the public health, safety, and general welfare and to promote environmentally sound design and planning in accordance with the following objectives:
 - To protect life and property from all potentially hazardous conditions particular to steep slopes, e.g., rock falls, flash flooding, debris flows, mud slides and increased wildfire hazard.

- To preserve and enhance the scenic and environmental resources of the landscape by encouraging the maximum retention of prominent natural topographic features, i.e., drainage swales, streams, slopes, ridgelines, rock outcroppings, vistas, natural plant formations, and trees.
- To encourage innovative site and architectural design and planning for the development to adapt to the natural terrain and be harmonious with the character of the area.
- To minimize grading and cut and fill operations inconsistent with the retention of the natural character of the hillside.
- To preserve, where possible, natural streams, ponds and associated riparian vegetation.
- To require the retention of trees and other vegetation to stabilize steep hillsides, retain moisture, prevent erosion, and enhance the natural scenic beauty.
- To encourage the retention of trees and other vegetation throughout the site instead of just the periphery of the development.
- To encourage minimal grading which relates to the natural contour of the land, thus rounding off sharp angles at the top and bottom of cut and fill slopes in a natural manner.
- To provide land use densities to promote the best possible development of hillside areas to retain significant natural features and to preserve slope stability.
- To encourage road design that follows the natural topography wherever possible to minimize grading.
- To preserve predominant views from and of the hillside areas to retain the sense of identity and imagery that the hills and mountains now impart to the Town of Woodfin.

(b) *Determining steep slope areas.* For the purposes of this section, steep slopes are defined as: (1) any lot, parcel, tract, or portion thereof, that has a natural elevation of 2,200 feet above mean sea level or higher and has an average natural slope of 20 percent or greater, or (2) that has a natural elevation of 3,000 feet above mean sea level or higher, regardless of slope.

For the purposes of this ordinance, slope means the average natural slope of an entire parcel. The average natural slope for the parcel shall be calculated using the following formula.

$S = \frac{.0023(I)(L)}{A}$	<p>Where:</p> <p>S = Existing grade of parcel in percent</p> <p>I = Contour interval of map in feet, with said contour intervals to be five feet or less</p> <p>L = Total length of the contour lines within the parcel in feet</p> <p>A = Area of the parcel in acres</p> <p>0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal into a percentage</p>
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(c) *Applicability.* Steep slope standards shall apply to the following:

- (1) New building construction and individual lot improvements, including but not limited to drives, retaining walls, utilities, and stormwater controls.
- (2) Communal infrastructure including, but not limited to, roadways, shared drives, public utilities, public facilities, and stormwater controls, when installed in accordance with an approved major subdivision plan. For the purpose of applying this section, approval of a subdivision plat shall not constitute approval of a development plan for the individual lots in the subdivision, which shall be reviewed under separate applications.
- (3) Building elements exempted from steep slope standards shall include:
 - a. Individual septic systems.

b. Expansions to existing structures applied for on or before February 15, 2022, that are less than 500 square feet.

(d) *Definitions.* The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Artificial slope shall mean any land disturbing activity that modifies an existing slope.

Building shall mean a structure that is designed or intended for support, enclosure, shelter or protection of person, animals or property having a permanent roof and walls.

Cut slope shall mean the exposed ground surface resulting from excavation of material.

Critical root zone shall mean the minimum area beneath a tree which must be left undisturbed and protected from construction disturbance in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The critical root zone is delineated by a concentric circle with the tree trunk as the center. The radius of the critical root zone equals one foot for every one inch of tree diameter. Example: a 20-inch diameter tree will have a critical root zone radius of 20 feet.

Development shall mean any man-made change to improved or unimproved real estate, including, but not limited to, new buildings and structures, including additions/expansions, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Disturbed areas shall mean any area subject to a *land-disturbing activity*.

Downhill sections shall mean areas of the property which fall ten feet or more in elevation within 50 feet of the structure.

Fill slope shall mean the exposed ground surface resulting from deposition of material.

Forested areas shall mean an ecosystem supporting a dense growth of trees covering a large area.

