LAKE JAMES PROTECTION ORDINANCE OF McDOWELL COUNTY, NORTH CAROLINA

ARTICLE I. TITLE

This ordinance shall be known as "The Lake James Protection Ordinance of McDowell County, North Carolina."

ARTICLE II. AUTHORITY AND GENERAL REGULATIONS

Section 201. Authority and Enactment.

In pursuance to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A, Article 18, Part 3, the County Commissioners of McDowell County, North Carolina, hereby ordain and enact into law the following articles and sections.

Section 202. Intent.

It is the intent of this Ordinance to protect water quality, public safety, aesthetics, fish and wildlife habitat, and recreational use of Lake James by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining healthy tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the shoreline. It is also the intent of this Ordinance to encourage responsible development of the shoreline of Lake James in compliance with this Ordinance.

This document shall replace the 1996, 2003, and 2016 Lake James Protection Ordinances. This unified document has the provisions for the previously mentioned documents, notations are made when provisions affect one or more but not all developments. ALL PLATS MUST DENOTE PROPERTY FALLS UNDER THE LAKE JAMES PROTECTION ORDINACE.

Section 203. Jurisdiction.

The provisions of this ordinance shall apply to all lands in McDowell County within two hundred fifty (250) feet, (measured horizontally) of the Reference Line of Lake James. The Reference Line is the Duke Power Company Lake James Project Boundary of 1,200 feet above mean sea level.

Section 204. Penalties.

This ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 153A-123 and 153A-324.

Section 205. Remedies.

(A) If the Planning Director or his/her duly authorized agent finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; replacement of vegetation or humus layers; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Planning Director or his/her duly authorized agent is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

(B) Violation of any provision of this ordinance shall subject the offender to a civil penalty in an amount of not less than five-hundred dollars ($500.00) nor more than five thousand dollars ($5,000) per occurrence. The removal of each protected tree will be considered as a separate violation. Such penalty

shall be recovered by the County in a civil action in the nature of a debt if the offender does not pay the penalty within a period of seventy-two (72) hours after being cited. Citations shall be in writing and signed by the Planning Director or his/her duly authorized agent, and shall be delivered or mailed to the offender either at his residence or at his place of business or at the place where the violation occurred. The offender will have ten (10) business days from receipt of the violation to begin corrective action and/or submit a plan of action to correct the violation. Each day that the violation continues shall constitute a separate and distinct offense without multiple citations being issued.

Section 206. 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 207. Conflict With Other Laws.

Where the provisions of any other law, ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of such law, ordinance or regulation shall govern.

Section 208. Effective Date.

This Ordinance shall take effect and be in force on the 13th day of October, 2020.

David N. Walker, Chairman,
McDowell County Board of Commissioners

Attest:

Cheryl Mitchell, Clerk to the Board of Commissioners

ARTICLE III. DEFINITIONS OF TERMS USED IN THIS ORDINANCE

Section 301. General Definitions.

Accessory Building or Structure. A building or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure. Examples of accessory uses are private garages, storage sheds, playhouses, swimming pools, satellite dish antenna and fuel pumps.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Board of Adjustment. The McDowell County Board of Adjustment. A quasi-judicial board composed of residents of McDowell County empowered to hear appeals from decisions of the Planning Administrator or his designee and grant variances from provisions of the Lake James Protection Ordinance.

Board of Commissioners. The McDowell County Board of Commissioners; the governing body.

Building Inspector. The building official named by the County Manager to administer and enforce the provisions of the building code, or his designated representative or agent.

Building Permit. A permit which is issued by the building inspector before a building or structure is started, improved, enlarged or altered as proof that such action is in compliance with county building code.

Built-upon area. Built-upon areas shall include that portion of a development project that is covered by impervious cover including buildings, pavement, gravel areas (e.g., roads, parking lots, pathsand paths), recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

County. McDowell County, North Carolina.

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Ground Cover. The small plants in a natural area, except young trees, or a planting of low- growing plants that covers the ground in place of turf grasses.

