

RESTRICTIONS & ZONING
Bear Paw Property Owners – Sensible Restrictions For Your Protection

The following restrictions are taken from Lake Hiwassee Development Co., Inc. (formerly Hiwassee Resort Village, Inc.). This instrument was executed on December 19, 1959.

Each and every conveyance of any lots or tracts out of said lands shall be subject to conditions, reservations, covenants, and agreements, which will run with the lands, as follows:

- All lots shall be residential lots. No structure shall be permitted other than one detached, single family dwelling, not to exceed two stories in height, and attached garage or carport and usual domestic servants' quarters, and one attached or detached bath house to be used in connection with any swimming pool erected on said lot. However, two single family dwellings may be allowed on a lot greater than one acre, and three single family dwellings on a lot greater than two acres.
- No residence shall be used as a multiple family dwelling.
- No residence shall be located nearer any side lot line than 15 feet.
- No trade or noxious or offensive activity shall be carried on, nor shall anything be done which may be an annoyance or nuisance to the neighborhood.
- No part of any lot shall be used for residential purposes until a dwelling house shall have been erected and fully completed.
- No trailer, basement, tent, shack, structure, barn, or other outbuildings shall be erected and used as a temporary or permanent residence. No structure of a temporary character shall be erected.
- No dwelling shall be erected of less enclosed ground floor living area of the main structure, exclusive of open porches, carports, or garages, than 600 square feet. In split-level houses the main area may include any area known as the living area that is full height on three sides.
- No one lot shall be re-subdivided, except that two or more lots may be combined as one lot. However, lots containing more than one acre may be re-subdivided into two lots; and lots containing more than two acres may be re-subdivided into three lots.
- Before any construction begins, plans and specifications shall be submitted for approval to a committee appointed by the Hiwassee Resort Village, Inc., and written approval must be secured.
- No horses, ponies, burros, or other like animals, shall be allowed; and none of such animals shall be allowed to roam or run at large on the streets or alleys bounding such premises.
- No sheep, cattle, goats, mules, swine, fowl, or rabbits shall be kept or allowed to remain on any lot. None shall be allowed to roam the streets or alleys bounding such premises.

- Before a dwelling is occupied, a septic tank or sewage disposal must be constructed in accordance with the requirements of the North Carolina State Board of Health & shall be installed.
- Effluent from such septic tank or sewage disposal shall not be permitted to discharge into a stream, storm sewer, open ditch or drain unless it has first been passed through an absorption field.
- Any structure commenced upon any lot shall be completed in 12 months of its initiation or it shall be demolished completely.
- All lavatories, and/or toilets shall be built indoors and connected to the outside septic tank or cesspool until such time as they can be connected to a sewer system, if ever a sewer system is maintained.
- No lot shall be used as a dumping ground. All waste shall be kept in sanitary containers and all incinerators shall be kept in a clean and sanitary condition.
- Zoning Regulations:

In addition to the above, a Zoning Ordinance was adopted by the Bear Paw Service District in 1996. Copies of the Ordinance are available from the Office Administrator's office at 60 Village Drive, Murphy, NC 28906 or (828)644-0808 and we have included a copy here at the end of this package.



THE ZONING ORDINANCE of the BEAR PAW SERVICE DISTRICT

Article 100: Authority and General Regulations

Section 101 Authority and Enactment Clause

In Senate Bill 1448, Chapter 1049 of the Session Laws, ratified 27 July 1990 by the 1989 Session of the General Assembly of North Carolina, the Legislature of the State of North Carolina adopted an act which authorized and empowered the Cherokee County North Carolina Board of Commissioners to create the Bear Paw Service District.

Senate Bill 1448 set forth the powers of the Bear Paw Service District as well as other terms and conditions pursuant to which the Bear Paw Service District is authorized to operate.

By Resolution unanimously adopted on 7 January 1991 by the Cherokee County, North Carolina Board of County Commissioners, the Bear Paw Service District was created.

Said Resolution of the Cherokee County Board of Commissioners further provided that the Board of Directors of the Bear Paw Service District were authorized and empowered to exercise all the powers, privileges and authority provided in and by Senate Bill 1448, Chapter 1049 of the Session Laws.

In Section 13 (c) of Senate Bill 1448, Chapter 1049 of the Session Laws and in Part 3 of Chapter 153A of the North Carolina General Statutes which was incorporated by reference by the Legislature into Section 13 (c) of Senate Bill 1448, Chapter 1049 of the Session Laws, the Legislature of the State of North Carolina delegated the responsibility of adopting regulations to promote the public health, safety and general welfare of its citizenry to the Bear Paw Service District, and in said laws, the Legislature authorized the Bear Paw Service District to establish zoning units and adopt and administer zoning regulations for the purpose of promoting and protecting the public health, safety and general welfare of the State.

Pursuant to the authority granted in Senate Bill 1448, Chapter 1049 of the Session Laws, the Board of Directors of the Bear Paw Service District does hereby ordain and enact into law the following sections as the Zoning Ordinance of the Bear Paw Service District.

