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By: Lizabeth R. Roupe  
Register of Deeds  
Ordinance Book 1 Page 451

ALLEGHANY COUNTY  
LIZABETH REEVES ROUPE  
REGISTER OF DEEDS

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### **Article 1. TITLE**

LAND SUBDIVISION ORDINANCE  
ALLEGHANY COUNTY, NORTH CAROLINA

### **Article 2. AUTHORITY**

This ordinance is adopted under the authority and provisions of the General Statutes of the State of North Carolina, (NCGS) Chapter 153A, sections 330-335.

### **Article 3. JURISDICTION**

This Land Subdivision Ordinance shall apply to all areas of unincorporated Alleghany County, which are not included in the extraterritorial jurisdiction of the Town of Sparta, North Carolina.

### **Article 4. PURPOSE**

By adoption of this ordinance, the Alleghany County Board of Commissioners will promote the health, safety and general welfare of the community by providing rules and guidelines for the subdivision of land and construction of roads. The Ordinance is intended to:

1. Provide for the orderly growth and development of the county.
2. Allow for the coordination of streets and highways within the subdivision with existing or planned streets and highways and with other public facilities.
3. Reduce the danger to health or peril from flood, erosion or water pollution.
4. Provide roads that (1) will allow for a safe, convenient and functional system for vehicular circulation; (2) will be eligible for state maintenance and school bus service and (3) afford adequate access for emergency vehicles and services.

5. Provide for the dedication of street right-of-way, utility easements and public facilities.
6. Ensure proper and accurate description and recordation of real property.
7. And provide public officials with information regarding land development in Allegheny County in order to project the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenses.

### **Article 5. DEFINITIONS And INTERPRETATIONS**

1. The word **may** is permissive.
2. The word **shall** is Mandatory.
3. The word lot includes the words **plot, parcel, tract** and **site**.
4. **Calculated Acreage.** The total acreage of the lot including dedicated easements and right-of-ways. For the purpose of this ordinance, total lot size shall be determined in this manner.
5. **Easement.** A strip of land designated by the property owner for a specified purpose and use by the public, a corporation or others.
6. **Family Subdivision of Real Property.** The first conveyance of a portion of real property from owner to his or her child(ren) following the effective date of this ordinance.
7. **Lot.** A portion of subdivision, no less than three-quarter (3/4) acre in size, intended as a unit for transfer of ownership or for development or both. (See Article 8).
8. **Major Subdivision.** Any subdivision with six lots or greater, or requiring the dedication of a public or private road.
9. **Minor Subdivision.** Any subdivision with five or fewer lots and not requiring the dedication of a public or private road.
10. **Nonconforming Lot.** A legally created lot previously subdivided and recorded in the office of the county register of deeds prior to the enactment of this ordinance which fails to meet minimum dimensional requirements for the district in which it is located.

11. **Planned Community.** An area with a contiguous specified minimum acreage of two (2) acres, to be developed as a single entity according to a plan of development, the plan for which does not correspond in lot size, bulk or type of dwelling or density with traditional subdivision requirements. It may contain one or more residential cluster or planned unit residential developments, and may incorporate commercial and industrial uses. Adequate provision shall be made for water, sewer, adequate access and open areas. Examples include, but are not limited to row houses, cluster developments, zero lot line developments, apartment courts, hospital campuses, shopping centers with residential components and industrial parks.
12. **Plat.** Includes the terms: map, plan, or replat; a map or plan of a parcel of land, which has been, or is to be subdivided.
13. **Private Driveway.** A non-public road, driveway or right-of-way providing access from a publicly or privately maintained road to five (5) or fewer lots, building sites, or other divisions of land and not intended for public use. A Private Driveway shall not be required to meet the minimum construction requirements of a Public Road, but should be sufficient to provide adequate access to those areas served, including emergency services, and minimum access requirements of lenders.
14. **Private Road, County Standard.** A road constructed in accordance with the provisions of Article 8.
15. **Public Road, State Standard.** A dedicated and accepted public road for vehicular traffic with 50-foot right-of-ways, on which is constructed a paved road that meets or exceeds the specifications of the North Carolina Department of Transportation (NCDOT).
16. **Right-of-Way.** A strip of land designated by the owner or acquired by another authority by which persons may legally pass, and on which may construct a road or other utilities.
17. **Subdivider or Developer.** The owner and any agent of the owner, including purchaser or other professional who subdivides or develops any land deemed to be a subdivision under the terms of this Ordinance.
18. **Subdivision.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets.

