

**ORDINANCE NO. 63**

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

**Adopted: July 08, 2010**

# Table of Contents

<b>I</b>	<b>GENERAL PROVISIONS .....</b>	<b>1</b>
	Section 101. Authority .....	1
	Section 102. Title .....	1
	Section 103. Purpose .....	1
	Section 104. Jurisdiction .....	1
<b>II</b>	<b>INTERPRETATION AND DEFINITIONS.....</b>	<b>1</b>
	Section 201. Word interpretation .....	1
	Section 202. Definitions .....	2
<b>III</b>	<b>PRESERVATION OF TREES AND NATIVE VEGETATION .....</b>	<b>3</b>
	Section 301. Preservation areas and riparian buffer areas.....	3
	Section 302. Permits.....	3
	Section 303. Maintenance of protected areas.....	3
<b>IV</b>	<b>ADMINISTRATION AND ENFORCEMENT .....</b>	<b>4</b>
	Section 401. Tree Preservation Administrator and Tree Preservation Board.....	4
	Section 402. Duties and function; Village Council, Tree Preservation Administrator and Tree Preservation Board.....	4
	Section 403. Application for permits .....	4
	Section 404. Penalties for violations .....	4
<b>V</b>	<b>APPEALS AND VARIANCES .....</b>	<b>5</b>
	Section 501. Appeals to the Tree Preservation Board.....	5
	Section 502. Variances.....	5
	Section 503. Procedures for appeals and variances.....	5
	Section 504. Appeals from decisions by the Tree Preservation Board .....	6
	Section 505. Fee schedule .....	6
<b>VI</b>	<b>AMENDMENTS.....</b>	<b>7</b>
	Section 601. Authority to amend.....	7
	Section 602. Initiation of amendments.....	7
	Section 603. Planning Board action .....	7
	Section 604. Public hearing.....	7
<b>VII</b>	<b>LEGAL STATUS .....</b>	<b>7</b>
	Section 701. Conflict of laws .....	7
	Section 702. Severability.....	8
	Section 703. Effective date.....	8

# FLAT ROCK TREE PRESERVATION ORDINANCE

## ARTICLE I GENERAL PROVISIONS

### **Section 101 Authority.**

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

### **Section 102 Title.**

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

### **Section 103 Purpose.**

In order to maintain the unique characteristics of the Village of Flat Rock as an historic residential community with forested landscapes and scenic vistas along the scenic byways and public roadways through the Village, it is necessary to preserve the quality and flavor of the trees and natural vegetation that form so much of the traditional appearance of the Village. This is particularly true of trees that form the canopy over the roads within the Village. The importance of trees is recognized not only for their aesthetic enhancement of real property, but also for their shade, cooling, noise and wind reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, wildlife habitat, and contribution to the well-being of the citizens of the Village. Trees provide a buffer and a natural canopy, and are a hallmark of the Village. They require protection, and damage to or removal of preservation trees requires regulation and control.

### **Section 104 Jurisdiction.**

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

## ARTICLE II INTERPRETATION AND DEFINITIONS

### **Section 201 Word interpretation.**

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

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

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

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

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

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

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

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

## **Section 202 Definitions.**

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

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

*Land Development Ordinance.* The Flat Rock Land Development Ordinance.

*Native vegetation.* Mountain laurel, rhododendron and native hollies.

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

*Preservation tree.* Any tree over six inches in diameter, as measured four feet above the ground, located in a preservation area or a riparian buffer area.

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

*Scenic byways.* The Greenville Highway (NC 225) within the corporate limits of the Village, Rutledge Drive (SR 1166) within the corporate limits of the Village and Little River Road (SR 1123) for its entire length.

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

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

**ARTICLE III  
PRESERVATION OF TREES AND NATIVE VEGETATION**

**Section 301 Preservation areas and riparian buffer areas.**

In order to preserve the existing forested landscapes and the scenic vistas along any preservation area of the Village, and to protect and preserve riparian buffer areas, except as hereinafter provided, the removal of existing native vegetation and any preservation tree shall be prohibited. Plans for all proposed development or expansion of existing improvements on public and private property that involves tree or native vegetation removal shall provide for the retention and preservation of all such existing native vegetation and trees in any preservation area, except for that which must be removed for the construction of driveways and roads providing ingress to and egress from lots or tracts of land to be developed and for the construction of utilities facilities.. Trees found to be dead, diseased, severely storm damaged or posing a danger to existing or proposed structures, public utility lines, streets or roads may be removed. The preservation areas of a site planned for development shall be shown on the site plan submitted to the Zoning Administrator with an application for a certificate of zoning compliance or land development permit under the Land Development Ordinance. The proposed development plans shall include provisions for the preservation and protection of the existing preservation trees and native vegetation, the disturbance or removal of which shall be limited to access areas for the property.

**Section 302 Permits.**

- A. Except as hereinafter provided, a no-fee permit shall be required for the removal of any preservation tree or native vegetation from a preservation area. The application for such permit shall include a site plan showing the location of the tree(s) or native vegetation planned for removal and a statement as to the reason for removal. The removal of a preservation tree or native vegetation without an approved permit shall be subject to a civil penalty as provided in Section 404.
  