Section 102 Jurisdiction

The provisions of this Ordinance shall apply within the jurisdictional limits of the Bear Paw Service District (hereinafter referred to as the "Service District") as described and set forth on Exhibit "A" attached to the Resolution of the Cherokee County, North Carolina Board of Commissioners adopted 7 January, 1991. Said jurisdictional limits are also defined and established on the maps entitled, "Zoning Maps" (Numbered sequentially as Zoning Maps 1, 2 and 3). The said Zoning Maps and all explanatory matter thereon accompany and are hereby made a part of this Ordinance, said maps being hereby incorporated by reference as fully as if set forth herein verbatim. Said Zoning Maps, together with a copy of this Ordinance, shall be permanently kept on file in the office of the Service District.

There is hereby specifically excepted both from the jurisdiction of these regulations and this Zoning Ordinance and from the property description of the jurisdictional limits of the Service District which is set forth and contained in said Exhibit "A" to said Resolution of the Cherokee County Board of Commissioners all that certain property and lots known as the Hiwassee Lakefront Property, which Hiwassee Lakefront Property is more specifically described in the following deeds of conveyance recorded in the Cherokee County Register of Deeds:

Book 393, at Page 5, also known as Lots 8 and 9, Block 8, Section 3;
Book 419, at Page 55, also known as Lots 1 and 2, Block 2, Section 4;
Book 414, at Page 38, also known as Lot 3, Block 2, Section 4;

Book 425, at Page 150, also known as Lot 4, Block 2, Section 4;
Book 497, at Page 154, also known as Lot 5, Block 2, Section 4;
Book 457, at Page 152, also known as Lot 6, Block 2, Section 4;
Book 516, at Page 6, also known as Lot 7, Block 2, Section 4;
Book 508, at Page 104, also known as Lot 3, Block 3, Section 4;
Book 506, at Page 144, also known as Lot 4, Block 3, Section 4;
Book 472, at Page 1, also known as Lot 5, Block 3, Section 4;
Book 568, at Page 166, also known as Lot 17, Block 1, Section 1;
Book 408, at Page 47, also known as Lot 7, Block 10, Section 1;
Book 408, at Page 47, also known as Lot 8, Block 10, Section 1;
Book 378, at Page 237, also known as Lot 11, Block 4, Section 2;
Book 393, at Page 5, also known as Lot 25, Block 1, Section 1;
Book 487, at Page 31, also known as Lot 1, Block 4, Section 2;
Book 528, at Page 142, also known as Lot 1, Block 2, Section 2;
Book 596, at Page 84, also known as Lot 1, Block 3, Section 6;
Book 585, at Page 165, also known as Lot 8, Block 1, Section 2;
Book 585, at Page 165, also known as Lot 9, Block 1, Section 2;
Book 572, at Page 108, also known as Lot 9, Block 1, Section 1;
Book 454, at Page 87, also known as Lot 19, Block 1, Section 1;
Book 454, at Page 88, also known as Lot 20, Block 1, Section 1;
Book 494, at Page 77, also known as Lot 3, Block 2, Section 2;
Book 319, at Page 107, also known as Lot 9, Block 3, Section 2;
Book 259, at Page 243, also known as Lot 3, Block 3, Section 3;
Book 259, at Page 243, also known as Lot 1, Block 4, Section 2;
Book 258, at Page 76, also known as Lot 8, Block 2, Section 6.

Section 103 Exceptions to Applicability

A. To the extent that any restrictive covenant which may apply to any real property located within the jurisdictional limits of the Service District does not conflict with this Zoning Ordinance, it is the intent of the Service District that this Zoning Ordinance does not repeal, modify, supplant or amend any such existing restrictions or restrictive covenants previously created which may apply to any real property located within the Service District. Specifically, it is the intent hereunder that no action or suit instituted for the enforcement of the Restrictive Covenants imposed by the Lake Hiwassee Development Co., Inc. on the lots formerly known as the Lake Hiwassee Estates Subdivision which are also located within the jurisdictional limits of the Service District shall be affected in any manner by this Zoning Ordinance. However, to the extent any such restrictive covenant conflicts with this Zoning Ordinance, then the more stringent of the two standards shall apply.

B. Nothing contained herein shall repeal, modify or amend any Federal law or regulation, State law or regulation, or any County Ordinance or regulation pertaining thereto.

However, where any such law or regulation imposes a higher or greater standard than those contained in this Zoning Ordinance then the more stringent standard shall apply.

Provided further, the adoption of this Zoning Ordinance shall and does amend any and all resolutions and acts of the Service District Board of Directors which remain in effect as of the time of the adoption of this Zoning Ordinance and which may, in any manner, be construed to otherwise impair or reduce the effectiveness of this Zoning Ordinance or to conflict with the terms and provisions of this Zoning Ordinance.

C. It is not intended that these regulations set forth in this Zoning Ordinance interfere with any private easement, private covenants or other private agreements between third parties which are in effect as of the time of the final adoption of this Zoning Ordinance.

D. These regulations shall not prevent the construction of any structure for which a building permit has been secured prior to the time of the final adoption of this Zoning Ordinance or any amendment thereto so long as the building permit has not been revoked or allowed to expire. However, once constructed, any subsequent additions or subsequent improvements erected will be subject to any and all regulations set forth in this Zoning Ordinance.