However, the following is not included within this definition and is not subject to any regulations enacted pursuant to this ordinance:

- a. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots are not increased and the resultant lots are equal to or exceed the standard of Alleghany County as shown by this Ordinance.
- b. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
- c. The public acquisition by purchase of strips of land for widening or opening streets.
- d. The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of Alleghany County as shown by this Ordinance.
- e. Family Subdivision of real property as defined in Article 5. Such conveyance must meet minimum lot requirements and the resulting lot may be served by a private driveway to avoid the necessity of constructing a Private Road or Public Road defined herein. Subsequent conveyances from Parent to Child(ren) are governed by this Ordinance unless otherwise excluded. The burden of establishing a Family Subdivision shall rest with the Grantor and the instrument of conveyance shall note the Family Subdivision in a manner prescribed by the County Planner.
- f. The division of decedent's property among his or her heirs for the sole purpose of settling an estate, providing that no street right-of-way dedication is involved and that the resultant lots are equal to or exceed the standards of Alleghany County as shown by this Ordinance.
- g. The division of lots in a cemetery and/or graveyard.
- h. Subdivision plats recorded at the Alleghany County Register of Deeds Office prior to the effective date of this Ordinance. However, further subdivision of parcels shown on such recorded plats shall be subject to the terms of this Ordinance.
- i. The combination or recombination of nonconforming lots of record for subdivisions which involve only the combination or recombination of lots which are nonconforming lots of record and further, where the proposed lots as combined or recombined fail to meet the current

dimensional requirements of the zoning district in which the lots are located, the combination or recombination of such lots may be administratively approved by the planning director if such approval can be made without destroying the intent of this ordinance, provided that the following conditions are met:

- (1) The lands involved in the combination or recombination are all included within lots or portions of lots previously subdivided and recorded in the office of the county register of deeds.
  - (2) The total number of lots is not increased.
  - (3) All subdivisions for which administrative approval is given herein shall be depicted on a map or plat thereof which shall meet all the requirements of the subdivision regulations and state law for recording in the county register of deeds. Upon administrative approval being given, such map or plat shall be filed for record in the office of the county register of deeds.
- j. The division of land solely for the purpose of creating lots to be occupied by electrical substations, water towers, community water and wastewater systems, cell towers and similar structures used for public or quasi-public utility purposes.

## **Article 6. REVIEW PROCESS**

**1. Pre-application Conference.** It is recommended that the Subdivider meet with the Alleghany Planning Director in a pre-application conference to informally discuss this ordinance and the subdivision of land in Alleghany County. It is recommended that a sketch plan of the proposed plat be provided to the Planner for preliminary review. Following preliminary review the Subdivider will be responsible for submitting his or her plan to the appropriate agencies, commissions and Boards for review and approval consistent with the terms of this Ordinance.

**2. Board of Commissioners Review and Approval.** Pursuant to NCGS 153A-332, no real property within the jurisdiction of this ordinance shall be subdivided and offered for sale; or a plat recorded; or a building permit issued for a structure to be erected in a subdivision, until all applicable agencies and officials have been given an opportunity to review and make recommendations regarding the proposed subdivision and the Board of Commissioners has approved the subdivision of land. There shall be no conveyance of subdivided real property until the provisions of this Ordinance have been met and the plat has been properly recorded with the Alleghany County Register of Deeds.

**3. Agency Review.** The developer shall make available a preliminary plat to the following agencies for review and recommendation of proposed subdivision prior to submission of the plat to the County Planner.