Hand Tools. Hand held tools such as axes and mattocks, including power equipment such as chainsaws and weed trimmers.

Humus Layer. Decayed leaf litter and other organic material in or on the soil.

Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devises, successors, assigns, and personal representative of such owner.

Leaf Litter. Normal fallen leaves from trees.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Marina. Any use of the project lands and waters of Lake James for facilities where water craft can be launched retrieved or moored and facilities for food services and convenience retailing, including petroleum dispensing, wet and dry storage of water craft and other activities customarily associated with marinas, campgrounds and yacht clubs are provided. This definition does not include private residential boat slips and ramps.

Mechanical Clearing. Any clearing of trees, shrubs, understories, stumps or humus layers by wheeled or tracked vehicles or equipment such as a bulldozer or backhoe. Mechanical clearing does not include clearing by hand held power equipment such as chainsaws.

Planning Director. The McDowell County official charged with the responsibility of enforcing this ordinance, or his/her duly authorized agent.

Planning Board. The McDowell County Planning Board.

Primary Structure. A structure or building on a parcel which contains the primary use of a parcel of land. Typically, the largest building, on a parcel.

Prune. To cut off or cut back parts of a plant above the ground in order to achieve a better shape or better growth. In order to reduce erosion potential, pruning shall not include the removal of any part of a plant below the surface of the soil.

Reference Line. The Duke Power Company Lake James Project Boundary of 1,200 feet elevation above mean sea level.

Setback Line. A line parallel to the shoreline and extending the full width or length of the lot for a specified distance at all points from the property line, and thus defining an area on which no building or structures, or portions thereof, may be constructed.

Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Turf Grasses. Normal yard grasses, including sod and fescue.

Understories. Small trees and shrubs (e.g. mountain laurel, dogwood.)

Variance. A reasonable deviation from those provisions regulating the size, area or location of a building, road or structure when the strict application of the provisions of this ordinance would result in an unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of this ordinance.

Variance, Minor. A variance whose deviation from the numerical requirement is ten (10) percent or less and can be granted by the Planning Administrator.

Water Dependent. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Section 302. Word Interpretation.

For the purpose of this ordinance, certain words shall be interpreted as follows: Words in the present tense include the future tense. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise. The word "person" includes a firm, association, corporation, trust, and company as well as an individual. The word "structure" shall include the word "building." The word "lot" shall include the words, "plot," "parcel," or "tract." The word "shall" is always mandatory and not merely directory. The word "will" is always mandatory and not merely directory.

ARTICLE IV. DEVELOPMENT REGULATIONS

Section 401 Natural Woodland Buffer.

Where existing, a natural woodland buffer shall be maintained within one hundred (100) feet (measured horizontally) of the Reference Line.

Section 401.01 General Provisions.

Within the natural woodland buffer, the following provisions shall apply within fifty (50) feet (measured horizontally) of the Reference Line:

1. All trees, shrubs and ground cover are considered protected vegetation.

2. Clearing, thinning, pruning, and planting shall be accomplished with hand tools. Burning shall not be used as a method of clearing or thinning.

3. All existing forest floor humus layers, leaf litter and soil shall remain undisturbed and intact except for the construction of foot paths and clearing permitted by this section.

4. Accessory structures such as storage sheds and gazebos but excluding automobile garages may be permitted within 50 feet of the Reference Line provided that:
    a. The footprint of the structure does not exceed 150 square feet.
    b. The structure is usually customary and incidental to a legally authorized use.

5. Within fifty (50) feet of the Reference Line, existing trees with a diameter of two (2) inches or greater are considered protected. Only those trees that pose a hazard to the home, dock, dead, diseased or dying may be removed with approval of the Planning Department.

6. Individual trees may have limbs removed only in cases where they pose a threat to the home or dock. The Planning Department must approve removal of any hazardous limbs.