Section 104 Non-conforming Lots, Uses, Buildings, Premises

A. Non-conforming Lots. Any single Lot that does not meet the minimum density requirements described in section 204 may nevertheless be used as a building site provided that: (1) the lot was in existence at the time of the final adoption of this Zoning Ordinance, or, alternatively, (2) the lot complied with Ordinance in effect at the time it was recorded, as evidenced by a recorded plat or as described in the conveyance recorded in the Office of the Cherokee County Register of Deeds.

B. Non-conforming Uses. The lawful use of any building or premises at the time of the final adoption of this Zoning Ordinance may be continued, even though the use does not conform with the provisions of this Zoning Ordinance. However, the non-conforming use shall not be enlarged, changed to another non-conforming use or reestablished after its discontinuance for a period of 12 consecutive months.

C. Non-Conforming Buildings and Premises. Buildings and premises which existed at the time of the final adoption of this Zoning Ordinance shall be deemed in compliance herewith, except in the following cases:

1. Additions. If an addition is made to any existing building or premises, such addition shall comply with this Zoning Ordinance.

2. Alterations/repairs. If alterations or repairs costing in excess of 50% of the physical value of an existing building or structure are made to that building or structure within any 12 month period, such building or structure and the premises on which it is located shall be made to conform to this Zoning Ordinance.

3. Change of use. If the use of a building or structure changes so that the requirements for the new use are in any way more stringent than the requirements for the previous use of the building or structure, then such building or structure and the premises on which it is located shall be made to conform to this Zoning Ordinance.

4. Discontinuance of use. If the non-conforming use of any building or structure or the premises upon which located has been discontinued for a period of 12 consecutive months, then the use of that building, structure and/or premises upon which the said building or structure is located shall not be reestablished or resumed until said building or structure and the premises upon which it is located is made to conform to this Zoning Ordinance.

Section 105 Criminal Penalties

Any person violating any provisions of this Zoning Ordinance shall be guilty of a Class 3 misdemeanor; the maximum fine, which may be imposed for any violation of this Zoning Ordinance, shall not exceed \$200.00. Each day any such violation continues shall constitute a separate offense.

Section 106 Remedies

If any building, structure or facility is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this Zoning Ordinance or if any building, structure or facility or land is used in violation of this Zoning Ordinance, then the Service District may institute any appropriate actions or proceedings available in law or in equity: (1) to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; and/or (2) to restrain, correct or abate the violation; and/or (3) to prevent occupancy of the building, structure or land; and/or (4) to prevent any illegal act, conduct, business or use in or about the premises; and/or (5) to avail itself of any other appropriate remedy; said actions or proceedings shall include but not be limited to any and all actions or proceedings authorized by North Carolina G.S. 153A-123 which is incorporated by reference into North Carolina G.S. 153A-324, contained in Part 1 of Article 18 of Chapter 153A of the North Carolina General Statutes.

Section 107 Vested Rights

In accordance with North Carolina G.S. SS153A-344.1, a landowner may establish a vested right with respect to property upon the approval of a Zoning Certificate or a Special Use Permit, or such landowner may otherwise seek appropriate relief from the Superior Court Division of the General Court of Justice.

Section 108 Designated Planning Agency and Board of Adjustment

Pursuant to Section 13 (c) of Senate Bill 1448, Chapter 1049 of the Session Laws, the Board of Directors of the Service District is not required to appoint a planning agency or a Board of Adjustment, and, instead, the Board of Directors is authorized to exercise all the rights, privileges, powers and duties of such bodies.

The Board of Directors of the Service District shall serve as both the planning agency for the Service District pursuant to North Carolina G.S. 153A-321 and 344 and the Board of Adjustment for the Service District pursuant to North Carolina G. S. 153A-345. As the said planning agency and the said board of adjustment, the Board of Directors of the Service District shall have and exercise all the rights, privileges, powers and duties of such bodies as said rights, privileges, powers and duties are granted and set forth in G.S. 153A-321, 344 and 345.

Article 200: SERVICE DISTRICT ZONING REGULATIONS

Section 201 Zoning Districts

For the purpose of this Zoning Ordinance, the Service District is divided into the following zoning districts:

- A. R-1 Residential District
- B. R-2 Residential District
- C. C-1 Commercial District

Section 202 General Description of the R-1 Residential District

The R-1 Residential District is a medium-density residential district for single-family dwellings.

Section 203 Permitted Uses: R-1 Residential District

Unless otherwise provided in this Zoning Ordinance, within the R-1 Residential District, no structure or land shall be used and no structure shall be erected, relocated, reconstructed or structurally altered except for one or more of the following purposes:

- A. Single-family dwelling; a "single family dwelling" is hereby defined as any building or portion thereof which is designed for permanent living quarters for one or more persons occupying the premises and living as a single housekeeping unit, with no more than one such single housekeeping unit occupying each building, and no more than one such building occupying each lot.
- B. Parks and playgrounds.
- C. Government buildings including municipal, county, state and other public use, including cemeteries, parks, and playgrounds.
- D. Customary home occupations as defined by this Ordinance.

