

**THE ZONING ORDINANCE  
of the  
BEAR PAW SERVICE DISTRICT  
(as amended 11/15/08)**

**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 Parts 1, 2 and 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" 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 Civil Penalties**

Pursuant to authority granted to the district by G.S.106A-175(b), the district hereby provides that the violation of this ordinance shall neither constitute a misdemeanor nor an infraction as provided by G.S. 14-4. Any person violating any provisions of this Zoning Ordinance shall be subject to civil penalties; the maximum penalty which may be imposed for any violation of this

Zoning Ordinance shall not exceed \$2000.00. 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 and issuance of a Building Permit or such landowner may otherwise seek appropriate relief from the Superior Court Division of the General Court of Justice. An additional means of establishing vesting rights include the existence of an installed septic system or of a formal application for a septic permit. Vesting rights associated with septic will remain in effect as long as the septic system meets county standards or as long as the septic permit is valid.

**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 board/commission 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 board/commission 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 as shown on the Zoning Maps referenced in Section 102:

- 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 building or land shall be used and no building shall be erected, relocated, reconstructed or structurally altered except for one or more of the following purposes:

- A. Single-family dwelling (excluding manufactured homes). For the purposes of the R-1 district, no more than one single housekeeping unit shall occupy each building and no more than one building shall occupy 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.

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

- A. Each single family dwelling shall have at least two parking spaces.
- 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.
    - f. Street numbers assigned and posted in accordance with the requirements of the Cherokee County 9-1-1 office.
  - 2. The following signs are prohibited:
    - a. Commercial signs.
    - b. Illuminated signs.
  - 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. Neighborhood Bulletin Boards. Private signs may only be placed on the neighborhood bulletin boards next to the mail boxes. Private signs shall not exceed one sq. ft. in size, and shall be securely attached to the bulletin board display surface. Any sign placed on the bulletin board that is larger than one sq. ft., is not attached to the bulletin board display area or is damaged or weathered in any way may be removed.

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 or placed on Service District property or 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, or 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. No lots in the R-1 and R-2 Residential Districts shall be re-subdivided but shall remain as legally described at the time this ordinance was recorded, except that lots containing more than one (1) acre may be formally subdivided into two lots and lots containing more than two (2) acres may be formally subdivided into three (3) lots. Restrictions pertaining to set backs shall pertain to the property lines of the new lots.

Exceptions to this standard are lots within Sections 4 and 5 and the parcel of approximately 7.5 acres north of the C-1 Commercial District deeded in the Cherokee County Registrar of Deeds in Book 00570 at Page 0005, which may be re-subdivided but no such re-subdivided lot may be less than .25 acre.

G. Two or more adjoining lots may be formally combined. Restrictions pertaining to set backs shall pertain to the property lines of the new lots.

H. All lots shall meet the definition of a lot in Section 502.

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

J. Any construction requiring a Zoning Certificate shall be completed within 12 months of its initiation or shall be demolished completely unless a new Zoning Certificate has been issued.

K. Erosion control measures shall be taken prior to and during all construction activities, to include all land clearing activities even when not associated with construction, to preclude erosion run off from such activities on to other property or into lakes, streams and rivers.

**Section 205 Setbacks in the R-1 Residential District**

No building within the R-1 Residential District shall be erected within 15 feet of a property line, except as follows:

1) A five foot setback from property lines abutting TVA shoreline is permitted; and

2) Where the edge of the Service District property extends more than 15 feet from the roadway, lot owners may locate a building so long as the building is greater than 15 feet from the roadway and located entirely within the property owner's lot.

Adjoining lots may be formally combined to accommodate the setback requirement as per Sec 204 Para H. The intent is to establish a buffer zone of at least 30 feet between buildings and 15 feet from the roadway edge.

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

**Section 206 Building Height in the R-1 Residential District**

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

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

This section shall not be construed to apply to any part of the building not intended for the human occupancy portion of the building such as television antennas, satellite dishes, chimneys, and flag poles.

**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 204 B through E, Section 205 and Section 206 apply.

**Section 208 General Description of the R-2 Residential District**

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

**Section 209 Permitted Uses: R-2 Residential District**

Unless otherwise provided in this Zoning Ordinance, within the R-2 Residential District, no building or land shall be used, and no building 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, Sections 203 and 207.

