

TRI-COUNTY AIRPORT HEIGHT RESTRICTION ORDINANCE



Bertie County
North Carolina

Bertie County, North Carolina
Tri-County Airport Height Restriction Ordinance

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Statutory reference:

NC General Statutes, Model Airport Zoning Act, § 63-30 et seq.
NC General Statutes, Specific Powers of Municipalities Operating Airports, §63-53
NC General Statutes, Chapter § 153A-340 et seq.

PURPOSE AND INTENT

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH AND OTHERWISE REGULATING THE USE OF PROPERTY IN THE VICINITY OF THE TRICOUNTY AIRPORT, BERTIE COUNTY, NORTH CAROLINA.

APPLICABILITY

This ordinance is adopted pursuant to the authority conferred under Chapter 63 of the North Carolina General Statutes, Article 4. Accordingly, it is declared:

1. that the creation or establishment of an obstruction has the potential of being a public nuisance and may impact the utility of the Tri-County Airport and the public investment therein;
2. that it is necessary in the interest of the public health, public safety and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented, and;
3. that the prevention of these obstructions should be accomplished, to the extent legally permissible, by the exercise of the authority invested in Bertie County.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or the marking and lighting of obstructions are in the public interest for which a political subdivision may raise and expend public funds and acquire land or interests in land.

SECTION § 1.01 SHORT TITLE

IT IS HEREBY ORDAINED BY the Bertie County Commission, as follows:

This Ordinance shall be known and may be cited as the "Tri-County Airport Height Restriction Ordinance." This attached map shall be known and may be sited as the "Tri-County Airport Height Restriction Ordinance Map".

SECTION § 1.02 DEFINITIONS

For the purpose of this Ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR: - The individual responsible for performing the administrative functions of this ordinance. The administrator shall be the Bertie County Planning Director, unless otherwise designated or represented.

AIRPORT: The Tri-County Airport, North Carolina (ASJ)

AIRPORT AUTHORITY: - An appointed group of members representing the interests of the Tri-County Airport.

AIRPORT ELEVATION: - The highest point of an airport's usable landing area measured in feet (tenths) from mean sea level.

AIRPORT HAZARD: Any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the airport or is otherwise hazardous to such landing or taking-off of aircraft.

AIRPORT REFERENCE POINT (ARP): The point established as the approximate geographic center of the airport landing area and so designated.

APPROACH SURFACE: A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 1.03 of this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES: These zones are set forth in Section 1.03 of this Ordinance.

CONICAL SURFACE: A surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty feet horizontally for each one foot vertically (20:1) for a horizontal distance of 4,000 feet.

COUNTY: shall mean the governing body of the Commissioners of Bertie County, North Carolina.

COUNTY ZONING BOARD OF ADJUSTMENT: The Bertie County Board of Commissioners shall serve as the Board of Adjustment.

EXCEPTED HEIGHT LIMITATIONS: - Means that nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree or other vegetation to a height up to 50 feet above the surface of the land.

HAZARD TO AIR NAVIGATION: - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace. A determination by the Federal Aviation Administration as to a hazard to air navigation is per FAA Form 7460-1.

HEIGHT: For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the Tri-County Airport Height Restriction Ordinance Map, the datum shall be mean sea level elevation unless otherwise specified.

LARGER THAN UTILITY RUNWAY: A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

LAND USE, COMPATIBLE: The use of land adjacent to the Airport that does not endanger the health, safety, or welfare of the owners occupants, or users of the land because of levels of noise or vibrations or because of the risk of personal injury or property damage created by the operation of the Airport, including the take-off and landing of aircraft.

NONCONFORMING USE: Any structure, tree or use of land which does not conform to a regulation prescribed in this Ordinance or any amendment thereto, as of the effective date of such regulation.

NON-PRECISION INSTRUMENT RUNWAY: - A runway end having an instrument procedure utilizing air navigation facilities with horizontal approach guidance or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

OBSTRUCTION: - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height.

PERSON: An individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

PRECISION INSTRUMENT RUNWAY: A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned.

PRIMARY SURFACE: - A surface longitudinally centered on a runway extending 200 feet beyond each end of a hard surfaced runway. The width of the primary surface is set forth as specified by the width of the runway inner approach surface. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

RUNWAY: - A defined area on an airport prepared for landing and take-off of aircraft along its length. The runway end is the physical end of the hard-surfaced asphalt or turf runway threshold, having a defined coordinate and elevation as noted on the Tri- County Airport Height Restriction Ordinance Map.

RUNWAY ENDS: - Refers to the planned usable physical end of the hard-surfaced asphalt runway, having a defined coordinate and elevation as noted on the Tri- County Height Restriction Ordinance Map.

STRUCTURE: - An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

TREE: Any object of natural growth.

State Law References: Definitions relating to municipal airports, G.S. §63-1.