- a. The District Highway Engineer when the proposed roads are to be dedicated as public or to review the manner in which proposed roads would intersect with the state system.
- b. The County Health Director for the purpose of reviewing proposed water and sewerage systems.
- c. A National Pollution Discharge Elimination System (NPDES) construction general storm water permit shall be received from the North Carolina Division of Water Quality by way of and in coordination with the North Carolina Division of Land Resources.
- d. Department of Environment and Natural Resources, Division of Land Resources for an approved erosion and sediment control plan for land development activities that will disturb one acre of land or more.
- e. Signed Certificates Required. The Alleghany Planner shall make available from time to time up-to-date certificates for use on subdivision plats, including the following certificate formats: Ownership, Certificate of Survey and Accuracy in accordance with GS sec. 47-30, Certificate of Alleghany Health Department, NC District Highway Engineer, Certificate of Approval of subdivision plat by Alleghany Board of Commissioners. The certificates in proper form shall be affixed to and signed by appropriate representatives prior to final approval of the plat.
- f. Private Road Disclosure. Every subdivision plat submitted that reflects the use of private roads shall include the disclaimer language contained in Article 7.

**4. Minor Subdivision.** If the Subdivider seeks to accomplish a Minor Subdivision, the review and approval process shall include the following steps.

- a. The developer or subdivider shall provide the County Planner two (2) copies of the plat meeting the requirements of this ordinance along with all relevant agency review documents. Within twenty-one (21) days of receipt, the County Planner will review the plat to insure it meets the standards of this Ordinance. Written notification of the decision will be mailed at the end of this period. Failure to take action within this time frame shall have the same effect as a recommendation that the plat be approved. If approved, the County Planner will so note and sign one copy of the plat and the subdivider shall record this copy within one year of approval with the Alleghany

County Register of Deeds. Failure to record this plat within this timeframe will cause the approval to be void.

- b. No Minor Subdivision will be allowed within a subdivision that results in a subdivision totaling six (6) or greater lots, building sites, or other divisions of land (including but not limited to previously subdivided and recorded subdivision lots, proposed subdivision lots, and new minor subdivision lots) without meeting the requirements of the Major Subdivision standards as set forth in this Ordinance.

**5. Major Subdivision.** If the Subdivider seeks to accomplish a Major Subdivision, the review and approval process shall include the following steps.

**a. Submission of Preliminary Plat.** (1) Six (6) copies of the preliminary plat along with all relevant agency review documents shall be delivered to the County Planner. (2) The County Planner will provide preliminary plat copies and recommendations to the Board of Commissioners at their regularly scheduled meeting within thirty (30) days of receipt. (3) The Board of Commissioners shall review the preliminary plat and discuss with the applicant any changes required so that the proposed subdivision will comply with this Ordinance. (4) The Board of Commissioners shall take action on the preliminary plat by their next regularly scheduled meeting following their initial review. Failure to take action within this time frame shall have the same effect as a recommendation that the preliminary plat be approved. (5) Written notification of the Board of Commissioners' decision will be sent to the applicant within seven (7) days of their ruling. **Absent Preliminary Plat approval from the Board of Commissioners, there shall be no improvements or site disturbing activities conducted on site of the proposed subdivision.**

**b. Phased Development.** If the developer plans to accomplish the subdivision in phases, a master plan showing the entire proposed subdivision and the phases of the development, proposed type and location of utilities, and proposed development timetable shall be submitted to the Board of Commissioners along with the preliminary plat for approval. Each phase of development shall be proceeded by submission and approval of a preliminary plat as outlined in Article 6, Section 5.a. This provision shall not prohibit additional subdivision of subdivided areas where a master plan was not submitted. However, each phase of development shall be subject to meeting planning and subdivision guidelines in place at the time of application.

**c. Road Construction.** After approval of the preliminary plat by the Board of Commissioners, the applicant may proceed to construct the proposed roads consistent with this ordinance and the approved

preliminary subdivision plat. **Prior to approval of the final plat, the subdivider shall have installed the roads to the specifications required by this Ordinance and those approved in preliminary plat, or guaranteed their installation as provided herein.** The County Planner has the authority to authorize minor changes to the preliminary plat during the construction period. Changes to the preliminary plat shall be reported to Board of Commissioners during the final plat review process.