Section 204 Minimum Residential Standards in the R-1 Residential District

- A. Each residence shall have at least two off-street parking places.
- B. Signs:
 - 1. The following signs are exempt from the requirements herein:
 - a. Government signs including but not limited to traffic, public safety, official notices, the location of the underground utility, community bulletin boards or other similar signs approved by the Board of Directors.
 - b. Signs posted on private property related to trespassing or public safety, such as danger from animals.
 - c. Signs attached to commercial vehicles.
 - d. For Sale signs on private vehicles.
 - e. Names and lettering on mail boxes and newspaper tubes.
 - 2. The following signs are prohibited:
 - a. Commercial signs.
 - b. Illuminated signs.
 - c. Any sign placed in a public right-of-way or on a utility pole or on other public property, excepting street numbers assigned and posted in accordance with the requirements of the Cherokee County 9-1-1 office.
 - 3. The following signs are permitted without the issuance of a permit:
 - a. One temporary real estate sign not exceeding 16 sq. ft. in surface area.
 - b. One temporary construction sign not exceeding 16 sq. ft. in surface area.
 - c. Flags of the United States, North Carolina, Cherokee County, or any patriotic or religious organization, or decorative fabric banners and windsocks, provided the display does not exceed sixteen sq. ft. in size, and further provided that no more than four such items may be exhibited on any one lot.
 - d. One political sign that contains in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale and that does not exceed sixteen sq. ft. in surface area.
 - e. Not more than two residential nameplate signs provided that each sign face does not exceed two sq. ft. of surface area.
 - 4. All private signs placed on neighborhood bulletin boards shall not exceed one sq. ft. in size, shall be dated at their time of placement and shall be securely attached to the bulletin board display surface. The Ordinance Administrator may, without notice, remove any sign placed on the bulletin board that has been displayed more than thirty (30) days, is larger than one sq. ft., is not dated, is not attached to the bulletin board display area or is damaged or weathered in any way.

C. No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for construction purposes shall be stored on any lot within the view of the street except for the purpose of construction on such lot.

D. No stable, poultry house or yard, rabbit hutch or other similar structure shall be constructed or allowed to remain on any lot, nor shall any livestock of any kind be kept or maintained on any lot.

E. The minimum lot size for the R-1 Residential District shall be 0.25 acres.

F. The enclosed, heated, primary and main living area (exclusive of garages, carports, terraces, decks and bulk storage) of all houses erected on any lot shall not be less than 1,000 sq. ft. of finished space.

Section 205 Setbacks in the R-1 Residential District

No structure within the R-1 Residential District shall be erected within 15 feet of the side yard property lines of any adjoining ownership.

For the purpose of this section, the setback distance shall be measured from the adjoining property line to the nearest projection of the structure, including, but not limited to, any eave, dormer, deck, step(s) or other part attached in any manner to said structure.

Section 206 Structure Height in the R-1 Residential District

No building located within the R-1 Residential District shall have more than three habitable stories nor shall the height of the structure exceed fifty (50) feet.

The height of any such structure shall be the distance from the highest point (in elevation) of the footings for any structure to the highest point of the roof of the said structure.

This section shall not be construed to apply to any part of the building not intended for human occupancy or to television antennas, satellite dishes, chimneys, flag poles and similar non-human occupied structures.

Section 207 Public and Private Utility Companies and Fire Departments

In addition to the uses permitted in Section 203, the construction, installation or operation of facilities and/or structures necessary to furnish utility services and/or fire protection to the Service District by any utility company or fire department serving the community within the Service District, shall be permitted in the R-1 and R-2 Residential Districts and the C-1 Commercial District.

Section 208 General Description of the R-2 Residential District

The R-2 Residential District is a district for single family dwellings including prefabricated and manufactured homes.

Section 209 Permitted Uses: R-2 Residential District

Unless otherwise provided in this Zoning Ordinance, within the R-2 Residential District, no structure or land shall be used, and no structure shall be erected, relocated, reconstructed or structurally altered, except for one or more of the following purposes:

- A. All uses permitted in the R-1 District, Section 203.
- B. Townhouses.
- C. Cluster homes.
- D. Manufactured homes, provided no manufactured home shall be erected, located, constructed, re-located, re-constructed or structurally altered except in accordance with and upon compliance with the following conditions:
 - 1. The structure was constructed after July 1, 1976.
 - 2. The manufactured home has an enclosed, heated, primary and main living area (exclusive of garages, carports, terraces, decks, and bulk storage) of not less than 1000 sq. ft. of finished floor space.
 - 3. The manufactured home must be occupied by the person owning the land upon which the unit is located.
 - 4. The pitch of the roof of the manufactured home shall have a minimum vertical rise of three (3) feet for each twelve (12) feet of horizontal run (a 3:12 pitch) and the roof is finished with a type of shingle that is commonly used on standard, single family dwellings.
 - 5. All roof structures shall provide an eave projection of no less than twelve (12) inches which may include a gutter.
 - 6. The exterior siding shall consist predominantly of vinyl or aluminum lap siding (whose reflectivity does not exceed that of gloss white paint), wood or hardboard, and is comparable in composition, appearance and durability to the exterior siding commonly used in standard, single family dwellings.
 - 7. The manufactured home shall be set up in accordance with the standards set by the North Carolina Department of Insurance, and a continuous, permanent masonry foundation or masonry curtain wall, unpierced except for ventilation and covered access, shall be installed under and around the perimeter of the unit.
 - 8. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the standards set by the North Carolina Department of Insurance, and any other applicable law.
 - 9. The moving hitch, wheels and axles, and transporting lights, if any, shall be removed.