Geotechnical assessment shall mean a comprehensive analysis of soil type(s), composition, and characteristics (colluvial, cohesive or expansive, pH, water retention, etc.) conducted pursuant to proposed development of a building site.

Impervious surface shall mean any surface that does not allow water to percolate through, or significantly penetrate, for natural absorption by the ground within a 24-hour period, including but not limited to: rooftops, parking/driving areas finished with asphalt, concrete, or densely compacted gravel, patios, or pools.

Land-disturbing activity shall mean any use of the land by any person in a residential, industrial, educational, institutional, or commercial development, highway and road construction, and maintenance that results in a change in the natural cover or topography.

Lot (for the purposes of this ordinance) shall mean a parcel of land occupied or intended for occupancy by one or more uses permitted in the Town of Woodfin Zoning Ordinance, including one principal building and its accessory building(s), and having its principal frontage upon a dedicated street.

Planar surface is defined as the combined exterior surface area of all vertical surfaces within a single face of the structure.

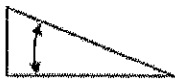
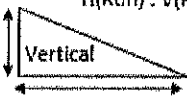
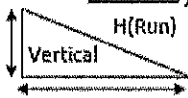
Regulated tree shall mean all native trees of with a caliper of three or more inches when measured six inches above the root ball and any mature grouping of rhododendron or mountain laurel of 250 square feet or more in area. Invasive non-native species shall not be included in this definition.

Revegetation shall mean reintroducing native plant species, as defined by the Natural Resource Conservation Service of the United States Department of Agriculture, into a disturbed area to restore native plant communities, mitigate erosion and landslides, and minimize the expansion of non-native invasive plants.

Snags shall mean any dead or dying standing tree. For wildlife purposes, snags should be at least three inches in diameter at breast height (dbh) and at least six feet tall. Snags may develop cavities which either occur naturally

or are excavated by birds and mammals. The removal of snags can negatively impact wildlife populations that are dependent on them as essential habitat components. Generally, the value of a snag tree increases as its size increases. To assure that the minimum requirements of most wildlife species are being met, three snags of 12 inches dbh or greater should be available per acre. A minimum of one 15-inch dbh or greater diameter den tree should also remain per acre.

Slope shall mean the extent to which a landform deviates from the perfectly horizontal as expressed in percent, degree or ratio. To ensure consistent conversion between these separate methods of expressing the extent of slope, the following explanatory table is provided as part of this definition.

<u>Degrees</u>	<u>Ratio</u>	<u>Percent</u>
	$H(\text{Run}) : V(\text{Rise})$ 	$\frac{V(\text{Rise})}{H(\text{Run})} \times 100$ 
Degrees Horizontal		Horizontal
45°	1H:1V	100%
39°	1.25H:1V	80%
34°	1.5H:1V	67%
30°	1.75H:1V	57%
27°	2H:1V	50%
22°	2.5H:1V	40%
18°	3H:1V	33%
14°	4H:1V	25%
8.5°	6.7H:1V	15%

(e) *Steep slope development standards.* In addition to development standards identified elsewhere in this code, development in designated steep slope areas must also comply with the following:

- (1) *Lot size.* Any new lot created with greater than ten percent of the area considered steep slope as defined in section 54-214(b), and which is created after February 15, 2022, shall be a minimum of 1.5 acres.

This subsection shall not prohibit the development on any lot which was a lot of record on or before February 15, 2022, and which does not meet the lot size requirements of this ordinance, provided that all other ordinance requirements are satisfied.

- (2) *Density.* No single lot may contain more than two dwelling units.
- (3) *Number and height of buildings and structures.*
 - a. *Buildings.* No single lot may contain more than two detached buildings, with principal buildings not exceeding a height of 35 feet and accessory buildings not exceeding a height of 20 feet.
 - b. *Accessory structures.* The number of accessory structures, not including buildings, are not limited in number however, height shall be limited to no more than 20 feet, except as noted below:
 - i. All retaining walls are limited to a maximum height of 12 feet. Separate walls that are stacked or tiered shall be combined for the purposes of this section.
 - ii. Fences and free-standing walls shall meet the standards found in section 54-317.
 - c. *Measuring height.* Height shall be limited as described elsewhere in this code.
 - d. *Setbacks.* The planning director may approve reductions of front setbacks from 30 feet to 20 feet in R-43 and R-21 district, when said setback reduction results in reducing site grading by 10%

or more in previously undisturbed areas based on the allowance provided in subsection (4) below.