**d. Guarantee of Road Installations Agreement and Security**

**Required.** If required roads are not to be constructed in a contemplated subdivision prior to final approval, a Guarantee Agreement (Agreement) shall be developed and submitted to the County Planner for review. The contents and requirements of the final Agreement must be approved by the County Attorney and the Board of Commissioners, and shall be signed by the subdivider and filed with the Planning Department prior to the consideration of any guaranteed preliminary plat. In the Agreement the subdivider shall agree to complete proposed roadways not yet installed at the time of guaranteed preliminary plat consideration by the Board of Commissioners. To secure this Agreement, the subdivider shall provide, subject to the approval of the Board of Commissioners, either one (1), or a combination of the following guarantees, not exceeding 1.25 times the entire cost of road improvements as provided herein:

**1. Cashiers Check(s).** The subdivider shall obtain a cashiers' check(s) from a bank or other qualified financial institution authorized to do business in North Carolina. The check(s) shall be payable to Alleghany County and shall be in an amount equal to 1.25 times the entire cost, as estimated by the subdivider and as further outlined below, of installing all required road improvements.

**2. Irrevocable Letter of Credit.** The subdivider shall obtain an irrevocable letter of credit from a bank or other qualified financial institution authorized to do business in North Carolina. The amount of authorized credit shall be equal to 1.25 times the cost, as estimated by the subdivider and as further outlined below, of installing all required roadways. The Board of Commissioners and the County Attorney shall approve the wording and language of the irrevocable letter of credit. The duration of the letter of credit shall be until such time as the Board of Commissioners accepts the roadways.

**3. Performance Bond.** The subdivider shall obtain a performance bond from a qualified insurer or bonding company authorized to do



business in the State of North Carolina. The amount of authorized bond shall be equal to 1.25 times the cost, as estimated by the subdivider and as further outlined below, of installing all required road improvements. The County Attorney shall approve the wording and language of the performance bond. The duration of the performance bond shall be until such time as the Board of Commissioners accepts the roadways.

The Guarantee Agreement may include a provision permitting the subdivision application to be withdrawn at any time prior to completion of roadways, upon written application by developer or subdivider. Withdrawal of the subdivision application shall be permitted only if the Developer has NOT conveyed parcels pursuant to the preliminary, guaranteed plat. Upon withdrawal, source of guarantee shall be refunded.

**e. Default.** Upon default, meaning failure on the part of the subdivider to complete the required installation of roadways in a timely manner as spelled out in the Guarantee Agreement and/or by this Ordinance, then the financial institution that issued the cashier's check and/or the irrevocable letter of credit and/or performance bond shall, if requested by the Board of Commissioners pay all or any portion of the amount needed to complete the installation of roadways based on an engineering estimate. Upon payment, the Board of Commissioners in its discretion may expend such portion of said funds, as it deems necessary to complete all or any portion of the required roadways. The County shall return to the subdivider any funds not spent in completing the roads after the County has reimbursed itself for costs of personnel and contract services.

**f. Release of Guarantee Security.** The Board of Commissioners of Alleghany County may release a portion of any security posted as the required roads are completed and recommended for approval by the County Planner. Within forty- five (45) days after receiving the Planner's recommendation, the Board of Commissioners of Alleghany County shall approve or disapprove of the completed roadways. If the Board of Commissioners approves the newly constructed roadways, then it shall immediately release any security posted on that portion.

**6. Agreement and Security Required.** The developer shall provide a written estimate from a North Carolina Licensed Engineer, the NCDOT, or other qualified Person for the cost of construction of the proposed subdivision roadways. The developer shall be responsible for submitting a satisfactory Guarantee Agreement that proposes to reimburse the County for reasonable administrative, supervisory, contract and legal fees incurred as a result of the developer electing to utilize the guarantee provision of this Ordinance. In no event shall these costs exceed \$5,000. This guarantee is intended to cover construction, as well as, any administrative or

legal fees incurred by Alleghany County in the event that the developer fails to comply with the Guarantee Agreement permitted by this Ordinance.