Section 210 Minimum Residential Standards of the R-2 Residential District

All zoning regulations which apply in the R-1 Residential District and described in Sections 204 through 206 shall also apply in the R-2 Residential District.

Section 211 General Description of the C-1 Commercial District

The C-1 Commercial District is a low density commercial district.

Section 212 Permitted uses: C-1 Commercial District

The C-1 district is intended to provide sites for existing and future uses involving a marina and limited commercial uses. Only those uses which meet all applicable local, state and federal environmental standards and

which do not create injurious and obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazards or other objectionable conditions which would be detrimental to the public health, safety and general welfare of the community shall be allowed.

The following uses are permitted:

- A. Marina and all of its related activities.
- B. Restaurants.
- C. Boat repair facilities.
- D. Any retail or service establishment whose business is closely related to or services the marina and boat repair facilities.
- E. Public and semi-public buildings or areas.

Section 213 Minimum Commercial Standards in the C-1 Commercial District

- A. Signs:
 - 1. The following signs are exempt from the requirements herein:
 - a. Government signs including but not limited to traffic, public safety, official notices, the location of underground utility, community bulletin boards or other similar signs approved by the Board of Directors.
 - b. Signs posted on private property related to trespassing or public safety, such as danger from animals.
 - c. Signs attached to commercial vehicles.
 - d. For Sale signs on private vehicles.
 - e. Names and lettering on mail boxes and newspaper tubes.
 - f. Commercial signs that are attached to commercial structures including dock areas. No commercial sign shall project or extend above the roof line or peak of any commercial building.
 - 2. The following signs are prohibited:
 - a. Any sign placed in a public right-of-way or on a utility pole or on other public property, excepting street numbers assigned and posted in accordance with the requirements of the Cherokee County 9-1-1 Office.
 - 3. The following signs are permitted without the issuance of a permit:
 - a. One temporary real estate sign not exceeding 16 sq. ft. in surface area.
 - b. One temporary construction sign not exceeding 16 sq. ft. in surface area.

c. Flags of the United States, North Carolina, Cherokee County or any patriotic or religious organization, or decorative fabric banners and windsocks, provided the display does not exceed sixteen sq. ft. in size, and further provided that no more than four such items may be exhibited on any one lot.

d. One political sign that contains, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale and that does not exceed 16 sq. ft. in surface area.

e. One free standing commercial sign per business that does not exceed 32 sq. ft. in surface area per sign face, that is not more than 12 feet above the ground surface (height being measured from the ground to the top of the sign) and that may be indirectly illuminated.

4. All private signs placed on neighborhood bulletin boards shall not exceed one (1) sq. ft. in size, shall be dated at their time of placement and shall be securely attached to the bulletin board display surface. The Ordinance Administrator may, without notice, remove any sign placed on the bulletin board that has been displayed for more than 30 days, is larger than one sq. ft., is not dated, is not attached to the bulletin board display area or is damaged or weathered sufficiently to fail to provide the intended message.

B. No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for construction purposes shall be stored on any lot except for the purpose of construction on such lot.

C. No stable, poultry house or yard, rabbit hutch or other similar structure shall be constructed or allowed to remain on any lot, nor shall any livestock of any kind be kept or maintained on any lot.

Article 300: BOARD OF ADJUSTMENT

Section 301 Establishment of the Zoning Board of Adjustment

A. The establishment of the Zoning Board of Adjustment is hereby affirmed consistent with Section 108 of this Ordinance.

B. The concurring vote of four-fifths (4/5) of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to grant a variance. On all appeals, applications and other matters brought before the Zoning Board of Adjustment, the Board shall inform all parties of its decisions and reasons therefore in writing.

C. The chairman and vice chairman of the Board of Directors of the Service District shall serve as chairman and vice chairman of the Zoning board of Adjustment. The board shall adopt by-laws in accordance with the provisions of this ordinance and the General Statutes of North Carolina. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or if absent, the vice chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.

Section 302 Appeals

A. The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made in the enforcement of this ordinance.

B. In order to provide time for appeal as herein provided, the decision of the Zoning Administrator shall not become effective until the tenth regular business day from the date of the issuance of a Zoning Certificate, or (in the case of the conversion of an existing structure to a new use) a Certificate of Compliance. In extraordinary circumstances in which life or property is threatened, the Zoning Board of Adjustment, upon proper findings of fact, may confirm the action of the Zoning Administrator within the ten business day period. The action of the Zoning

Board of Adjustment may be made upon those reasonable conditions that the board deems necessary under the circumstances; however, the confirmation shall not preclude the right of appeal vested in citizens and owners.