7. Replanting Timetable: In instances where trees and vegetation are removed and considered a violation of this ordinance, the owner will have 30 days from receipt of violation notice to submit a replanting timetable and have temporary sediment and erosion control measures in place. Species and location of replacement trees must be denoted. Replacement trees must be at least 1 ½ inches in diameter and replaced within and throughout the area where the violation occurred.

401.02 Activities Permitted Within Fifty Feet of the Reference Line.

The following, activities are permitted within fifty (50) feet of the Reference Line, with the approval of the Planning Director or his/her duly authorized agent.

1. Dead, diseased, hazardous or unsafe trees, shrubs or ground cover may be removed.

2. Fallen trees may be removed.

3. Vines, shrubs, and ground covers may be selectively pruned in order to facilitate a better view or a more aesthetically pleasing landscape.

4. Understories of trees may be thinned, but no grubbing and grinding of stumps is allowed.

5. Ground cover other than grasses may be planted. Any replacement ground cover must prevent surface water runoff under normal precipitation conditions.

6. Shoreline stabilization is permitted, subject to approval of the plan for stabilization by the Planning Administrator. Stabilization materials shall not exceed a vertical height of four feet (4') above the Reference Line. Land disturbing activities in connection with shoreline stabilization shall not extend more than ten feet (10') measured horizontally from the Reference Line.

7. With approval of the Planning Director or his/her duly authorized agent, permanent grasses other than turf grasses, may be permitted in special situations in conjunction with shoreline stabilization projects where the slopes will not support a natural mulch ground cover.

8. Clearing is allowed to create a single corridor, not to exceed ten (10) feet in width, for equipment access, and to allow slopes to be laid back to create a stable condition. Protected trees removed to accommodate the stabilization shall be replaced as provided in Section 401.01(5).

9. Structures that support water dependent uses (i.e., boat ramps, docks, and piers, but not parking areas) are permitted within fifty (50) feet of the Reference Line if they comply with all applicable Duke Power, local, state, and federal regulations.

10. Any land disturbing activity or tree removal (in excess of two (2) inch diameter) within fifty (50) feet of the Reference Line must be pre-approved by the Planning Director or his/her duly authorized agent.

Section 401.03 Activities Not Permitted Within Fifty (50) Feet of the Reference Line.

The following provisions are not permitted within fifty (50) feet (measured horizontally) of the Reference Line.

1. Topping of trees.

2. Grubbing or grinding of stumps of any size.

3. Chemicals shall not be used to kill stumps and other vegetation.

4. Mechanical clearing shall not be used unless it is used in conjunction with a shoreline stabilization project. *This shall include but not limited to, bush hogs, mini excavators, large excavators, etc*.

Section 401.04 Setback Provisions.

All permanent structures shall adhere to the following, setback provisions.

1. Primary structures shall be set back at least seventy-five (75) feet (measured horizontally) from the Reference Line. Uncovered wooden slatted decks attached to a primary structure are allowed to extend fifteen (15) feet from the primary structure. (The Enclave and Pisgah Shores).

2. Developments platted between 1996 and 2016 (The Arbor, Sunset Point, Bear Cliff, Black Forest, Old Wildlife Club, 1780, Mystic Point Landing, and The Peninsula) houses shall be

setback 65 feet unless the slope of the lot is greater than 2:1 the setback must be 75 feet from the reference line.

3. Roads and/or driveways shall be set back at least seventy-five (75) feet (measured horizontally) from the Reference Line, and shall be designed to minimize disturbance to existing natural vegetation and topography, except for bridges and bridge approaches and access ways for emergency vehicles.

4. Primary structures shall be set back at least fifteen (15) feet (measured horizontally) from the side property lines. (Excluding the Arbor and Sunset Point).

5. The 50-foot vegetative buffer and the 65-foot or 75-foot homesite must be surveyed in and the corners in relation to the setback staked prior to application for a Shoreline Protection Permit. Only homes on lots that have a slope greater than 2:1 are required to be setback 75 feet. A surveyor must determine the slope for the homeowner prior to application of a shoreline protection permit. Homes in the Enclave and Pisgah Shores must be setback 75 feet.

