



## ZONING ORDINANCE

## **Zoning**

### **Article I. Title**

### **Article II. Authority and Enactment**

### **Article III. Purpose**

### **Article IV. Definitions of Terms Used in This Ordinance**

- Sec. 401. General.
- Sec. 402. Specific definitions.

### **Article V. Application of Regulations**

- Sec. 501. Territorial application.
- Sec. 502. Uniform application of regulations.
- Sec. 503. Uses.
- Sec. 504. Buildings.
- Sec. 505. Reduction of lots prohibited.
- Sec. 506. Additional dwellings on a single lot.
- Sec. 507. Control of vision clearance.
- Sec. 508. Compliance with other laws and regulations.
- Sec. 509. Business use of a mobile or manufactured home.
- Sec. 510. Use of a mobile home in medical emergencies.
- Sec. 511. Access through another use district.
- Sec. 512. Uses not delineated in this ordinance.

### **Article VI. Establishment of Districts**

- Sec. 601. Use districts names.
- Sec. 602. Conversion to a zoned district.
- Sec. 603. Zoning map requirements.
- Sec. 604. Map amendment.
- Sec. 605. Replacement of the official zoning map.
- Sec. 606. Rules for determining boundaries.
- Sec. 607. Nonconforming uses.

### **Article VII. General Provisions for Compliance**

- Sec. 701. Terms of compliance.
- Sec. 702. Exempt uses.
- Sec. 703. Uses-by-right.
- Sec. 704. Nonconforming lots and structures.

## **Article VIII. Subdivision Regulations**

- Sec. 801. Minimum Lot Sizes
- Sec. 802. Family Subdivisions

## **Article IX. Use Requirements by District**

- Sec. 901. R-A1 Residential - Agricultural District
- Sec. 902. R-A2 Residential - Agricultural District
- Sec. 903. R-A3 Rural Historic Residential District
- Sec. 904. R-1 Residential District
- Sec. 905. R-2 Residential District
- Sec. 906. O-I Office and Institutional District
- Sec. 907. N-B Neighborhood Business District
- Sec. 908. G-B General Business District
- Sec. 909. IND Industrial District
- Sec. 910. O-U Open Use District

## **Article X. Other Requirements by Use Districts**

- Sec. 1001. Minimum lot area and setbacks.

## **Article XI. Special Provisions**

- Sec. 1101. Buffer/screening requirements.
- Sec. 1102. Manufactured homes and manufactured home parks.

## **Article XII. Conditional Uses**

- Sec. 1201. Purpose
- Sec. 1202. Procedures for obtaining a conditional use permit.

## **Article XIII. Site Plan Review Requirements**

- Sec. 1301. Intent.
- Sec. 1302. Procedure for site plan review.
- Sec. 1303. Uses subject to special site plan review.
- Sec. 1304. Documentation.

## **Article XIV. Vested Rights**

- Sec. 1401. Initial adoption of ordinance.
- Sec. 1402. Site plan vested right.
- Sec. 1403. Vested right attached to property.

Sec. 1404. Jurisdiction determination.

#### **Article XV. Administrative Provisions**

- Sec. 1501. Appointment of the planning administrator.
- Sec. 1502. Powers and duties of the planning administrator.
- Sec. 1503. Application procedures.
- Sec. 1504. The pre-application conference.
- Sec. 1505. Submittal of application.
- Sec. 1506. Issuance of compliance permit.
- Sec. 1507. Denial of application.
- Sec. 1508. Burden of proof.

#### **Article XVI. Administrative Remedies**

- Sec. 1601. Procedures for requesting an amendment to this ordinance.
- Sec. 1602. Procedure for requesting a variance or an interpretation of the use district map.
- Sec. 1603. Appeals procedure.

#### **Article XVII. Relationship of This Ordinance to Public Bodies**

- Sec. 1701. Intent
- Sec. 1702. The Board of Adjustment
- Sec. 1703. The Planning Board.
- Sec. 1704. The Board of Commissioners.

#### **Article XVIII. Legal Provisions**

- Sec. 1801. Conflict with other laws and private contracts.
- Sec. 1802. All permits and licenses to conform.
- Sec. 1803. Violations.
- Sec. 1804. Validity.
- Sec. 1805. Effective date.

**MCDOWELL COUNTY, NORTH CAROLINA**

**ZONING ORDINANCE**

**ARTICLE I. TITLE**

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

**ARTICLE II. AUTHORITY AND ENACTMENT**

In pursuance to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A, Article 18, Part 2 and Part 3, the County Commissioners of McDowell County, North Carolina, hereby ordain and enact into law the following articles and sections.

**ARTICLE III. PURPOSE**

The purpose of this ordinance is to ensure orderly, healthy, safe, attractive and economically sound development, and to protect existing property values within McDowell County.