B. Manufactured homes, provided no manufactured home shall be erected, located, constructed, relocated, re-constructed or structurally altered except in accordance with and upon compliance with the following conditions:

1. The manufactured home was constructed after July 1, 2002.
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, un-pierced 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 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 with the minimal standards listed:

- A. Marina
  - 1) Parking shall be provided with .5 parking spaces per slip. This either can be accomplished on-site or off-site with a written agreement with the off-site landowner. At no time can parking be allowed on the street.
  - 2) Water and sewer shall be addressed either by public service or private well and septic tank approved by the appropriate review agency.
  - 3) Storm water shall be addressed and approved by a NC professional engineer in accordance with best management practices.
  - 4) Fire code shall be addressed by building plans and approved by the County Fire Marshall in writing.
  - 5) Written approval shall be obtained from the Tennessee Valley Authority for the use of their property.
  - 6) No storage of material shall be allowed on the property except for on-going permitted construction, for normal operation requirements and for storage of items for community benefit. All storage of materials will be confined to designated areas.
  - 7) Any fuel storage shall meet all local, state and federal guidelines in addition to requiring a containment structure to limit fuel spills.
  
- B. Restaurants;
  - 1) Parking shall be required at 1 for each employee working, plus one space for each 3 seats provided.
  - 2) Water and sewer shall be addressed either by public service or private well and septic tank approved by the appropriate review agency.
  - 3) Storm water shall be addressed and approved and sealed by a NC professional engineer in accordance with best management practices.
  - 4) Fire code shall be addressed by building plans and approved by the County Fire Marshall in writing.
  
- C. Boat repair and storage facilities;
  - 1) No storage of material shall be allowed on the property.
  - 2) Boats under repair shall not occupy any required parking and are not allowed being in a state of repair for more than 90 days.
  
- D. Any retail or service establishment whose business is closely related to or services the marina and boat repair and storage facilities;
  - 1) Parking shall be required at 1 space per 200 square feet of retail space.
  
- E. Boat launches;
  - 1) No buildings or structures shall be allowed in connection with this use.
  
- F. Accessory residential use
  - 1) One single family unit shall be allowed per building in the C-1 Commercial District. Occupant of the single family unit shall either be the owner and/or owner's family or someone who works at the business and/or their family.
  - 2) Two parking spaces required.
  - 3) No detached accessory building or signs allowed with this use.
  
- G. Public and semi-public buildings or areas;
  
- H. Public and private utility companies and fire departments in accordance with Section 207.

At no time shall multiple uses in this district require any less than the standards of each individual requirement cumulatively. If written agreements are established as a condition of approval for such items as parking, they shall be maintained or the use shall immediately cease and desist.

**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.
  - g. Street numbers assigned and posted in accordance with the requirements of the Cherokee County 9-1-1 office.”
2. 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.

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 nor 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.

D. A 15 foot setback is required from all property lines except a 5 foot setback is required from lake front property lines. This shall include all buildings, uses, accessory and storage.

E. Property in the C-1 district may be re-subdivided but no such new lot may be less than .25 acre. All lots shall meet the definition of a lot in Section 502. Restrictions pertaining to setbacks apply to new lots.

**Section 214 Bear Paw Service District Property**

The restrictions for R-1, R-2 and C-1 shall not apply to any property owned by the Bear Paw Service District.

**Article 300: BOARD OF ADJUSTMENT**

**Section 301 Establishment of the Zoning Board of Adjustment**

The establishment of the Zoning Board of Adjustment is hereby affirmed consistent with Section 108 of this Ordinance. The Zoning Board of Adjustments shall adopt by-laws in accordance with the provisions of this ordinance and the General Statutes of North Carolina which shall provide information regarding Zoning Board of Adjustment activities.

**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 or denial 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. The Zoning Board of Adjustment Bylaws detail the appeals process.

**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. Application for a variance to the zoning ordinance may be made by anyone so affected as described in paragraph A. The Zoning Board of Adjustment Bylaws detail the variance application process.