- (4) *Land disturbance and impervious surface standards.* Land disturbance and impervious surface limits shall apply to all steep slope areas as follows:

	Land Disturbance	Impervious Surface
Lots less than 2 acres	0.3 acres	0.16 acres
Lots 2 acres or larger	15% of the total lot area	8% of the total lot area
Major Subdivisions	15% of the total lot area	10% of the total lot area

- (5) *Geotechnical assessment.* A geotechnical assessment prepared by a NC registered professional engineer shall be required for lots with existing grade 35 percent or greater to determine the stability of the underlying geology and soils to support the proposed development. The geotechnical analysis report shall be required prior to the issuance of a zoning permit.

- (6) *Screening of buildings and structures.*

- a. *Applicability.* Screening and revegetation standards apply within steep slope areas for all new construction including new buildings and structures and additions to buildings and structures, and any modification to an existing building exceeding 50 percent of the appraised or tax assessed value.
- b. *Planting standards.*
 - i. *Calculating the requirement.* The surfaces of the structure which are oriented to the downhill sections of the lot must be screened at a ratio of one tree for every 200 square feet of planar surface. Retaining walls visible from public property or public right-of-way shall be screened at a ratio of one large maturing tree, one small maturing tree and five shrubs for every 50 linear feet.
 - ii. *Minimum tree size.* Trees planted must be a minimum of 1.5 inches in diameter measured six inches above the root ball and 75% of all new trees must be a large maturing species.
 - iii. *Tree spacing.* Trees must be located no greater than 50 feet from the furthest extending portion of the structure (measured perpendicularly) and shall be spaced a minimum of ten feet, but no greater than 30 feet, apart.
 - iv. *Tree composition.* Trees must be of varying, native species, as defined by the Natural Resources Conservation Service of the United States Department of Agriculture, and no single species shall comprise more than 50 percent of the trees planted, unless applying existing tree credits. Existing trees which are left intact and that appear in good health can be credited toward the required plantings. The following credit system will be observed:

Tree Dimensions	Credits
2.5" to 4" DBH (minimum 8' tall)	1 tree
4" to 6" DBH (minimum 15' tall)	1.5 trees
6" to 10" DBH (minimum 20' tall)	2 trees
10" to 16" DBH (minimum 25' tall)	2.5 trees
16" or greater (minimum 30' tall)	3 trees

Trees to be credited shall be marked using flagging tape and cordoned off with tree protection fencing spaced one foot for every one inch of tree diameter measured from the edge of tree prior to site disturbance to ensure their health throughout site development.

- (7) *Artificial slopes.*

- a. Maximum slope standards. Artificial slopes shall not exceed a 1.5:1 cut and 2:1 fill. Artificial slopes may increase to 1:1 cut and 1.5:1 fill with submittal of a geotechnical certification from a North Carolina registered professional engineer. However, if stable exposed rock is the intended result, the cut and/or fill slope(s) may be increased upon certification from a North Carolina registered professional engineer.
 - b. Revegetating artificial slopes. Artificial slopes shall be remediated through reforestation or revegetation to visually integrate disturbed areas into surrounding terrain with the purpose of maintaining a natural appearance. Revegetation shall consist of a combination of trees, shrubs, and groundcover plants native to the area.
- (8) *Maintenance plan.* A maintenance plan shall be required for revegetated areas and such plan shall include provisions for replacement of dead vegetation when greater than 50 percent mortality rate occurs.
- (9) *Preservation of vegetation.* The removal of trees, vegetation, and snags from lots within steep slope zones is prohibited unless such trees, vegetation, and snags are located within a permitted land disturbance area. Non-native invasive species may be removed. For all new development, these preservation areas shall be designated on plans submitted for approval. Preservation areas shall be clearly designated during all land disturbing activities using protective fencing and shall be inspected prior to the zoning permit being issued.
- (f) *Zoning permit required.* Compliance with the requirements of this chapter shall be included in the zoning permit review. Site and building plan information necessary to demonstrate compliance with the steep slope development standards, along with all other applicable development requirements will be required at time of zoning permit application.
- (1) *Site plan requirements.* Site plans shall be prepared by a licensed design professional and shall include the following:
- a. A boundary line survey of the property.
 - b. The size, location, and species of *regulated trees*.
 - c. Limits of disturbance identifying where trees, vegetation, and soils are to be protected and preserved and areas where trees, vegetation, and soils are to be removed or modified. This includes proposed grading, utilities, and improvements as well as access, staging, and storage areas.
 - d. The *critical root zones* of all existing trees within or overlapping the disturbed area including those trees on adjacent properties with root areas that would be impacted by construction, and the placement of tree, vegetation, and soil protection measures that will be used before, during, and after all construction activities to promote the survival and/or retention of such elements.
 - e. The location of all proposed underground utilities, construction material storage, debris dumpster locations, and the location of proposed sanitary facilities.
 - f. The location of tree protection fencing required with detail of the fencing construction and a note indicating that a pre-construction meeting with Town of Woodfin staff will be scheduled prior to commencing any work on the site.