Section 401.05 Natural Woodland Buffers.

Within the natural woodland buffer, the following restrictions shall apply between fifty (50) and one hundred (100) feet (measured horizontally) of the Reference Line.

1. Existing natural woodland buffers must be maintained.

2. Dead, diseased, hazardous or unsafe trees, saplings, shrubs, or ground cover may be removed. Fallen trees may also be removed. Removal of lateral limbs of no more than fifty (50) percent of a tree's total height will be permitted.

3. Between fifty (50) and one-hundred (100) feet of the Reference Line, existing trees with a diameter of two inches or greater are considered protected. Only trees that pose a hazard to the home, are dead, diseased or dying may be removed with approval of the Planning Department.

4. Removal of these trees with a diameter of two inches or greater is permitted to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas. The establishment of turf grass in this area is permitted.

Section 401.06 Protected Shoreline Limit.

The following shall be adhered to within 250 feet of the Reference Line.

1. Planting efforts that are beneficial to wildlife are encouraged to be undertaken.

2. Trees that fall into the lake, and do not pose a navigational hazard or other safety concern shall be left in place to benefit fish habitat.

3. Foot paths for individual lots shall be four feet or less in width and designed in a winding manner to prevent surface runoff and erosion. Foot paths serving common areas or multiple lots shall be six feet or less in width. Materials that are considered impervious (impenetrable materials) are not permitted for use on footpaths, these materials are as follows but not limited to: concrete, asphalt, gravel, stone, brick etc. Plant root systems adjacent to the foot path shall be protected by a layer of wood chips or other organic material.

4. Buildings shall be fitted to the natural topography to avoid extensive grading that would alter the drainage patterns or create very steep slopes, minimize the potential for erosion and maintain existing vegetation.

5. Total parcel coverage by impervious surfaces including building footprint, impervious roads, or other impervious cover shall not exceed twenty-four (24) percent of the parcel.

6. Activities conducted by state regulated public utilities (i.e., utility, right of way, construction, and maintenance) are not subject to the provisions of this article. However, such activities, where practical, shall be conducted in a manner that is consistent with this article.

7. The provisions of this article shall not apply to activities which were permitted and/or approved by McDowell County prior to the adoption of these requirements.

Section 401.07 Dimensional Requirements for Lots.

Lots created after the effective date of this Section and subject to the provisions of this Ordinance shall meet the following requirements:

1. The minimum lot size shall be one and one –half (1.5) acres. (Excluding the Arbor and Sunset Point).

2. The minimum lot width at the Reference Line shall be one hundred fifty (150) feet. (Excluding the Arbor and Sunset Point)

Section 402 Storm Water Management and Erosion Control.

The following provisions shall apply to land disturbing activities within two hundred fifty (250) feet of the Reference Line:

1. A storm water management and erosion control plan, sealed by a registered surveyor, engineer, architect, landscape architect or approved by a representative of the McDowell Soil and Water Conservation District, shall be submitted for any construction development and/or grading activities which disturb soil.

2. The following standards shall be applied in designing storm water management and erosion control measures:

    A. All measures in the storm water management and erosion control plan shall meet the Best Management Practices set forth in the North Carolina Erosion and Sediment Control Planning and Design Manual.
    B. Whenever practical, natural vegetation shall be retained, protected or supplemented.
    C. Appropriate erosion and sediment control measures shall be installed prior to the removal of vegetation.
    D. Erosion and sediment control measures shall be placed immediately downstream of disturbed areas and shall not be placed within fifty (50) feet of the Reference Line, if feasible.
    E. The area of disturbance and the duration of exposure shall be kept to a minimum. Disturbed areas remaining idle for more than thirty (30) days shall be stabilized.
    F. Measures shall be taken to control sediment and retain it within the project area. Sediment in runoff water shall be trapped and retained within the project area using approved measures. Approved measures shall protect very poorly drained soils and surface waters within the project area as identified by the United States Department of Agriculture's Soil Survey of McDowell County. g. Off-site surface water runoff from undisturbed areas shall be carried non- erosive through the project area, or diverted away from disturbed areas where feasible.
    G. Priority shall be given to protecting natural drainage systems including perennial and intermittent streams, wetlands, swales, and drainage ditches for conveyance of runoff leaving the project area.
    H. All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the

removal of temporary measures shall be permanently stabilized within thirty (30) days.