C. Before the Zoning Board of Adjustment may grant a variance, it must determine there are practical difficulties or unnecessary hardships resulting from the strict enforcement of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the board must conclude that the following conditions exist. Their findings shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:

1. 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.

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

3. 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.

4. 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.

5. 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.

6. 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.

7. 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. 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. For the purpose of matters relating to the Tree Ordinance, the Zoning Administrator or an individual appointed by the Board of Directors shall have all rights and responsibilities as directed by this amendment and by the Zoning Ordinance. Such an individual shall have the title of Tree Protection Administrator.

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 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. The plan shall also include location of the septic system and other items such as paths, walkways, ramps and stairs, a 15-foot perimeter boundary around all structures and two off-street parking spaces, location of additional areas proposed for clearing or tree thinning for the purpose of patios, satellite capability, views, etc.

The site plan shall show the location of all individual significant trees (with size and species) including all significant trees proposed for removal.

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 a Zoning Certificate has been issued for any reason, a Certificate of Compliance shall be secured from the Zoning Administrator within thirty (30) days from the completion of the work for which the Zoning Certificate was obtained.

C. The Certificate of Compliance shall certify that the Zoning Administrator has inspected the construction of any new building or the addition, enlargement, moving or demolition of any existing building, 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 for 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 Zoning Administrator shall supply the interested party 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. In addition to the newspaper notice required above, when an amendment to the Zoning Maps (zoning map amendment) is proposed, the owner of that parcel of land, as shown on the county tax listing, that is the subject of a proposed zoning amendment, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. Such notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board that fact, and such certificate shall be deemed conclusive in the absence of fraud. In addition to the mailed notice, the Board shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Board shall post sufficient notices to provide reasonable notice to interested persons.

C. For each application for small-scale zoning map amendments, a statement analyzing the reasonableness of the proposed rezoning shall be prepared by the applicant to include the size of the tract proposed for rezoning in relation to surrounding properties, the benefits and detriments of the proposal on the owner of the subject property and to the Bear Paw Service District as a whole, and the relationship of the proposed uses that would be allowed by the rezoning and the current uses of nearby properties.

D. Prior to adopting or rejecting any zoning amendment, the Board shall adopt a statement explaining why the Board considers the action taken to be reasonable and in the public interest.

E. A Board member shall not vote on any zoning amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**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 17<sup>th</sup> day of May, 1997. Amendments to this ordinance shall take effect after their adoption by the Board, upon publication, and after November 15, 2008.

**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:

**Attached:** Physically connected by a common wall, footer, beam, and/or covered walkway and providing direct access from the main single family dwelling. A feature separated by a small distance which provides direct access is attached as per this definition. For the purpose of decks, porches, landings, walkways, stairs, steps, entrance platforms and ramps, the attachment must be of common construction material for such a structure. For the purpose of garages and other similar major attachments, the construction and attachment must be of the same design, roof line, siding and general appearance as the main building.

**Building:** A roofed structure used for shelter for persons and/or goods including any extension and extrusion of the building such as balconies, decks and porches, landings, walkways, stairs, entrance platforms and ramps.

**Caliper:** The diameter measurement of tree trunks, taken at 6 inches above the average ground level.

**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.

**Dbh:** The diameter of a tree trunk measured at breast height, four and one-half feet above the average ground level.

**Development:** The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building and structure, to include site work.

**Diseased Tree:** A tree in which fungi, bacteria, and/or viruses have invaded and infected causing poor growth and weak appearance, disruption of plant processes, distortion of certain tree parts and strain or death of the tree.

**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.

**Hazardous Tree:** A tree that meets one or more of the following criteria:

(1) It has a structural defect which predisposes it to fall or drop limbs (e.g., it is a dead tree, has trunk decay, dead branches, or V-crotches), and it is located dangerously near a target such as a structure, road, walkway, or other area where property exists or people reside.

(2) Though structurally sound, it interferes with the routine activities of people, such as obstructing visibility for motorists or interfering with utilities.