Explanatory note: In addition to recognizing the importance of retaining and using native trees and shrubs, dead and deteriorating trees often provide valuable wildlife habitat. Property owners and managers are encouraged to retain significant portions of dead trees as wildlife snags. A tree care or forestry management professional should be consulted to consider ways to reduce the threats to human life and property. Hazardous snags should be cut to a height as close to 10 feet as is deemed safe to remove the falling hazard.

- (2) *Implementation of tree protection.*

- a. Pre-construction conference. Prior to commencing any activity requiring a development approval, a pre-construction conference with Town of Woodfin staff shall take place to review procedures for protection and management of all protected elements identified on the tree protection plan.
 - b. Tree protection procedures. Tree protection procedures must follow the specifications written in accordance with standards in the current ANSI A300 Standards for Tree Care Operations, ANSI Z133 Safety Standards, industry best management practices and administrative standards.
 - c. Protective barriers. Fences or other equally protective barriers as determined by the Town of Woodfin shall be used to protect areas identified on an approved tree protection plan as to limit access to the protected area, prevent the compaction of soil and the destruction or damage of the trees. Prior to any development activity, the installation of the protective barrier shall be approved by the Town of Woodfin. The protective barriers shall not be relocated or moved temporarily without the written approval of the Town of Woodfin and shall remain in place until all development activity is completed and approved.
 - d. Restrictions within the protected areas. The following activities are prohibited within the protected area inside of fences: parking of vehicles or equipment; storage of building materials, refuse, or excavated soil; use of tree trunks as a backstop, winch support, anchorage, power pole, signpost, or other similar function.
- (g) *Enforcement and penalties.* The Town of Woodfin shall perform inspections to assure that the work conforms to the approved plan and the provisions of this ordinance. Violations of this chapter shall be enforced with the standards found in section 54-41.
- d. Delete **Sections 54-215** through **54-314.** in their entirety.
 - e. Amend **Sec. 54-41. – Notice(s) of violation.** to read as follows:

Sec. 54-41. - Notice(s) of violation.

- (a) *Notice of violation.* Whenever the zoning administrator determines that a person is violating any of the provisions of this chapter or any plan, order, or condition issued pursuant to this chapter, a written notice of violation may be issued. The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail to the holder of the development approval or occupant and the landowner of the property involved, if the landowner is not the occupant or holder of the development approval. The notice of violation may be posted on the property. The zoning administrator shall certify that the notice was provided.
- (b) *Appeal.* Any owner or occupant who has received a notice of violation may appeal in writing the decision of the zoning administrator to the board of adjustment within 30 days following the date of the notice of violation. The Planning Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the notice of violation. In the absence of an appeal, the remedies and penalties sought by the zoning administrator in the notice of violation shall be final.
- (c) *Failure to remedy.* Once a notice of violation has been issued, and the responsible party fails to address the violation or appeal within the prescribed time period, the zoning administrator shall issue a Zoning Citation that includes an assessment of fines.
- (d) *Immediate fines.* The following violations are subject to a Citation with the assessment of immediate fines without need for a Notice of Violation:
 - (1) *Repeat violations.* For every violation that occurs within one year of the receipt of a notice of violation for a previous offense of the same nature will not require new notice and will result in an immediate civil penalty.