I. Disturbance of one acre or more requires a permit from the Division of Land Quality under the North Carolina Sedimentation Control Act.

J. No collected storm water, such as water from gutter downspouts and driveway storm drains, shall be discharged within fifty feet (50') of the Reference Line.

Section 403. Marina and Mooring Provisions.

The purpose of this section is to regulate marinas and mooring areas on Lake James. North Carolina G.S. 143.215 does not allow the discharge of any pollutant or untreated wastes into the waters of North Carolina. A marina or mooring area is defined as any use of the project lands and waters of Lake James for facilities where water craft can be launched retrieved or moored and facilities for food services and convenience retailing, including petroleum dispensing, wet and dry storage of water craft and other activities customarily associated with marinas, campgrounds and yacht clubs are provided. This definition does not include private residential boat slips and ramps. All requirements of this ordinance must also be met.

1. All marinas and mooring areas permitting overnight use of water craft shall have pump-out stations, gray water disposal facilities, on shore trash disposal facilities and containment materials for oil and gas spills.

2. All water craft operating or moored on Lake James that have sleeping, kitchen and/or bathing facilities shall have a fixed or portable holding tank or other approved marine sanitation device for the collection of wastewater.

Section 404. Shoreline Protection Permit.

1. No building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any clearing or grading commence, nor shall any building permit be issued until a ***Start Work Letter*** has been issued by the Planning Director or an agent of the Planning Director. ***No Start Work Letter*** shall be issued except in conformity with the provisions of this ordinance.

2. Shoreline Protection Permit applications shall be filed with the Planning Department by the property owner or his/her designated agent. Minor Shoreline Protection Permits cover only boat dock construction and construction of walking paths. No land disturbance or vegetation removal is allowed. A Major Shoreline Protection Permit is required for land disturbance construction, and vegetation removal. Property owners are responsible for evaluating their respective parcels, thereby placing the burden on the homeowner to comply with the Ordinance, including the need for shoreline stabilization, as part of the overall site planning process. Equipment access corridors should be planned and coordinated with other land disturbance on the property. The application shall include a completed application form and a site plan(s) which shall include the following:

   A. Ownership and contact information
   B. Name and address of person who prepared the plan.
   C. Date of the plan and an accurate record of any later revisions
   D. North arrow
   E. Property boundaries
   F. Approximate contour lines at 10' intervals
   G. Location and dimensions of existing and/or proposed structures
   H. Location and dimensions of roads, driveways walks, paths and, any proposed access corridor
   I. The Reference Line and 50' setback line
   J. The location of any trees proposed for removal and the location of replacement trees and other proposed plantings

K. Sedimentation and erosion control plan
L. Location of proposed area of disturbance for any shoreline stabilization and description or plan of proposed stabilization measures

3. The property owner shall provide sufficient staking to readily identify on the property the fifty-foot (50') setback and the homesite from the Reference Line.

4. Prior to issuance of a Shoreline Protection Permit, the Planning Director or his/her duly authorized agent may request additional supporting documentation deemed necessary and consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance. The property owner or his/her designated agent shall meet with the Planning Administrator on site to review the proposed plan.

5. A Shoreline Protection Permit shall expire if a Building Permit or Certificate of Occupancy for such use is not obtained by the applicant within twelve (12) months from the date of issuance, unless an extension is approved by the Planning Director or his/her designee.

6. The cost of a Shoreline Protection Permit shall be the amount specified in the County's Schedule of Fees and shall be payable to the County of McDowell at the time the application for a Shoreline Protection Permit is made.

Section 405. Building Permit Required.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Shoreline Protection Permit is required until that permit has been issued.