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

Land Clearing: Tree removal, under brushing or any activity that removes live woody plants such as trees and shrubs

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. Also known as a mobile home. Such manufactured homes are distinguished from modular and prefabricated homes because a modular and prefabricated home is a factory-fabricated, transportable building or dwelling that is designed to be used by itself or to be incorporated with other units into a structure that will be a finished building on a permanent location on a permanent foundation and is constructed in accordance with construction standards of the North Carolina Uniform Residential Building Code.

Parking space: An area at least 8'6" in width and 18' in length of an all weather surface (e.g. gravel, cement or asphalt), usable for parking which is accessible from the street and entirely within the boundaries of the property exclusive of Service District property.

Perimeter Area: A zone that extends fifteen feet from the boundary of any building, structure and septic system defined by an outer perimeter line. This area encompasses the full extent of expected disturbances resulting from construction and may extend into setback areas.

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

Setback Area: The area between the property lines and the setback lines (front, back and sides, including all yards) designated by the lot's zoning classification. The setback area is intended to create a buffer zone of natural vegetation between properties.

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.

Significant Tree: Any tree as defined in Appendix A with a dbh equal to or greater than the dbh noted as significant dbh for that species in the table.

Single-family dwelling: Any building or portion thereof and features attached thereto which is designed for permanent living quarters for one or more persons occupying the premises and living as a single housekeeping unit,

Story: That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and being situated above natural grade level.

Structure: Anything, other than a building, constructed or erected, including, but not limited to walls, fences, gates, mailboxes, driveways and reflectors or mirrors associated with driveways, residential parking decks (whether constructed of fill dirt or retaining walls, or other methods), and private bridges or tunnels.

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.

Tree: A woody plant with a well-developed main trunk of at least 4 inches dbh at maturity.

Tree Thinning: The removal of significant trees and/or minor branches from significant trees for purposes of developing views and/or permitting more sunlight to reach the ground. The number of significant trees which may be removed for thinning is based on the number of significant trees on the lot. The ratio of how many significant trees may be removed for thinning to the number of significant trees on the lot is shown in Appendix B.

**ARTICLE 600: AN AMENDMENT TO THE BEAR PAW SERVICE DISTRICT ZONING  
ORDINANCE RELATING TO STANDARDS AND REQUIREMENTS FOR THE MAINTENANCE  
OF TREES**

This article provides regulations for the protection and management of significant trees within the Service District. The Service District, realizing trees have a profound effect on the quality of life in the community, deems it necessary and desirable, in the interest of public health, safety and welfare, to enact an amendment for the preservation, planting, replacement and removal of trees without denying the reasonable use and enjoyment of real property. Maintenance and management of trees and shrubbery not classified as significant are at the discretion of the property owner.

**Section 601: Authority and Enactment Clause**

The North Carolina General Assembly enacted Article GS 153A-340 confirming the rights of institutions such as the Service District to regulate management of trees providing that such regulations appear within zoning regulations.

**Section 602: Special Administrative and Enforcement Provisions for Land Clearing**

- A. Inspections. The Tree Protection Administrator shall periodically inspect all land-clearing to ensure compliance with this ordinance.
- B. Stop work order. The Tree Protection Administrator is authorized to issue a stop-work order at any time any of the following is determined to have occurred:
  - 1. Tree removal for development prior to obtaining a zoning certificate.
  - 2. A deviation from approved plans, certificates, or permits.
  - 3. Systematic or habitual removal of or damage to significant trees.
  - 4. Cutting of significant trees not authorized by this ordinance.
- C. Remedies. Following issuance of a stop-work order the Tree Protection Administrator shall provide the property owner with a written list of infractions. In cases where

additional or more severe penalties are required, the penalties described in paragraph E. below may be considered. The Tree Protection Administrator shall verify that all appropriate measures have been implemented, including proof of any necessary agreements by the owner to complete weather-sensitive replantings at the appropriate season, before work is allowed to resume.