SECTION § 1.03: AIRPORT HEIGHT ZONES AND HEIGHT LIMITATIONS

In order to carry out the provisions of this Ordinance, there are created and established certain zones which include all of the land lying within the instrument approach zones, non-instrument approach zones, transition zones, horizontal zones, and conical zone. Such areas and zones are shown on the Tri-County Airport Height Restriction Ordinance Map, dated May, 2004, which is incorporated by reference and made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are established and defined as follows:

- A. Primary Surface Zone - A rectangular surface longitudinally centered on a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

Runway 1-19: 1,000 feet wide and extends 200 feet beyond each runway end.

- B. Approach Surface Zones - A trapezoidal inclined plane symmetrically centered along the extended runway centerline, longitudinally extending outward and upward from the end of the primary surface. The perimeter of the approach surface coincides with the perimeter of the approach zone, extending per a boundary and slope defined below, and as shown on the Tri-County Airport Height Restriction Ordinance Map.

<u>Runway End</u>	<u>Inner Width/Length/Outer Width (Slope)</u>
Runway 1 approach surface zone*:	1,000' x 50,000' x 16,000' (0'-10,000' @ 50:1) (10,000' - 50,000' @ 40:1)
Runway 19 approach surface zone**:	1,000' x 50,000' x 16,000' (0'-10,000' @ 50:1) (10,000' - 50,000' @ 40:1)

* *Portion of zone extends into Bertie County.*

** *Portion of zone extends into Northampton County.*

- C. Horizontal Surface Zone* - A plane, elliptical in shape, with a height one hundred and fifty (150) feet above the established airport elevation and having a specified radius from the center of the primary surface for each runway end. The perimeter of the horizontal surface coincides with the perimeter of the horizontal zone as indicated on the Tri-County Airport Height Restriction Ordinance Map.

Runway 1-19 horizontal radius: 10,000'

**Portion of zone extends into Northampton County.*

- D. Conical Surface Zone* - A surface, elliptical in shape, extending radially outward and upward from the periphery of the horizontal surface zone at a slope of 20: 1 for a horizontal distance of 4,000 feet and vertical elevation of 200 feet above the horizontal surface. The conical surface zone is shown on the Tri-County Airport Height Restriction Ordinance Map.

**Portion of zone extends into Northampton County.*

- E. Transitional Surface Zones - Inclined planes with a slope of 7:1 measured upward and outward in a vertical plane at right angles to the centerline of the runway and approach surfaces. The transitional surface zones, located on either side of the runway and symmetrically parallel to and level with the runway centerline, extend upward and outward from the primary surface and approach surface elevation to a point intersecting the horizontal or conical surface (150 feet above the airport elevation). Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping 7:1 measured upward and outward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline. The transitional surface zones are shown on the Tri-County Airport Height Restriction Ordinance Map.

Nothing in this Ordinance except as defined by Section 1.03 shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height of 50 feet above the surface of the land.

SECTION § 1.04 USE RESTRICTIONS

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, in such manner as to create electrical interference with navigational signals or radio communication between the Airport and aircraft, make it difficult for flyers to distinguish between Airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the Airport, create bird strike hazards or otherwise endanger the landing, taking-off or maneuvering of aircraft intending to use the Tri-County Airport.

SECTION § 1.05 NONCONFORMING USES - REGULATIONS NOT RETROACTIVE

The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted. Except as specifically provided in this section, it is not permissible for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. Physical alteration of structures or the placement of new structures on open land is unlawful if they result in:

- a. An increase in the total amount of space devoted to a nonconforming use; or
- b. Greater nonconformity with respect to height limitation.

Nonconforming Uses Abandoned or Destroyed - Whenever the Administrator determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

Marking and Lighting - Notwithstanding the preceding provision of this Ordinance, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Administrator to indicate to the operators of aircraft in the vicinity of the Airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Airport Authority

Notwithstanding any preceding provision of this Ordinance, if, by a determination of the NC Division of Aviation or Federal Aviation Administration, the encroachment of any structure or tree into regulated airspace is such that providing markers and lights is insufficient to protect the life and property of the flying public, the Airport Authority shall institute steps to have such structures or trees mitigated at the expense of the Airport Authority. If unsuccessful in obtaining the cooperation of the parties involved, Bertie County shall institute the appropriate legal action, as reasonably necessary, to insure the safety of the flying public in airspace regulated by this Ordinance.

SECTION § 1.06 PERMITS

N.C.G.S. §63-32 provides for the issuance of permits with respect to allowing the construction of new structures and other uses, and to replace existing structures and other uses, or making substantial changes therein or substantial repairs thereof. Permit applications shall be made to the Administrator upon a form published for that purpose.

Permit Application -Each application shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations prescribed in this Ordinance, including any additional information requested by the Administrator as necessary to determine compliance with this Ordinance and the laws of the State of North Carolina and any applicable federal rules or regulations. A copy of the permit application shall be furnished to the County Building Inspector and Airport Authority, or to other designated agents, for advice as to the aeronautical effects of the said permit application.

Permit Review - Applications required by this Ordinance shall be promptly considered and granted or denied. Application for action by the Zoning Board of Adjustment shall be forthwith transmitted by the Administrator, or a designated representative

1. **Future Uses** - Except as specifically provided in (a) and (b) hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

No permit for a use inconsistent with the provisions of this Ordinance, as depicted on the Tri-County Airport Height Restriction Ordinance Map, shall be granted unless a variance has been approved in accordance with Section 1.07.

