



November 14, 2023

Dear Madison County Planning Board,

We understand the Planning Board is considering an amendment to the County's ordinances that would eliminate a setback requirement applicable to a small number of properties in Madison County on protected ridgetops.¹ As a membership organization representing residents of Madison County and greater Western North Carolina, we value the region's natural beauty and appreciate the work Madison County has done to protect it. We write to urge the Board to recommend denial of the proposed amendment and to instead consider extending a variance to the applicant if one is warranted.

The Mountain Ridge Protection Act of 1983, N.C. Gen Stat. §§ 113A-205–214, affirmed² local authority to protect prominent ridges from development that would interrupt the natural lines of ridgetops and disturb delicate soils. Rather than deciding what protections would be appropriate across the state, the Act encouraged counties and larger cities in the mountains to adopt whatever protections they felt were necessary to protect ridgetops from harmful scenic and ecological impacts. It is important to understand that reducing or eliminating Madison County's existing setback requirement would not align the ordinance more closely with state law. Rather, both the Act and general zoning authority granted by Chapter 160D of the North Carolina General Statutes empower counties to decide how best to pursue the Act's goals and protect mountaintop ridges. Madison County has determined that the purposes of the Act and the goals of the County would be well-served by protecting the very tops of ridges from construction. Those who purchased property in Madison County in reliance on these viewshed protections undoubtedly agree.

To be sure, we share concerns about soil stability and steep slopes expressed in the text amendment application. But the answer to those concerns is not to push development still higher up the

¹ Mountain Ridge Protection Ordinance, Madison County, N.C., art. V § 503(3).

² County and city governments have broad authority to adopt zoning regulations that "may regulate and restrict," among other things, the location, height, and size of buildings, as well as the "size of yards, courts, and other open spaces." N.C. Gen. Stat. § 160D-702(a). In other words, Madison County's authority to require the setback at issue here does not presently depend on and is not limited by the Mountain Ridge Protection Act of 1983. "Regulations made under authority of" Chapter 160D apply of their own force when they "require a greater width or size of yard or courts ... or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation." Moreover, the Mountain Ridge Protection Act itself notes that it "provides a supplemental source of authority in addition to other present or future legislation." N.C. Gen. Stat. § 113A-213. Thus, even though the Mountain Ridge Protection Act is primarily concerned with "tall buildings and structures," Chapter 160D's more general grant of authority empowers counties to impose setbacks across the board.

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mountain. Even if the flatter soils at the top of a ridge make construction of a homesite cheaper, they do not limit the costs to soils, waters, and scenery imposed by the necessity of building a road up to a ridgetop homesite and hauling materials up the mountainside. Instead, we think those concerns are better addressed by adopting a steep slopes ordinance, like nearby Jackson and Haywood counties, that specifically addresses the environmental and safety risks attendant to those unstable conditions.³ These ordinances typically require protective measures and the submittal of site plans for construction on sites with slopes above a certain gradient.

In rare cases, protections like the setback at issue here will unduly burden landowners. But the County has a procedure better calibrated to address those occasions: Its Board of Adjustment can make findings through a quasi-judicial procedure and, as those findings warrant, grant variances to landowners pursuant to Chapter 11.3 of the Madison County Land Use Ordinance and N.C. Gen. Stat. § 160D-705(d). This sort of adjudicative response is appropriate to address landowner grievances. The variance procedure exists precisely to ensure that addressing unforeseen but atypical circumstances does not require a legislative revision of the County's ordinances. It allows the County to address site-specific concerns without eroding county-wide protections that county residents and visitors rely on. Addressing site-specific concerns legislatively is inefficient, invites unforeseen consequences, and risks creating an appearance of undue influence by specific landowners over county-wide policy decisions.

Thank you for your thoughtful consideration of this matter and for your ongoing stewardship of Madison County's natural beauty and the economic progress it enables.

Sincerely,

Christopher Joyell
Healthy Communities Director
MountainTrue

³ See Jackson County, N.C. Ordinances art. V § 5.8; Haywood County, N.C. Ordinances ch. 158.