- D. Replantings. Any significant tree cut in violation of an approved zoning certificate or that is damaged during construction to the extent that the tree is likely to die, shall be replaced by healthy trees at the expense of the owner of the property. Such trees shall be replaced with a species chosen by the owner from the list of trees at Appendix A at the minimum dbh for replanting sizes appropriate to the species as shown in Appendix A and in sufficient numbers to equal the total inches in dbh of the trees damaged or unlawfully removed. Such replacement trees shall be planted in the approximate location of the originals that were damaged or unlawfully removed, or elsewhere on the property as approved by the Tree Protection Administrator, and shall be inspected at intervals by Tree Protection Administrator. Any replanted trees not continuing in good health for a minimum of one year shall be replanted at the expense of the owner of the property.
- E. Penalties for violation in unlawful removal of trees during land clearing associated with development and land clearing not associated with development but without an existing building shall include a penalty of up to \$2000. In addition, the Tree Protection Administrator may deny approval of a Zoning Certificate for such land for a period of three years after the last date that clearing activities occurred on the site. If the violation was willful, this period may be increased to five years from the last date that clearing activities occurred on the site. In addition to these penalties, illegally removed significant trees shall be replaced at the expense of the owner as set forth in paragraph D. above.

Penalties for violation in unlawful removal of trees during land clearing not associated with development but with an existing building shall subject the property owner to penalties of \$200.00 for each significant tree illegally removed. If the number of significant trees previously existing on the property is not known by means of an on-site inspection, penalties shall be levied based on the canopy coverage observable from existing aerial photography of the area in question. In addition to these penalties, illegally removed significant trees shall be replaced at the expense of the owner as set forth in Sec 602.D.above.

**Section 603: Zoning Certificate Required**

A zoning certificate is required prior to land clearing associated with development.

**Section 604: Land Clearing Associated with Development**

- A. General. No cutting of significant trees shall begin without an approved zoning certificate.
- B. Standards.
  - 1. Structure Boundary. The removal of trees is required within the footprint of the proposed structures.
  - 2. Perimeter Areas. The removal of trees is permissible within the perimeter lines. Each significant tree in these areas shall be indicated on the plan either as protected or to be removed.

3. Septic System. The removal of trees is permissible within the septic system approved by appropriate County authorities; however, placement of the septic system to preserve significant trees is encouraged.
4. Remainder of Lot. The removal of significant trees is not permissible outside of the perimeter areas except for diseased and hazardous trees and tree thinning and topping for the development of views, to provide satellite capability or to provide sunlight for gardening. All significant trees in these areas shall be marked on the site plan as protected or to be cut. Significant trees topped to the extent the tree will likely die must be replaced as described by pertinent sections of Special Administrative and Enforcement Provisions for Land Clearing paragraph D.

Note that these permissions do not include the removal of significant trees for the construction of easily relocatable features such as stairs and paths without exception being granted by Tree Protection Administrator.

**Section 605: Land Clearing Not Associated with Development**

- A. Tree cutting is permitted on land not associated with development except for the cutting of significant trees.
- B. Significant trees may be topped and thinned to provide for views and to provide satellite capability. Such trees topped or thinned to the extent the tree will likely die must be replaced as described by Section 602 D. Prior to topping or thinning of significant trees, a written request describing which trees are to be topped or thinned must be submitted to and approved in writing by the Tree Protection Administrator.
- C. Exceptions: Insofar as they are not undertaken with the intent of circumventing these zoning regulations, the cutting of diseased or hazardous significant trees is authorized. Prior to cutting diseased or hazardous significant trees a written request describing which trees are to be cut must be submitted to and approved in writing by the Tree Protection Administrator.
- D. Septic System. The removal of trees is permissible within the septic system approved by appropriate county authorities, however, placement of the septic system to preserve significant is encouraged.

## Appendix A

### Significant Trees

Tree Species	Significant dbh	Minimum Caliper for replanting
Oak	12"	3"
Ash	6"	3"
Maple	6"	3"
Dogwood	4"	3"
Locust	12"	3"
Black Walnut	12"	3"
Hickory	12"	3"
Poplar	12"	3"
Sycamore	12"	3"
Birch	12"	3"
Black Cherry	12"	3"

## Appendix B

### Ratio of Significant Trees Which May Be Cut for Thinning

# of Significant Trees per Lot	# of Significant Trees Which May Be Removed
1	0
2	1
3	1
4	2
5	2
6	3
7	3
8	4
9	4
10	5
More than 10	Less than 50%