C. Appeals to the Zoning Board of Adjustment may be taken by any person affected by a decision of the Zoning Administrator. Appeals shall be filed on the proper form, addressed to the Zoning Board of Adjustment and delivered to the office of the Zoning Administrator within thirty (30) days of the decision being appealed. A notice of intent to file an appeal shall be filed in the same manner within ten business days of the decision being appealed.

D. All documents, pleadings and transcripts or certified copies thereof, constituting the record upon which the action being appealed from was taken, shall forthwith be transmitted to the Zoning Board of Adjustment by the Zoning Administrator.

E. Upon service of the notice of appeal, accompanied by the supporting documents, the board shall forthwith fix a date within a reasonable time thereafter for the hearing of the appeal or for a hearing upon any other matter properly referred to it.

F. The Zoning Board of Adjustment shall call a public hearing, shall give due notice thereof to the parties in interest and render a decision upon the same within a reasonable time after the hearing. At the hearing, any party may appear in person or be represented by an authorized agent or attorney.

Section 303 Variances

A. The Zoning Board of Adjustment shall have the power to authorize a variance from the terms of this ordinance provided in so doing the action is not contrary to the public interests where, owing to special conditions, a literal enforcement of this ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this ordinance is observed, public safety and welfare secured, and substantial justice done.

B. All applications for variances shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Zoning Administrator. Upon receipt of an application for a variance, the Zoning Board of Adjustment shall call a public hearing and give notice as required by law. Applications for a variance shall be made on the proper form obtainable from the Zoning Administrator. Some application requirements may be waived, such as for changes of use in existing buildings involving no expansions in building or parking areas, etc.

C. Before the Zoning Board of Adjustment may grant a variance, it shall make the following three findings which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the board must find that the five following conditions exist:

a. If the applicant complies with the provisions of the Ordinance, the Applicant can secure no reasonable return from nor make reasonable use of the property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the board in granting a variance. Moreover, the board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of the property.

b. The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship.

c. The hardship is due to the physical nature of the applicant's property, such as its size, shape or topography, which is different from that of neighboring property.

d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance and then comes to the board for relief.

e. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

2. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in area a non-conforming use. Moreover, the existence of a nonconforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.

3. In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety or general welfare.

D. In granting the variance, the board may attach thereto such conditions regarding the location character, and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purpose of this ordinance.

E. The Zoning Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

F. A variance issued in accordance with this section shall expire if a Zoning Certificate or Certificate of Compliance for such use is not obtained by the applicant within six months from the date of the decision.

Section 304 Appeals from the Zoning Board of Adjustment

Appeals from the Zoning Board of Adjustment shall be taken to the appropriate court of record, as provided by law.

ARTICLE 400: ADMINISTRATIVE AND LEGAL PROVISIONS

Section 401 Zoning administrator

A. Appointment and removal. The Board of Directors of the Service District shall, by a majority vote, appoint a Zoning Administrator and Deputy Zoning Administrator, who shall be duly sworn in. The Zoning Administrator and Deputy Zoning Administrator shall serve at the pleasure of the Board and may be removed from office without cause at any time by an affirmative vote of a majority of the members of the Board.

B. Powers and Duties. The Zoning Administrator is granted the authority to administer and enforce the provisions of this ordinance. The Zoning Administrator may enter any building, structure or premises to perform any duty imposed by this ordinance, provided entry is made with proper notice and at reasonable hours.

C. Issuance of certificates. The Zoning Administrator shall have the authority to issue zoning certificates and certificates of compliance.

D. Availability for duty. The Zoning Administrator shall be available to receive applications by appointment. A notice indicating how to contact the Zoning Administrator shall be posted at prominent location(s) within the Service District. The Deputy Zoning Administrator shall serve in the place and stead of the Zoning Administrator for those times that the Zoning Administrator shall be on leave of absence. Either the Zoning Administrator or Board of Directors of the Bear Paw Service District shall issue written notice authorizing the Deputy Zoning Administrator's service.

Section 402 Zoning Certificate

A. No person shall commence or proceed with construction of any new building or with the reconstruction, alteration, addition, enlargement, moving or demolition of any existing building prior to the issuance of a Zoning Certificate. Application for a Zoning Certificate shall be filed with the Zoning Administrator. Application shall include the following information:

1. A site sketch, drawn to a scale of at least one inch to forty feet (1"= 40'), of the parcel of property showing its actual dimensions and indicating the size, location and distance from property lines of the proposed building, any other existing building(s), and any other improvements proposed to be accomplished, including but not limited to driveways, sidewalks and parking areas.
2. A drawing of the proposed building drawn to scale and in sufficient clarity and detail to indicate the nature and character of the work to be done, and consisting at minimum of a floor plan and elevations of the building (except, however, that the Zoning Administrator may approve minor construction work without compliance with this requirement).
3. A description of the use to which the completed project shall be devoted.
4. Any other information the Zoning Administrator may deem reasonably necessary to evaluate compliance of the applicant's proposal with the provisions of this ordinance.