- a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
- b. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limits prescribed for such transition zones.

The preceding paragraphs (a) and (b) corresponds with permit areas (shaded yellow) identified on the Tri-County Airport Height Restriction Ordinance Map. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section 1.03 and Section 1.04.

2. Existing Uses - No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

SECTION § 1.07 VARIANCES

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Administrator for a variance from such regulations. The application for variance shall be accompanied by a determination from the NC Division of Aviation and/or Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance.

Obstruction Marking and Lighting - Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Zoning Board of Adjustment, this condition may be modified to require the owner to permit the Airport Authority, at its own expense, to install, operate, and maintain the necessary markings and lights.

SECTION § 1.08 ENFORCEMENT

It shall be the duty of the Administrator to administer and enforce the regulations prescribed herein. Applications for permits required by this Ordinance shall be promptly considered and granted or denied. Applications for variances may require up to forty- five (45) days. The ordinance may be enforced by any one or more of the remedies authorized by G.S.153A-123.

SECTION § 1.09 ZONING BOARD OF ADJUSTMENT

The Zoning Board of Adjustment shall have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the Administrator in the enforcement of this Ordinance; (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Zoning Board of Adjustment under such regulations may be required to pass, and; (3) to hear and decide specific variances.

SECTION § 1.10 APPEALS

It shall be the duty of the Zoning Board of Adjustment to hear and decide appeals and review any orders, requirements, decisions or determinations made by the enforcement officer responsible for administration or enforcement of this Ordinance.

SECTION § 1.11 JUDICIAL REVIEW

Any person aggrieved or any taxpayer affected by any decision of the board of adjustment, or any office, department, board or bureau of the County, under this Ordinance, may petition the superior court for a review of such decision.

State law references: Judicial review, G.S. § 63-34.

SECTION § 1.12 PENALTIES

In accordance with North Carolina General Statutes § 63-35; each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a Class 3 misdemeanor punishable by a fine of not more than one hundred dollars (\$100) or imprisonment for not more than thirty (30) days or both; and each day a violation continues to exist shall constitute a separate offense.

In lieu of this criminal penalty, the responsible person may be subject to a civil penalty pursuant to N.C.G.S. 1530A-123(c) in the amount of \$1,000 per day for each day the violation continues, recoverable by the County Zoning Board of Adjustment through its Administrator in a civil action in the nature of a debt. In addition to all other remedies available either at law or in equity, the County Zoning Board of Adjustment through its Administrator may institute an action in the General Court of Justice seeking enforcement of the ordinance by injunction or order of abatement, or both, pursuant to N.C.G.S. 153A-123(d) and (e).

State law references: Enforcement and remedies, G.S. §63-35.

SECTION § 1.13 CONFLICTING REGULATIONS

Where this Ordinance imposes a greater or more stringent restriction upon the use of land than is imposed or required by any other ordinance or regulation of the County, the provisions of this Ordinance shall govern. Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION § 1.14 SEVERABILITY

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION §1.15 EFFECTIVE DATE

WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect immediately after its passing, publication, and posting, as required by law. This Ordinance shall be effective upon adoption.

Duly adopted this 7th day of *January, 2019*.

BERTIE COUNTY



Chairman, Bertie County Board of Commissioners:

ATTEST:



County Clerk to the Board of Commissioners

HIGHWAY RECONSTRUCTION PROJECT MAP

THIS MAP IS A PRELIMINARY DESIGN OF THE PROJECT AND IS NOT TO BE USED FOR CONSTRUCTION. THE DESIGN IS SUBJECT TO CHANGE WITHOUT NOTICE. THE DESIGNER ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY RESULTING FROM THE USE OF THIS MAP.

LEGEND

- EXISTING ROADWAY
- PROPOSED ROADWAY
- PROPOSED SIDEWALK
- PROPOSED BIKEWAY
- PROPOSED LANDSCAPING
- PROPOSED LIGHTING
- PROPOSED UTILITIES
- PROPOSED SIGNAGE
- PROPOSED FURNITURE
- PROPOSED ARTWORK
- PROPOSED PUBLIC ART
- PROPOSED PUBLIC SEATING
- PROPOSED PUBLIC UTILITIES
- PROPOSED PUBLIC SERVICES
- PROPOSED PUBLIC SAFETY
- PROPOSED PUBLIC AMENITIES
- PROPOSED PUBLIC FACILITIES
- PROPOSED PUBLIC OPEN SPACES
- PROPOSED PUBLIC GREEN SPACES
- PROPOSED PUBLIC WATER SPACES
- PROPOSED PUBLIC AIR SPACES
- PROPOSED PUBLIC LAND SPACES
- PROPOSED PUBLIC WATER SPACES
- PROPOSED PUBLIC AIR SPACES
- PROPOSED PUBLIC LAND SPACES

PROJECT INFORMATION

PROJECT NAME: [REDACTED]

PROJECT NUMBER: [REDACTED]

PROJECT LOCATION: [REDACTED]

PROJECT DATE: [REDACTED]

PROJECT STATUS: [REDACTED]