**ARTICLE IV. DEFINITIONS OF TERMS USED IN THIS ORDINANCE**

**Section 401. General**

Except as otherwise provided herein, all words shall have the customary dictionary meaning. The present tense includes the future tense. The singular number includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders. The word "person" includes a firm, corporation, association, organization, trust or partnership. The word "lot" includes plot or parcel. The word "building" includes "structure." The word "shall" is always mandatory. The word "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 402. Specific Definitions**

When used in this ordinance the following words and phrases shall have the meaning given in this section:

**402.01. Accessory Building, Use or Structure.** A building, use 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, telephones and fuel pumps.

**402.02 Affected Property Owner.** The owner of any property upon which the proposed development will have a positive or negative impact.

**402.03 Agribusiness.** An agricultural activity that manufactures and distributes farm equipment and supplies, or processes, stores and distributes farm commodities. More specifically, the activity includes stockyards, livestock markets, dairies and the following Standard Industrial Classification Codes, 1987: 021, 0254, 027, 071-078, 058, 091.

**402.04 Agricultural Use.** The tilling of the soil, the raising of crops, horticulture, and gardening, including the keeping of animals and fowl and farms; more specifically, the activity included in the following Standard Industrial Classification Code, 1987: 0100, 0210 (except 0211), 0241, 0250 (except 0254), 0272-3, 0290, 0810, 0830, 0920, 0970 and 5150.

**402.05 Amenities.** A manmade or natural feature which enhances or makes more attractive a particular site for development.

**402.06 Automobile Graveyard.** Any lot or parcel, or part thereof, which is exposed to the weather and upon which more than five (5) motor vehicles of any kind incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

**402.07 Automobile Service Station.** Any area of land, including structures thereon, used for the retail sale of gasoline or oil, automobile accessories, and incidental services including facilities for lubricating, hand washing and cleaning, or otherwise servicing automobiles, but excluding painting or major repair.

**402.08 Base Map.** A document on which property lines are depicted to the most accurate scale available.

**402.09 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 the Planning Administrator or his designee and grant variances from provisions of the McDowell County Zoning Ordinance.

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

**402.11 Boarding House.** A building where, for compensation, lodging and/or meals are provided for not more than ten (10) persons. A rooming house, bed and breakfast, guest house, or tourist home shall be deemed a boarding house.

**402.12 Bonafide Farm.** All land on which agricultural operations are conducted as the principal use, to include cultivation of crops and the husbandry of livestock.

**402.13 Buffering or Screening.** Any device or natural growth, or a combination thereof which shall serve as a barrier to vision or noise between adjoining properties wherever required by this ordinance. Whenever used for screening or buffering purposes "natural growth" shall be taken to mean evergreen trees, bushes and shrubbery.

**402.14 Building.** Any structure designed or intended for support, enclosure, shelter, or protection of persons, animals, chattels or property.

**402.15 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.

**402.16 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 state building code.

**402.17 Building, Principal.** A building in which is conducted the principal use of the lot on which said building is situated.

**402.18 Commercial Use.** Any activity that is included in the following Standard Industrial Classification Code, 1987: 4100 (except 4150 and 4170), 4400, 4500, 4700, 4800, 5010, 5020, 5040, 5060, 5090-5140, 5180, 5190, 5200-6700, 7000, 7200, 7300, 7500, 7600, 7800-8400, 8600-8900 or listed an allowed use in a commercial zone.

**402.19 Compatible.** Capable of existing together in harmony.

**402.20 Conditional Use.** A use that may be allowed in a use district, other than the Open Use District, when either the Board of Commissioners or the Board of Adjustment, after review of the application and hearing therein, finds as a fact the proposed use or uses are consistent with the comprehensive plan and the policies of the County for the applicable use district.

**402.21 Contiguous Development.** Areas where adjacent properties are developed.

**402.22 County.** McDowell County, North Carolina.

- 402.23 County Comprehensive Plan.** A document prepared and adopted in accordance with the General Statutes of North Carolina for the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county; in McDowell County, the Comprehensive Land Use Plan - 1993.
- 402.24 Day Care Center.** An agency, organization, or individual providing daytime care for six (6) or more children not related by blood or marriage to, or not the legal wards or foster children of the attendant adult and for payment or fee.
- 402.25 Department of Health.** McDowell County Department of Health.
- 402.26 Developer.** Any individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity commencing proceedings under this ordinance to bring about development for the individual or another; includes the term "subdivider."
- 402.27 Development.** A tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose, or is to contain five or more residential dwelling units. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.
- 402.28 Dwelling.** Any building or portion thereof which is designed for or used for residential purposes.
- 402.29 Dwelling, Single-Family.** A building designed for or occupied exclusively by one (1) family in a single dwelling unit.
- 402.30 Dwelling, Multi-Family (Duplex).** A building designed for or occupied exclusively by two (2) families living independently of each other in two dwelling units. A building designed for or occupied exclusively by two (2) or more families living independently of each other in adjoining dwelling units.
- 402.31 Dwelling Unit.** One (1) or more rooms in a residential building or in a mixed building which are arranged, designed, used or intended for use by one (1) family, and which included lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.
- 402.32 Easement.** A grant of one or more of the property rights by the property owner to and/or for the use by the public, corporation or another person or entity.