B. The Zoning Administrator shall review each element of the application and if satisfied that the work described therein complies with the ordinance, issue a Zoning Certificate. Zoning Certificates shall be issued prior to the issuance of a permit under the North Carolina State Building Code by the Cherokee County Building Inspector. After a Zoning Certificate has been issued, no changes or deviations from the terms of the application, plans or permit shall be made until specific written approval has been obtained from the Zoning Administrator. If the Zoning Administrator finds the application to be deficient or the information contained therein to be contrary to the provisions of this ordinance, the application for a Zoning Certificate shall be denied and a written statement setting forth the reasons for the rejection provided to the applicant.

C. A Zoning Certificate shall expire six months after the date of issuance if the work authorized has not commenced. If after commencement the work is discontinued for a period of 12 months, the certificate shall immediately expire. Upon expiration, the certificate shall become void and no work may be performed until a new certificate has been secured.

Section 403 Certificate of Compliance

A. A Certificate of Compliance shall be secured from the Zoning Administrator before the making of a permanent connection to electrical service, water service or sewer service.

B. If any repairs, improvements or alterations have been performed for which a Zoning Certificate has been issued, a Certificate of Compliance shall be secured from the Zoning Administrator within thirty (30) days from the completion thereof.

C. The Certificate of Compliance shall certify that the Zoning Administrator has inspected the completed improvements and that the improvements, together with the proposed use thereof, are in conformity with the Zoning Certificate and the provisions of the ordinance.

D. No new building or part thereof, no addition or enlargement of any existing building, and no existing building that has been altered or moved shall be occupied until a Certificate of Compliance has been issued.

E. The Zoning Administrator may issue a Temporary Certificate of Compliance, permitting occupancy of specified portions of an uncompleted building or project for a limited time, not to exceed six months, if the Zoning Administrator finds that the portion of the building or project may safely be occupied prior to the final completion of the entire building or project. The Zoning Administrator may renew the Temporary Certificate of Compliance for additional periods, each period not to exceed six months.

Section 404 Ordinance Amendments

A. In no instance shall action be initiated for a zoning amendment affecting the same parcel of property, or any part thereof, more often than once every twelve (12) months. Any communication purporting to be an application for a change shall be regarded as mere notice to seek relief until it is made in the form required. Upon receipt of any communication, the interested party shall be supplied with the proper application form.

B. Before enacting an amendment to this ordinance, the Board shall hold a public hearing. Notice of the public hearing shall be given once a week for two successive weeks by publication in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing.

Section 405 Severability

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

Section 406 Effective Date

This ordinance shall take effect and be in force from and after its adoption by the Board, this the 17th day of May, 1997.

Article 500: Definitions

Section 501 General

A. Except as specifically defined within this section or elsewhere within this ordinance, all words shall be construed to have their customary dictionary definitions.

B. Words used in the present tense shall include, where appropriate, the past and future tense. Where appropriate, words in the singular shall include the plural, and words used in the plural shall conversely include the singular.

C. The word "shall" is always mandatory; the word "may" is permissive.

D. The words "used" or "occupied" as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."

Section 502 Individual Words or Terms

For the purposes of this ordinance, certain words or terms used herein are defined as follows:

Building: Any structure built for the support, shelter or enclosure of persons, animals or property of any kind, including sheds, carports, garages, guest cottages and other outbuildings, and also including any extension and extrusion of the building structure such as balconies, decks and porches. Satellite dish antennas shall be

considered buildings insofar as they shall be required to meet the requirement of the zoning district in which they are located.

Customary Home Occupation: Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

Dwelling Unit: A single residential unit where complete, independent living facilities, including provisions for living, sleeping, eating, cooking and sanitation, are provided on a permanent basis.

Free-standing sign: A sign that is not attached to or supported by any building or structure. Such signs shall include ground signs and signs mounted on poles or other supports.

Indirectly illuminated sign: A sign that is illuminated by a white light source that is shielded and directed solely at the sign face.

Lot: A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title.

Manufactured home: A dwelling unit that is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings; is composed of one or more components, each of which is substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; and exceeds forty (40) feet in length and eight (8) feet in width.

Mobile home: A manufactured home.

Modular home: A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on a permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two or more sections transported to the site on its own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled or joined there.

Person: An individual, corporation, partnership, firm, association, trust and any other legally recognized entity.

Right-of-way: An area owned or maintained by the Service District or the North Carolina Department of Transportation for the placement of roads or utilities.

Sign: A visual display designed to advertise, identify, direct, promote or in any way attract attention to a product, service, business, event, person or specific location.

Structure: A building.

Surface area: The entire display area of a sign, including any border or accessory area, but excluding any base supports, posts, roofs or other structural elements provided they do not serve primarily to attract attention. In the case of three dimensional letters or letters painted directly on the wall surface, the surface area shall be defined as the total of the areas within the perimeter of each letter.

~ End ~

ZONING BOARD OF ADJUSTMENT BYLAWS

ARTICLE I General Rules

The Zoning Board of Adjustment shall be governed by the terms of Article 19 of Chapter 160A, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of the Bear Paw Service District, North Carolina. All members of the Board shall thoroughly familiarize themselves with the laws.

ARTICLE II Officers and Duties

A. Chairman and Vice Chairman. The Chairman and Vice Chairman of the Bear Paw Service District shall serve as the Chairman and Vice Chairman of the Zoning Board of Adjustment.