- (2) *Acts of Destruction.* The unlawful removal of trees and other land disturbing activities in designated steep slope areas.
- (e) *Penalties.* Violations of this Code shall subject the offender to a civil penalty upon the issuance of a citation for a violation. The town may recover the civil penalty, if not paid to the town within 30 days of the date the citation was issued, in a civil action in the nature of a debt pursuant to G.S. 160A-175.
- (1) *Penalties for violations.* Except as noted below, each day that any violation of the provisions of this Code continues shall constitute a separate and distinct offense and subject the violator to additional civil penalty. The civil penalty shall be \$100.00 for each violation unless otherwise provided in this Code.
- (2) *Penalties for unpermitted tree removal and/or unpermitted grading in designated steep slope areas.* A violation of this Chapter where unlawful tree removal or unpermitted land disturbing activity has occurred shall subject the violator to an immediate civil penalty as follows:
- a. Where unlawful activity has resulted in the complete clearing and grubbing of all vegetation a minimum of \$1,000 for the first 100 square feet plus 35 cents of every square foot thereafter shall be assessed.
 - b. Where trees or stumps are present after unlawful tree disturbing activity has occurred, the civil penalty shall be calculated as \$1,000 for the first tree plus \$100 per diameter inch for any other tree or stump 3 inches diameter and larger.
- (4) *Restoration or remediation.* In addition to the civil penalty of Sec. 54-41(e)(2), the owner of real property where a violation has occurred shall remove each unlawfully disturbed tree and replace it with a tree or trees of equal caliper.
- a. Prior to any replanting, the Planning Director shall first approve a replacement planting and maintenance plan. Replacement trees shall be native to the mountains of Western North Carolina and a minimum of 2 inches in diameter with 75% of the plantings being a large maturing species. Replacement trees shall be located first in preservation areas where the unlawful disturbance has occurred and shall be in addition to any required tree plantings of this Chapter.
 - b. All replacement trees shall be planted in a planting area of at least 200 square feet with minimum dimensions of 8 feet.
 - c. If the tree conservation area where the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees cannot be planted on other portions of the property, then in lieu of such replacement trees, a replacement fee equal to \$100 per caliper inch of replacement trees shall be paid to the Town. This shall be in addition to any penalties paid for removal.

Section 2: If any provisions of this Ordinance are for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, independent provision and such holding shall not affect the validity of any other provision thereof, and to that end, the provisions of this Ordinance are hereby declared to be severable.

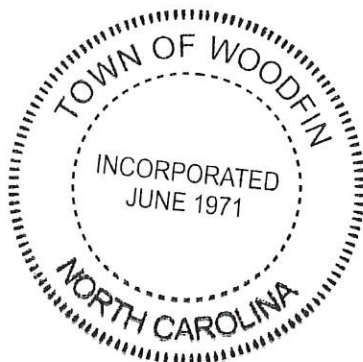
Section 3: This Ordinance is adopted on this 19th day of September, 2023, and shall become effective immediately upon adoption.

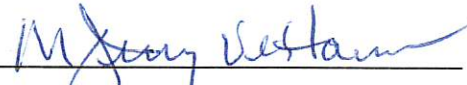
Section 4. This ordinance shall be deemed published as of the day of its adoption and approval by the Town Council and the Clerk of the Town of Woodfin is hereby authorized and ordered to file a copy of said ordinance in the Office of the Town Clerk.

Section 5. Except as modified herein, this ordinance shall be in full force and effect immediately on the date of its publication and filing thereof in the Office of the Clerk, and said ordinance shall be presumptive evidence in all courts and places of the ordinances and all provisions, sections, penalties and regulations therein contained and of the date of passage, and that the same is properly signed,

attested recorded and approved and that any public hearings and notices thereof as required by law have been given.

Ayes 5
Nays 0
Abstains 0





M. Jerry Vahaun, Mayor

Attest:



Town Clerk