**402.33 Family.** One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, adoption or guardianship, no such family shall contain over five (5) persons, but further provided that domestic servants employed and housed on the premises shall not be counted as a family or families.

**402.34 Family Subdivision.** A division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

**402.35 Family Care Home.** A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

**402.36 Feed Lot.** An area enclosed by fences and designated for the feeding of livestock, including hogs, which are not allowed to graze in an open pasture. Typically supports little or no vegetation.

**402.37 Floor Area.** The sum of the gross areas of the several floors of a building or buildings measured from the exterior faces of exterior walls or from the center lines of walls separating two (2) buildings. In particular, floor area includes:

- (a) Basement space, except such space in a basement which has at least one-third (1/3) of its height below grade level, and which is located in a residential building with not more than two (2) stories entirely above grade level.
- (b) Elevator shafts or stairwells at each floor;
- (c) Floor space in penthouse;
- (d) Attic space (whether or not a floor has been laid) providing structural headroom is eight (8) feet or more;
- (e) Floor space in interior balconies or mezzanines;
- (f) Floor space in open or roofed terraces, exterior balconies, breezeways, or porches, if more than fifty (50) percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed;

- (g) Any other floor space used for dwelling purposes, no matter where located within a building, when not specifically excluded;
- (h) Floor space in accessory buildings except for floor space used for accessory off-street parking.

Floor area of building shall not include:

- (a) Cellar space, except that cellar space used for retailing shall be included for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths;
- (b) Elevator or stair bulkheads, accessory water tanks, or cooling towers;
- (c) Uncovered steps;
- (d) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than eight (8) feet;
- (e) Floor space in open or roofed terraces, exterior balconies, breezeways, or porches, provided that not more than fifty (50) percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed;
- (f) Unenclosed floor space used for permitted or required accessory off-street parking spaces;
- (g) Floor space used for accessory off-street loading berths;
- (h) Floor space used for mechanical equipment.

**402.38 Grade.** An average level of the finished surface of the ground adjacent to the exterior walls of the building or structure.

**402.39 Handicapped Person.** A person with a temporary or permanent physical, emotional or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but not including mentally ill persons who are dangerous to others, as defined in G.S. 122-58.2 (1) b.

**402.40 Hazardous Waste.** Solid or liquid waste which, because of concentration, quantity, physical, chemical or infectious characteristics:

- (a) May cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
- (b) May pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed; and
- (c) Is identified by the United States Environmental Protection Agency as hazardous.

**402.41 Health Club.** Commercial establishments such as gymnasiums (except public), private clubs (athletic, health or recreational), reducing salons and weight control establishments.

**402.42 Home Occupation.** Conduct of a home occupation in a residential structure subject to the following limitations:

- (a) The use shall be conducted entirely within a dwelling or permitted accessory building and carried on by the inhabitants living there, and having not more than three (3) other persons regularly employed at the premises concerning said use; and
- (b) The use shall be clearly incidental and secondary to the use of the dwelling; and
- (c) The total area used for the home occupation shall not exceed one-half the floor area of the user's living unit; and
- (d) There shall be no exterior advertising other than identification of the home occupation by a sign which shall not exceed fifteen (15) square feet in area which shall not be illuminated; and
- (e) There shall be no exterior storage on the premises of material or equipment used as part of the home occupation, except two (2) vehicles used in connection with said use; and
- (f) There shall be no offensive noise nor shall there be vibration smoke, dust, odors, heat or glare noticeable at or beyond the property line; and
- (g) There shall be no storage or use of toxic, explosive or other dangerous or hazardous materials upon the premises; and

**402.43 Industrial/Commercial Park Development.** A form of development characterized by a unified site design for a variety of commercial and industrial uses, open space, buffers, and a mix of building types in which flexibility is given

to project planning by allowing for the specific land uses to be determined as the market need arises.

**402.44 Industrial Use, Heavy.** Any activity that is included in the following Standard Industrial Classification Code, 1987: 1000, 1200-1700, 2000-2200, 2400-2600, 2800-3500, 3700, 4600, 4900, 5050 and 5170 or listed as an allowed use in an industrial zone.

**402.45 Industrial Use, Light.** Any activity that is included in the following Standard Industrial Classification Code, 1987: 2300, 2700, 3600, 3800, 3900, 4200, 5030, 5070, 5080 and 5160 or listed as an allowed use in an industrial zone or district.

**402.46 Institutional Use.** A nonprofit or quasi-public use, such as a church, library, or private school, hospital, or government owned or operated building, structure or land used for a public purpose.

**402.47 Junk.** Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste; or junked, dismantled or wrecked automobiles, or parts thereof; iron, steel and other old or scrap ferrous or nonferrous material.

**402.48 Junkyard (Salvage Yard).** An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk; or for the maintenance or operation of an automobile graveyard; the term shall include garbage dumps and sanitary fills.

**402.49 Kennel.** Any location where boarding, caring for or keeping of more than a total of three (3) dogs or cats or other small animals or a combination thereof (except litters of animals of not more than six months of age) is carried on, and also raising, breeding, caring for or boarding dogs, cats, or other small animals for commercial purposes.