**7. Timing and Extension.** The guaranteed improvements shall be accomplished within one year of Board of Commissioners approval of the preliminary plat. The Board of Commissioners may, upon proof of difficulty, grant an extension of the completion date set forth in its approval, for a maximum period of six (6) additional months.

**8. Approval Procedure, Guarantee.** If approved as a guaranteed preliminary plat, the Chairman of the Board of Commissioners will so note on one copy of the preliminary plat. The signed copy will be returned to the developer. The developer shall record the approved guaranteed preliminary plat with the Alleghany County Register of Deeds prior to any conveyance of real property.

**9. Refund.** All unused guarantee funds will be returned to the developer or financial institution after approval of the Major Subdivision Final Plat.

### **Article 7. PLAT REQUIREMENTS**

A plat submitted for review or recordation shall be prepared in accordance with NCGS 47-30 and 39-32.1 – 32.4. Every subdivision plat covered under this Ordinance that has private roads shall include the following statement: **A privately maintained road serves this parcel of land. As a private road, and not a public road, the responsibility for maintenance of this road is upon the property owners. School bus service is not provided on private roads by the Alleghany County School system. State road maintenance and snow removal are not provided on private roads by NCDOT. Road conditions may adversely affect the timely delivery of emergency services.**

### **Article 8. DEVELOPMENT STANDARDS**

**1. Public Road, State Standard.** Roads constructed in a subdivision that are designated as public, are to conform to the minimum construction standards of the North Carolina Department of Transportation as required under NCGS 136-102.6, with the exception that all road right-of-ways shall be a minimum of fifty (50) feet. This section does not apply to private driveways as defined in Article 5, Number 12.

**2. Private Road, County Standard.** Roads constructed in a subdivision that are designated as private, are to be constructed to the minimum standards of the North Carolina Department of Transportation as required under NCGS 136-102.6, with the following exceptions:

- a. All road right-of-ways shall be a minimum of fifty (50) feet.

b. Pavement surface is not required. Should the developer select to pave the roads, the base must conform to the minimum standards of the North Carolina Department of Transportation as required under NCGS 136-102.6.

c. Minimum road surface for unpaved roads is four (4) inches of crushed and packed stone or North Carolina Department of Transportation ABC compacted stone.

This section does not apply to private driveways as defined in Article 5, Number 12.

**3. Dedication of Roads.** In accordance with NCGS section 136-12.6, streets designated as public shall be conclusively presumed as an offer of dedication to the public. An approved permit is required for connection of any subdivision to any State System highway. Nothing herein shall obligate the State of North Carolina or the County of Alleghany to accept, maintain or reconstruct any roadway, whatsoever.

**4. Lot Size.** In order to provide adequate space for future septic and well repair areas, minimum lot size shall be three-fourth ( $3/4$ ) acre in size. Lots developed in areas designated by the State of North Carolina, as High Quality Waters (HQW) or Outstanding Resource Waters (ORW) shall be developed in accordance with the State of North Carolina's low-density option, requiring a minimum one (1) acre lot. Lots developed in areas designated by the State of North Carolina as a public water supply watershed, shall be developed with a minimum lot size in accordance with the Alleghany County Water Supply Watershed Management and Protection Ordinance, but in no case shall a lot be less than three quarter ( $3/4$ ) acres.

**5. Planned Communities.** Planned communities that have community water and sanitary sewer systems designed by a North Carolina Licensed Engineer or Registered Soil Scientist, and approved by the County Health Director are exempt from minimum lot size requirements. Individual units within a planned community that are served by a community water system but not a community sanitary sewer system shall have a minimum lot size of one-half ( $1/2$ ) acre. This exemption is not valid in areas designated as Water Supply Watershed Management areas.

**6. Private Driveway.** Private Driveways will not be utilized to access more than one (1) lot building site, or other divisions of land within any subdivision or combination of subdivisions totaling six (6) or greater lots, building sites, or other divisions of land (including but not limited to previously subdivided and recorded subdivision lots, proposed subdivision lots, and new minor subdivision lots). Private driveways may provide access from a publicly or privately maintained roadway and serve up to five lots in a Minor Subdivision. When a private

driveway serves more than one lot, a driveway maintenance agreement is required. If future development is possible, a fifty (50) – foot wide easement is required. It is recommended that private driveways be constructed to such minimum standards so as to adequately meet access requirements of lenders and emergency services.