- B. No tree removal permit shall be required if:
  - (1) Removal of the tree(s) and native vegetation is required to implement site development plans for the property as approved by the Zoning Administrator pursuant to the Land Development Ordinance.
  - (2) Tree removal is required for construction or maintenance within public utilities easement areas or public road right of ways.
  - (3) A tree is within twenty feet of a building or within ten feet of a driveway.

**Section 303 Maintenance of protected areas.**

Nothing contained in this ordinance shall be construed to prevent a property owner from ordinary and customary maintenance of a preservation area or riparian buffer area, such as

the cutting or removal of dead trees smaller than preservation trees and other dead plant materials, the trimming of brush, the mowing of grass, and other similar grounds maintenance activities. Such maintenance by the property owner is encouraged.

**ARTICLE IV  
ADMINISTRATION AND ENFORCEMENT**

**Section 401 Tree Preservation Administrator and Tree Preservation Board.**

The Village Zoning Administrator is hereby designated as the Tree Preservation Administrator. Members of the Village Board of Adjustment are hereby appointed as a five member Tree Preservation Board and alternate members of the Board of Adjustment are appointed to serve in the absence or temporary disqualification of any regular member.

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

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

**Section 403 Application for permits.**

Applications for permits required by Section 302 of this ordinance shall be submitted on forms prescribed by the Tree Preservation Administrator and shall be accompanied by such supporting documentation as may, in the reasonable judgment of the Tree Preservation Administrator, be required to identify the preservation area affected and the preservation tree(s) and native vegetation planned for removal. If the stated reason for removal is that a tree or native vegetation is dead or diseased, or that the tree poses a significant threat to people or property, the Tree Preservation Administrator may, if he deems it appropriate, require the applicant to retain a certified arborist or other qualified consultant to determine the health of such tree or native vegetation or give his opinion regarding the threat that the tree poses and to report his findings in writing to the Tree Preservation Administrator. When the Tree Preservation Administrator has verified that the application and conditions meet the requirements of this ordinance, a permit shall be issued. In the event that a permit is denied, the Tree Preservation Administrator shall provide the applicant with a written explanation for such denial.

**Section 404 Penalties for violations.**

Failure to obtain a permit as required by this ordinance for the removal of any preservation tree or native vegetation before its removal shall result in a civil penalty of \$500 for each tree so removed, and up to \$500 for each native shrub or plant so removed.

**ARTICLE V  
APPEALS AND VARIANCES**

**Section 501 Appeals to the Tree Preservation Board.**

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

**Section 502 Variances.**

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

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

**Section 503 Procedures for appeals and variances.**

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

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

- B. *Hearings.* Upon receipt of a notice of appeal or a variance application, the chairman of the Tree Preservation Board shall schedule a time for a hearing that shall be within thirty calendar days of the filing of such notice of appeal or application.
- C. *Notice of Hearing.* For all appeals and variance applications, the Tree Preservation Administrator shall give notice of the public hearing at least seven calendar days prior to the date of the hearing, one time, in a newspaper with general circulation in the Village. All notices shall state the location of the lot or building, the type and nature of the appeal or application and the time, date and place of the hearing.
- D. *Conduct of Hearing.* Any party may appear at the hearing in person, by agent or by attorney. All testimony shall be given under oath or affirmation, and any party shall have the right to confront and cross-examine another party's witnesses.
- E. *Voting.* The concurring vote of four-fifths of the members of the Tree Preservation Board shall be necessary to reverse any decision or determination of the Tree Preservation Administrator, to grant a variance or otherwise to render a decision on matters arising in the administration of this ordinance. An abstention shall constitute a vote to affirm a decision of the Tree Preservation Administrator or to deny a variance.
- F. *Decisions.* A decision by the Tree Preservation Board shall be made within forty-five calendar days of the date of conclusion of the public hearing and be given by the secretary of the Tree Preservation Board, by certified first class mail, to the appellant or applicant, no later than the close of business the day following the date of such decision and by first class mail to any other person who has made a written request for such notification.

**Section 504 Appeals from decisions by the Tree Preservation Board.**

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

**Section 505 Fee schedule.**

The Village Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this ordinance. Fees may include expenses for technical

advisors when needed to evaluate an application. In order to be deemed complete, all applications and appeals shall be accompanied by payment of applicable fees.

## **ARTICLE VI AMENDMENTS**

### **Section 601 Authority to amend.**

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

### **Section 602 Initiation of amendments.**

Proposed changes or amendments to this ordinance may be initiated by the Village Council, the Planning Board or the Tree Preservation Board.

### **Section 603 Planning Board action.**

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

### **Section 604 Public hearing.**

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

## **ARTICLE VII LEGAL STATUS**

### **Section 701 Conflict of laws.**

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

**Section 702 Severability.**

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

**Section 703 Effective date.**

This ordinance shall become effective on and be in full force and effect from the date of its adoption this 8<sup>th</sup> day of July 2010.

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Michelle Hill  
Village Clerk

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Robert V. Staton  
Mayor

Approved as to form:

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Sharon B. Alexander  
Village Attorney