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

**402.51 Lot.** A measured portion or parcel of land separated from other portions or parcels by description in a site plan or a recorded plat, or by metes and bounds, intended to be a unit for the purpose, whether immediate or future, of transfer of ownership or of development or separate use. The term applies to units of land whether in a subdivision or a development.

**402.52 Lot Corner.** A lot which occupies the interior angle at the intersection of two (2) street lines which make an angle of more than forty-five degrees (45) and less than one hundred and thirty-five degrees (135) with each other. The street line forming the least frontage shall be deemed the front of the lot except where the

two (2) street lines are equal, in which case the owner shall be required to specify which is the front when necessary.

**402.53 Lot Line (Property Line).** The boundary of a lot.

**402.54 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 of McDowell County, or a lot described by metes and bounds, the description of which has been so recorded.

**402.55 Lot Width.** The distance between side lot lines measured at the building setback line, or as otherwise herein stated.

**402.56 Manufactured Home.** A dwelling unit constructed and designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of forty (40) feet or more in length and eight (8) feet or more in width. It shall also comply with the National Mobile Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development. This term shall also include the term "Mobile Home."

**402.57 Manufactured or Mobile Home Park.** Any place or tract of land or multiple lots or parcels of land that are leased or rented and managed as part of a single business operation, maintained, offered or used for the parking of three (3) or more manufactured homes used or intended to be used for living or sleeping quarters.

**402.58 Modular Home.** A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code, as amended, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. A modular home shall consist of two or more sections transported to the site on a truck and erected or joined together on the site.

**402.59 Motel.** A building in which lodging or board and lodging are provided for transient guests and offered to the motoring public for compensation. This term shall also include the terms "hotel" and "inn."

**402.60 Nonconforming Lot.** An otherwise legally platted lot that does not conform to the minimum area or width requirements of this ordinance either at the effective date of this ordinance or as a result of subsequent amendments thereto.

**402.61 Nonconforming Structure.** An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations

of this ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance, either at the effective date of this ordinance or as a result of subsequent amendments thereto.

**402.62 Non-Conforming Use.** A building or land which does not conform to the use regulations of this ordinance for the use district in which it is located, either at the effective date of this ordinance, or as an amendment thereto.

**402.63 Non-Residential Use.** A building or structure not used for residential purposes.

**402.64 Non-Rural Use.** The use of land, buildings or structures other than a rural use.

**402.65 Nursing Home.** A home for aged or ill persons in which three (3) or more persons not of the same immediate family are provided with food, shelter and care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to diagnosis and treatment.

**402.66 Open Space.** Any yard area which is not used for or occupied by a building, driveway, off-street parking, loading space, or refuse storage space.

**402.67 Open Storage.** Unroofed storage area, whether fenced or not.

**402.68 Parking Lot.** Any designated area designed for temporary accommodation of motor vehicles of the motoring public in normal operating condition whether for a fee or as a service.

**402.69 Planning Administrator.** The McDowell County official charged with the responsibility of enforcing this ordinance.

**402.70 Planning Board.** The McDowell County Planning Board.

**402.71 Presiding Officer.** A person appointed by the Planning Board, Board of Adjustment, and/or Board of Commissioners, whichever is appropriate, to preside at public meetings or hearings in order to carry out the provisions of this ordinance.

**402.72 Public Utility Corporation.** A organization performing a public service and subject to special governmental regulation.

**402.73 Recreational Vehicle.** A vehicular, portable structure designed as a temporary dwelling for travel, recreational and vacation uses. The term recreational vehicle does not include mobile or manufactured homes.

**402.74 Recreational Vehicle Parks.** Facilities for recreational vehicles, pick-up coaches, motor homes, camping trailers, other vehicular accommodations and

tents suitable for temporary habitation and used for travel, vacation and recreation purposes.

**402.75 Residential Use.** A building or part of a building containing one or more dwelling units or rooming units, including single-family or two-family houses, multiple family dwellings, mobile or manufactured homes, boarding or rooming houses, dormitories, fraternity or sorority houses or apartment hotels; but not including monasteries, convents, transient accommodations, such as hotels, motels, tourist homes, or recreation vehicle parks, or that part of mixed building used for any non-residential use, except accessory to residential uses.

**402.76 Rest Home.** A health facility where persons are housed and furnished with meals and continuing nursing care for compensation.

**402.77 Right-of-Way.** Access over or across particularly described property for a specific purpose or purposes.

**402.78 Right-of-Way Line.** The dividing line between a lot, tract, or parcel of land and a contiguous street, railroad, or public utility right-of-way.

**402.79 Right-of-Way, State Owned.** The right-of-way owned outright by the North Carolina Department of Transportation on which public roads are constructed and maintained.

**402.80 Rural Use.** An activity defined as either an agricultural use or an agribusiness.

**402.81 Salvage Yard.** See "Junk Yard."

**402.82 Sanitary Landfill.** An engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

**402.83 Setback Line.** A line parallel to a street right of way, shoreline or lot line 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.