B. Secretary. A secretary shall be appointed by the Board. The secretary shall hold office during the term of the chairman, keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, and generally supervise the clerical work of the Board. The secretary shall keep a permanent volume of the minutes of every meeting of the board. The minutes shall include a record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. If the secretary is chosen from outside the membership of the Board, the secretary shall not be eligible to vote in any matter.

ARTICLE III Rules of Conduct for Members

A. No member shall take part in the hearing, consideration or determination of any case in which the member has a personal or financial interest.

B. No Board member shall vote on any matters deciding an appeal or application unless the member has attended the public hearing on that appeal or application.

C. No Board member shall discuss any case with any party thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, secretary or the attorney for the Board prior to the hearing.

D. Members of the Board shall not express individual opinions on the proper judgment of any case with any party thereto prior to the determination of that case.

ARTICLE IV Meetings

A. Meetings of the Board shall be called by the chairman as needed and shall be held in any convenient place in the District or Cherokee County as directed by the chairman in advance of the meeting.

B. Emergency meetings of the Board may be called at any time by the chairman. At least forty-eight (48) hours notice of the time and place of such meetings shall be given by the secretary or the chairman, in writing or orally, to each member of the Board.

C. A quorum shall consist of three members of the Board; however, the Board shall not pass upon any question relating to an appeal from a decision, order, requirement or determination of the Zoning Administrator or an application for a variance when there are less than four members present.

D. Proxy voting shall not be permitted.

E. All meetings shall be open to the public and the order of business at regular meetings shall be as follows:

1. Roll Call
2. Reading of Minutes of Previous Meetings
3. Hearing Cases
4. Reports of Committees
5. Unfinished Business
6. New Business

ARTICLE V Appeals and Applications

A. **Types of Appeals:** The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or upon which it is required to pass by the ordinance. In deciding appeals, it may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based upon alleged hardship resulting from the strict interpretation of the ordinance.

B. **Procedure for Filing Appeals:** A notice of intent to file an appeal shall be filed within ten (10) business days of the decision being appealed. Appeals shall be filed on the proper form, addressed to the Zoning Board of Adjustment and delivered to the office of the Zoning Administrator within thirty (30) days of the decision being appealed. All required information shall be provided before an appeal or an application shall be considered as having been filed.

C. **Hearings:**

1. **Time.** After receipt from the Zoning Administrator of a completed appeal or variance application, the chairman shall schedule the time for the hearing, which shall be at the next regularly scheduled meeting or at least within thirty-six (36) days.

2. **Notice.** The Board shall give notice of the hearing by publishing the notice of hearing in a newspaper of general circulation at least once and at least 5 days prior to the date of hearing and by mailing notices of the hearing to parties to the action at least 5 days prior to the hearing. All such notices shall state the location of the building or lot, the general nature of the question involved and the time and place of the hearing.

3. **Conduct of Hearing.** Parties or their attorney shall appear in person at the hearing. The order of business for each hearing shall be as follows:

- a. The chairman or the person so directed to do so by the chairman shall give a preliminary statement of the case.
- b. Witnesses will be sworn in.
- c. The applicant shall present the arguments in support of the case or application. Witnesses in favor of the applicant's request may be called and factual evidence submitted.
- d. Applicants and proponents may be questioned by the Board.
- e. Persons opposed to granting the application shall present their argument. Witnesses may be called and factual evidence submitted in opposition.
- f. Opponents may be questioned by the Board.
- g. Both sides will be permitted to present rebuttals to opposing testimony.
- h. The Board may at its discretion view the premises and obtain additional facts of the matter before arriving at a determination of the case.

- i. Discussion of the case among the Board members, leading to "findings of fact" and conclusions, with reference to the ordinance.
- j. Motion.

D. Decisions.

1. Vote. The concurring vote of four-fifths (4/5) of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to effect any variation from terms of the ordinance.
2. Time. Decisions by the Board shall be made not more than thirty (30) days from the time of the hearing.
3. Form. Written notice of the decision and the reasons therefor in a case shall be given to the applicant by the secretary as soon as practicable after the case has been decided. Also, written notices shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board, and signed by the Chairman and the secretary upon approval of the minutes of the board. The records shall show the reason for the decision, the summary of the evidence introduced, and the findings of fact and conclusions of law made by the Board. Where a variance is granted, the records shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from. Records shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of the variance or exception.
4. Rehearings. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence or conditions in the case. A rehearing shall be granted by the Board if in its judgment there has been such a change and it shall thereupon treat the request in the same manner as any other application.
5. Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times. Said records shall be kept by the secretary, who shall make them available to the public.

ARTICLE VI
Amendments

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths (4/5) of the Board, provided that such amendment is presented in writing at a meeting of the Board, preceding the meeting at which the vote is taken.

Read, approved and adopted by the Zoning Board of Adjustment of the Bear Paw Service District, North Carolina, on May 17, 1997, the following Board members voting AYE:4, voting NAY: -0-.

These bylaws shall become effective May 17, 1997

Attest:

(Signature on file)

(Signature on file)

John A. Smith, Chairman

C. Edward Mortlock, Secretary