### **Article 9. VARIANCES**

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of this Ordinance would cause an unnecessary hardship, the Allegheny County Board of Commissioners may authorize a variance, if such variance can be made without destroying the intent of this ordinance. Any variance thus authorized is required to be entered into the minutes of the Board of Commissioners with the reasoning set forth on why the departure was justified. Request for variances must be made in writing.

### **Article 10. FINAL PLAT, MAJOR SUBDIVISION**

After completion of improvements, the developer shall submit two (2) copies of the final major subdivision plat to the County Planner. Within twenty-one (21) days of receipt, the County Planner will verify that the final plat is consistent with the preliminary plat, and that the standards of the ordinance have been met. After the County Planner's review, one copy of the final plat along with the written recommendation of the County Planner shall be presented to the Board of Commissioners during their next regularly scheduled meeting for their consideration. If so approved, the Chairman of the Board of Commissioners will so note and sign the plat. The approved plat will be returned to the developer within seven (7) days so it can be properly recorded by the developer with the Allegheny County Register of Deeds. The approved final plat must be recorded within one year of approval or the approval is void.

### **Article 11. PRIVATE ROAD DISCLOSURE**

After the date of this ordinance, any conveyance of land that is accessed by or situated on a private road shall require the purchaser to be provided from the seller of land that is situated on a private road, a written disclosure statement that includes the following phrase: **A privately maintained road serves this parcel of land. As a private road, and not a public road, the responsibility for maintenance of this road is upon the property owners. School bus service is not provided on private roads by the Allegheny County School system. State road maintenance and snow removal are not provided on private roads by the NCDOT. Road conditions may adversely affect the timely delivery of emergency services.** In addition, the Private Road Disclosure shall indicate the means of access to a public road.

### **Article 12. PENALTIES**

**1. Criminal.** Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and shall be subject to punishment as provided by NCGS 14.4. This Ordinance may be enforced by equitable remedies provided by NCGS 153A-123, including, but not limited to injunction and abatement. Every day there is a violation of this ordinance shall be considered a unique and separate offense.

**2. Civil.** In lieu of, or in addition to the criminal penalties, the Alleghany County Board of Commissioners may impose civil penalties of up to five hundred dollars (\$500) a day for each and every day there is a violation of this ordinance. No penalty shall be assessed prior to notification. If the violator does not pay such penalty within thirty (30) days, Alleghany County may recover the penalty in a civil action in the nature of a debt. The violator may contest said penalty in the court of appropriate jurisdiction.

### **Article 13. INJUNCTIVE RELIEF**

Alleghany County may bring an action for injunctive relief and order abatement for any illegal subdivision, transfer, conveyance or sale of land therein, and the Court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this Land Subdivision Ordinance under NCGS 153A-123(e).

### **Article 14. SEVERABILITY**

Should any section or provision of the Alleghany County Land Subdivision Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or a part thereof other than the part so declared to be unconstitutional or invalid.

### **Article 15. CONFLICT WITH OTHER LAWS**

Whenever the regulations of the Land Subdivision Ordinance are in conflict with the requirements of a Federal or State statute, or other County ordinance, the more restrictive standard shall govern.

### **Article 16. SUPERSEDES PRIOR SUBDIVISION ORDINANCE**

As of the adopted date of this Ordinance, this Ordinance shall supersede all prior Land Subdivision Ordinances.

Adopted this the 3<sup>rd</sup> day of November, 2008.

ATTEST:

ALLEGHANY COUNTY  
BOARD OF COMMISSIONERS:

(sig: Karen Evans)  
Karen Evans  
Clerk to the Board

(sig: Ken Richrdson)  
Ken Richardson, Chair

(sig: J. Warren Taylor)  
Warren Taylor, Vice-Chair

(County Seal)

(sig: Randy Miller)  
Randy Miller, Member

(sig: Doug Murphy)  
Doug Murphy, Member

(sig: Milly B. Richardson)  
Milly B. Richardson, Member