**402.84 Shopping Center.** A group of commercial establishments, planned and developed as a unit, with common offstreet parking provided on the property, located on a parcel of land ten or more acres in size.

**402.85 Shopping Complex.** Two or more commercial uses or establishments, planned and developed as a unit, with common offstreet parking provided on the property,

located on less than a ten-acre parcel of land.

**402.86 Sign.** Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or marks, or combinations thereof, by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a public business, a commodity, or product, which are visible from any public way and used as an outdoor display.

**402.87 Sign Control Ordinance.** The Off Premise Sign Control Ordinance of McDowell County, North Carolina, Ordinance Number 129.

**402.88 Site Plan.** A graphic representation of a proposed development of a parcel of land describing with reasonable certainty the type and intensity of use thereon.

**402.89 Standard Industrial Classification.** A multi-digit code utilized by the federal Executive Office of Management and Budget to classify establishments by type of activity in which they are engaged.

**402.90 Street.** A dedicated and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

**402.91 Structure.** Anything constructed or erected, the use of which requires more or less permanent location on the ground, or which is attached to something having more or less permanent location on the ground.

**402.92 Subdivision.** A "subdivision" shall mean all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions of, for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets.

**402.93 Superior Court.** The Superior Court of McDowell County, North Carolina.

**402.94 Tourist Home.** See "Boarding House."

**402.95 Townhouse.** A residential unit in a series of three (3) or more single-family attached dwellings separated from one another by common vertical walls with no openings.

**402.96 Townhouse Lot.** A lot upon which a townhouse is or is to be erected.

**402.97 Use.** The principal purpose for which a lot or the principal building thereon is designed, arranged, or intended and/or which it is or may be used, occupied, or maintained.

- 402.98**      **Use-by-Right.** A use of the land, because of its nature and impact, that is automatically allowed within a use district.
- 402.99**      **Variance.** A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building 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.
- 402.100**      **Vested Rights.** The written and granted right to undertake and complete the development and use of real property which, when completed, will be in conflict with the provisions of this ordinance at its effective date, or any amendments thereto.
- 402.101**      **Wayside Stand.** A building or structure located within fifty (50) feet of a street or road for the sole purpose of selling agricultural or horticultural products grown within the county.
- 402.102**      **Yard.** An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward, except where encroachments and accessory buildings are expressly permitted.
- 402.103**      **Yard, Front.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street or highway right-of-way line and the front line of the building, projected to the side lines of the lot. On all corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension.
- 402.104**      **Yard, Rear.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. On all corner lots the rear yard shall be at the opposite end of the front yard.
- 402.105**      **Yard, Side.** An open, unoccupied space on the same lot with a principal building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. On all corner lots, the side yard shall be considered as parallel to the street upon which the lot has its greatest dimension.

## ARTICLE V. APPLICATION OF REGULATIONS

### **Section 501 Territorial Application**

The provisions of this ordinance shall apply to all lands as designated on the Official Zoning Map of McDowell County.

All territory which may hereafter be included within the planning jurisdiction of any municipality shall be continued in the County's existing planning jurisdiction until otherwise classified by the governing board of the affected municipal government.

### **Section 502 Uniform Application of Regulations**

The regulations established herein shall be minimum regulations and be uniformly applied, except as hereafter provided.

### **Section 503 Uses**

No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, constructed, moved or structurally altered except in conformity with the regulations herein specified.

### **Section 504 Buildings**

No building shall hereafter be erected, constructed, or altered so as to accommodate or house a greater number of families or to occupy a greater percentage of the lot area than is required or specified on the regulations herein.

### **Section 505 Reduction of Lots Prohibited**

No new lot shall hereafter be created, nor shall any lot existing at the time of enactment of this ordinance be changed so that building setback or lot area requirements; or other requirements of this ordinance are not maintained, except when a portion of a lot is acquired for public use or when a lot is divided for a family subdivision.

### **Section 506 Additional Dwellings on a Single Lot**

Two or more single-family dwellings up to a total of three dwelling units are allowed on the same lot or parcel of land except in use districts which specifically prohibit additional dwellings on the same lot or parcel. In use districts which allow duplexes, apartments and garage apartments, these structures must conform to the minimum dwelling unit per acre requirements described herein.

### **Section 507 Control of Vision Clearance**

No fence, wall, shrubbery, sign, marquee or other obstruction to vision between the heights of two and one half (2-1/2) and ten (10) feet from the ground level shall be permitted within twenty (20) feet of the intersection of the right-of-way lines of two roads or railroad lines, or of a road intersection with a railroad line.

### **Section 508 Compliance With Other Laws and Regulations**

Provisions herein may reference other applicable laws and regulations that must be adhered to in addition to the requirements herein. Any other law or regulations applying to the applicant or his agent for any project subject to this ordinance, whether referenced herein or not, shall be the responsibility of the applicant or his agent.