Section 406. Certificate of Occupancy.

1. The Planning Director or his/her duly authorized agent shall issue a Certificate of Occupancy certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved.

2. A Certificate of Occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a Shoreline Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.

3. If the Certificate of Occupancy is denied, the Planning Administrator shall notify the applicant in writing stating the reasons for denial.

4. No building or structure which has been erected, moved, or structurally altered may be occupied until the Planning Administrator or his duly authorized agent has approved and issued a Certificate of Occupancy.

5. Prior to issuance of a certificate of occupancy, homeowners must present the Planning Department with a plat showing the 50-foot buffer, the setback for the home (65-75), the footprint of the home in relation to all setbacks and septic systems must be shown on the final plat.

Section 407. Existing Development.

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to August 1, 1996, is grandfathered from this ordinance.

Lots not subject to the Lake James Protection Ordinance are subject to the Catawba River Buffer Rule as enforced by the North Carolina Department of Environmental Quality.

ARTICLE V: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section 501. Planning Director and Duties Thereof.

The County Manager shall appoint a Planning Director, or someone similarly styled, who shall be duly sworn in. It shall be the duty of the Planning Director to administer and enforce the provisions of this ordinance as follows:

1. The Planning Director or his/her duly authorized representative is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the County. The Planning Director, or his/her duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

2. The Planning Director or his/her duly authorized representative shall issue Shoreline Protection Permits and Certificates of Occupancy as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

3. The Planning Director shall serve as clerk to the Planning Board.

4. The Planning Director shall have the authority to grant minor variances of less than ten (10) percent of a numerical number.

5. The Planning Director or his/her duly authorized agent shall respond to violations or complaints within five (5) business days of such notification.

6. The McDowell County Planning Department does not enforce individual Home Owners Association (HOA) Property Owners Association (POA), or Architectural Review Committee (ARC) rules. Enforcement will be the responsible of the governing Board of the development. Individual property owners are responsible for meeting the rules of their respective HOA, POA, or ARC.

Section 502. Appeal From the Planning Director.

Any order, requirement, decision or determination made by the Planning Director may be appealed to and decided by the Board of Adjustment. An appeal from a decision of the Planning Director must be submitted to the Board of Adjustment within thirty (30) days from the date the order, interpretation, decision or determination is made, all appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Planning Director shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

Section 503. Establishment of the Board of Adjustment.

There shall be and hereby is created the Board of Adjustment.

1. The Board of Adjustment shall consist of seven (7) members appointed by the McDowell County Board of Commissioners.

2. Five (5) members shall be comprised of the Board of Commissioners.

3. One (1) member shall be the sitting chairperson of the Planning Board.

4. One (1) member shall be a sitting member of the Planning Board.

Section 504. Rules of Conduct for Members.

Members of the Board may be removed by the McDowell Board of Commissioners for cause, including violation of the rules stated below:

1. Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

2. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).

3. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Planning Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

4. Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.

5. Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.

6. No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

Section 505. Powers and Duties-of the Board of Adjustment.

1. Administrative Review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Planning Director in the enforcement of this ordinance.

2. Variances. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be 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 shall be observed, public safety and welfare secured, and substantial justice done.

   A. Applications for a variance shall be made on the proper form obtainable from the Planning Director or his/her duly authorized representative and shall include the following information:

      (1) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point,

name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application.

B. Before the 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 he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his 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 an 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 his 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.

(3) In the 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 in any respect impair the public health, safety, or general welfare.

(4) 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. If a variance for the construction, alteration or use of property is

granted, such construction, alteration or use shall be in accordance with the approved site plan.

(5) The 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.

(6) A variance issued in accordance with this Section shall be considered a Shoreline Protection Permit and shall expire if a Building Permit or Shoreline Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

Section 506. Appeals from the Board of Adjustment.

As provided in G.S. 153A-345(e). Appeals from the Board of Adjustment must be filed with the Clerk of Superior Court within 30 days from the date of the decision. Review of appeals by the Superior Court will be in the manner of certiorari.