### **Section 509 Business Use of a Mobile or Manufactured Home**

A mobile or manufactured home may be occupied as a commercial use provided that prior to engaging in such activity all provisions required herein shall be adhered to. In the event a mobile or manufactured home is to be used on a construction site, the mobile or manufactured home, will be limited to its location on such site for the period of the actual construction.

### **Section 510 Use of a Mobile Home in Medical Emergencies**

In the event of a medical emergency where a family member requires close supervision or constant care a permit may be issued by the Planning Administrator or the Planning Board for a mobile home or manufactured home to be placed on a lot in the rear yard of another structure for a period of twelve months. The Planning Board or Planning Administrator may renew the permit at the end of the twelve month period.

### **Section 511 Access Through Another Use District**

Private access to a parcel of land used appropriately in a use district as provided herein shall be prohibited through another use district unless such private access is approved by the Board of Adjustment in accordance with section 1503 herein.

### **Section 512 Uses Not Delineated in This Ordinance**

If in any use district established hereunder, a use is not specifically delineated in this ordinance as a use-by-right or a conditional use, a property owner, or his appointed agent, may submit an application for a use permit. If the use as applied for is approved, this ordinance shall be automatically amended to include the use as a conditional use in the district so located, provided the requirements in Section 1601 herein are met.

## ARTICLE VI. ESTABLISHMENT OF DISTRICTS

### Section 601 Use Districts Names

For the purpose of this ordinance the use districts of McDowell County are hereby divided into the following districts:

- R-A1 Residential - Agricultural Low Density District
- R-A2 Residential - Agricultural Medium Density District
- R-A3 Rural Historic Residential District
- R-1 Residential Medium Density District
- R-2 Residential Low Density District
- O-I Office and Institutional District
- N-B Neighborhood Business District
- G-B General Business District
- IND Industrial District
- O-U Open Use District

### Section 602 Conversion to a Zoned District

From time to time a group of citizens may desire the traditional Euclidean zoning system rather than remaining in an unzoned area. Such group of citizens may apply to the Board of Commissioners to amend the Use District Map to change their property to a use district or districts as described herein. The process for changing from the unzoned to other use districts is delineated in Section 1601.01 herein, provided the application for such amendment shall be presented from a group of citizens/land owners located within a minimum area of six hundred forty (640) acres including a minimum of ten (10) parcels of land under separate ownership. Where the area to be zoned is contiguous to an existing zoned area, the above minimums do not apply. The application shall be accompanied with a signed petition requesting the amendment from at least one half (1/2) of the land owners within the area to be changed. The land owners shall also own a minimum of one half (1/2) of the land area that is to be converted to another use district.

### Section 603 Zoning Map Requirements

The "Official Zoning Map of McDowell County, North Carolina," with all notations, references, amendments and dates thereto, and other information shown thereon, shall constitute a part of this ordinance and be hereinafter referred to as the zoning map. The zoning map shall be made public record and shall be kept permanently in the office of the Planning Administrator, where it shall be available for inspection by the public.

### Section 604 Map Amendment

If, in accordance with the provisions of Article XVI herein, changes are made in the district boundaries or other information portrayed on the official map, such changes shall be entered on the official zoning map within thirty (30) days after the amendment has been approved by the

Board of Commissioners, together with a numerical entry referring to the application for the amendment which shall be kept as a public record by the Planning Administrator. Said numerical entry shall state the reference number of the application in the records of the Planning Administrator, and the date of the approval of the amendment by the Board of Commissioners. Amendments to this ordinance which involve matter portrayed on the official zoning map shall become effective immediately upon being approved by the Board of Commissioners. The official zoning map which shall be located in the office of the Planning Administrator shall be the final authority in determining the current legal status of land and water areas, buildings, and other structures in the County. No changes of any nature shall be made on the official zoning map except in accordance with the procedures set forth herein.

### **Section 605 Replacement of the Official Zoning Map**

In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, or can be improved with a more accurate base map, the Board of Commissioners may, by resolution, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting or other errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original official zoning map or any subsequent amendment thereof without a public hearing.

### **Section 606 Rules for Determining Boundaries**

Unless district boundary lines are fixed by dimensions, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the official zoning map, the following rules shall apply:

606.01 Unless otherwise indicated, district boundaries indicated as approximately following property lines, land lot lines of streams, streets, highways, alleys or railroads, or the shorelines of reservoirs, or other bodies of water, or civil boundaries, shall be construed to follow such lines.

606.02 District boundaries indicated as approximately parallel to the center lines of streams, streets, highways, or railroads, or rights-of-way of the same, or the shorelines of reservoirs, or other bodies of water, or said lines extended, shall be construed as being parallel thereto and at such distance therefrom as indicated on the official zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the official zoning map.

606.04 Where a public road, street, or alley is officially vacated or abandoned, the regulations applicable to the property to which it is reverted shall apply to such vacated or abandoned road, street, or alley.

606.05 Where a district boundary is indicated to follow a river, creek, or branch or other body of water, said boundary shall be construed to follow the center line at low water or

at the limit of the jurisdiction, and in the event of natural change in the shoreline, such boundary shall be construed as moving with the actual shoreline with its reestablished center of channel.

606.06 If no distance, curvature description, or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on the official zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Adjustment which shall determine the boundary in accordance with Section 1602 herein.

606.07 In case the exact location of a boundary cannot be determined by the foregoing method, the Board of Adjustment shall, upon application, determine the location of the boundary in accordance with Section 1602 herein.

### **Section 607 Non-Conforming Uses**

As provided in Article XIV herein, nothing in this ordinance shall be construed to impair any vested right, except that this ordinance recognizes the elimination of existing uses that are not in conformity with the provisions of this ordinance in as much a subject of health, safety, and general welfare as is the prevention of the establishment of new uses that would violate the provisions of this ordinance. It is, therefore, the intent of this ordinance to permit these non-conforming uses to continue, but not to encourage their survival or permit their uses as grounds for adding other uses prohibited elsewhere within the same zoning.

Nonconforming uses may be found in all use districts, therefore, any use of land existing at the time when any zoning is created under the provisions of this ordinance and any amendments thereto, and not in conformity with the regulations and provisions prescribed herein, may be continued subject to the following provisions:

#### **607.01 Non-Conforming Uses of Land**

Where a lawful use of land exists at the time when any zoning is created or amendment of this ordinance that would not be allowed by the regulations imposed herein, such use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. A non-conforming use may be enlarged or increased or extended to occupy a greater area not exceeding fifty percent (50%) of the land area that was occupied at the time it was determined to be non-conforming.
2. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the time it was determined to be non-conforming.

3. In the event that such use ceases for any reason for a period of more than twelve (12) months any subsequent use shall conform to all requirements of this ordinance for the zoning in which the land is located.
4. No additional structure not conforming to the requirements of this ordinance shall be constructed in connection with such non-conforming use.

#### **607.02 Non-Conforming Uses of Structures**

Where a lawful use of an individual structure, or of structures on premises in combination, exists where any zoning is created or amendment to this ordinance that would not be permitted in the zoning in which it is located under the requirements of this ordinance, such use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. A structure existing at the time when it was determined to be non-conforming, devoted to a non-conforming use may be enlarged, extended or structurally altered, provided such enlargement, extension or alteration shall not exceed fifty percent (50%) in the aggregate of the floor area of the original structure devoted to a non-conforming use and provided all yard and other appropriate requirements herein are met. The provision shall not apply to the changing of the use of a structure to a conforming use.
2. When a non-conforming use of a structure and premises in combination is discontinued or abandoned for twelve (12) consecutive months, except when government action impedes access to the premises, or when a non-conforming use is superseded by use-by-right, the structure and premises shall not thereafter be used except in conformity with regulations of the zoning in which it is located.
3. Where a structure which is used in combination with its premises for a use not in conformity with the regulations herein is destroyed by any means, the use of the land shall be allowed to continue after reconstruction of the structure, provided such reconstruction of the structure adheres to the appropriate requirements of the zoning district in which said structure is located.

## **ARTICLE VII. GENERAL PROVISIONS FOR COMPLIANCE**

### **Section 701 Terms of Compliance**

This ordinance contains a minimal number of exempt uses and very few prohibited uses. Exempt uses are considered generally compatible in nature and are not required to obtain a compliance permit, provided the provisions in Section 703 are met. All other development, including all changes of developed uses, not specifically prohibited, is required to obtain a compliance permit issued pursuant to Article XV herein and in accordance with other appropriate Articles of this ordinance.

### **Section 702 Exempt Uses**

The following uses are exempt from obtaining a compliance permit:

1. Incidental agriculture in conjunction with a residential use provided that such agricultural use shall not occupy over five (5) acres.
2. A bonafide farm, and land which is used solely for forestry or logging using a temporary on-site portable sawmill.
3. Yard sales and garage sales by the resident owner, and bazaars, flea markets and sales conducted by nonprofit organizations, provided such sales are limited to forty-eight (48) hours per sale and no more than one (1) such sale per month.
4. Wayside stands for the sale of only agricultural or horticultural products.
5. Signs as delineated in the Sign Control Ordinance.

### **Section 703 Uses-by-Right**

A Use-by-Right, because of its nature and impact, is automatically allowed within a designated zoning area. A compliance permit shall be required, and the application for a Use-by-Right shall be processed in accordance with Section 1505.01 herein.

### **Section 704 Non-Conforming Lots and Structures**

As provided in Article XIV herein, nothing in this ordinance shall be construed to impair any vested right except that this ordinance recognizes the elimination of existing lots or structures that are not in conformity with the provisions of this ordinance is as much a subject of health, safety, and general welfare as is the prevention of the establishment of new lots, or structures that would violate the provisions of this ordinance. It is, therefore, the intent of this ordinance to

permit these non-conformities to continue, but not to encourage their survival. Therefore, any lot or structure of land existing at the time and amendments thereto, but not in conformity with its regulations and provisions, may be continued subject to the following provisions:

704.01 Lots of Record. Where a platted or deeded lot of record at the time of enactment of this ordinance does not contain land of sufficient area or width to permit conformity with dimensional requirements of this ordinance, a single non-conforming lot of record at the time of enactment of or amendment to this ordinance which is not of continuous frontage with other lots in the same ownership may be used as a building site, provided that the development conform to the setback requirements herein. Variances of setback requirements may be obtained only through appeal to the Board of Adjustment, as outlined in Sections 1602 and 1702 herein. However a variance of less than ten percent (10%) of a numerical number may be issued by the Planning Administrator.

704.02 Non-Conforming Structures. Where a lawful structure exists at the time of enactment of or amendment to this ordinance that could not be built by reasons of restrictions on area and setback, such structure may be continued so long as it remains lawful, subject to the following provisions:

1. Any structure or portion thereof declared unsafe by the building inspector, or destroyed by any means, may be restored to a safe condition, provided that the requirements of this section are met.
2. A non-conforming structure may be enlarged or altered as necessary, provided such enlargement(s) or alteration(s) do not exceed a fifty (50) percent of the floor area of the original non-conforming structure, and provided all setback and other appropriate requirements herein are met; any structure or portion thereof may be altered to decrease its nonconformity.
3. Notwithstanding the provisions of Section 704.02 (2) above, whenever repairs on or installation of plumbing facilities in residential structures are required by law or administrative action of the department of health or the building inspector, such alteration shall be permitted, provided that where such alterations require an addition to the structure, such addition shall not exceed the setback line permitted by the requirements of this ordinance. Where an existing residential structure exceeds these requirements, the said addition shall not extend farther past the setback line than the existing building line.
4. Should a non-conforming structure be moved it shall thereafter conform to the setback required herein after it is moved.

## ARTICLE VIII. SUBDIVISION REGULATIONS

### **Section 801 Minimum Lot Sizes**

Within all R-A1 Residential-Agricultural Districts of McDowell County, no new lot shall be created that is less than one (1) acre in size.

Within all R-A2 Residential-Agricultural Districts of McDowell County, no new lot shall be created that is less than one (1) acre in size.

Within all R-A3 Rural Historic Residential Districts of McDowell County, no new lot shall be created that is less than three (3) acres in size.

Within all R-1 Residential Districts of McDowell County, no new lot shall be created that is less than one quarter (1/4) acre in size.

Within all R-2 Residential Districts of McDowell County, no new lot shall be created that is less than one half (1/2) acre in size.

### **Section 802 Family Subdivisions**

Family subdivisions are exempt from the provisions of Section 801.

## ARTICLE IX. USE REQUIREMENTS BY DISTRICT

Within the use districts indicated on the zoning map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part, for any use other than those listed as uses-by-right and conditional uses for the zoning described in this Article.

### Section 901 R-A1 Residential - Agricultural District

The R-A1 Residential-Agricultural District is established as a district in which the principal use of the land is for residential and agricultural purposes.

#### 901.01 Uses-By-Right

- a. Single family dwellings including mobile homes and manufactured homes and accessory buildings to residential uses
- b. Agriculture or horticulture, including the sale of farm products at a retail stand on the property where produced.
- c. Home occupations, including dressmaking, cooking and baking, barber and beauty shops, music instruction, the practice of such professions as insurance and accounting, shall be permitted as accessory uses in a residence provided not more than 50% of the total gross floor area be used for these purposes. The Board of Adjustment shall decide whether other home occupations not listed here are within the spirit of this category of accessory uses. (Refer to Section 402 for definition)
- d. Day care centers, provided that they meet State day care and local Health Department requirements.
- e. Rest homes, nursing homes and family care homes.
- f. Churches and their customary related uses including cemeteries provided that all graves shall be set back at least ten (10) feet from any property line.
- g. Public elementary and secondary schools and private schools having curricula approximately the same as ordinarily offered in public schools.
- h. Public or private parks, playgrounds, community centers, country clubs and lodges, golf courses and swimming pools.
- i. Public safety facilities such as fire and police stations and rescue squad

headquarters, provided that all vehicles and equipment shall be stored indoors and shall be designed and landscaped in such a way as to blend in with the surrounding area.

- j. Public works and public facilities such as transformer stations, pumping stations, water towers and telephone exchanges, provided:
  - (1) Such facilities are essential to the service of the immediate area and no vehicles or materials shall be stored outside on the premises;
  - (2) No offices shall be permitted;
  - (3) All buildings shall be set back at least fifteen (15) feet from all property lines and shall be designed and landscaped in such a way as to blend in with surrounding area;
  - (4) All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.
- k. Farm-type enterprises such as plant nurseries, commercial greenhouses, fruit or vegetable packing sheds, retail sale of products grown on premises, hatcheries, and similar commercial and processing activities.
- l. Garage apartments, provided they meet the requirements stipulated for two-family dwellings in the district, and meet all setback requirements required of the principal structure.
- m. Small poultry operations (e.g. less than 1,000 square feet).
- n. Signs as provided for in the Sign Control Ordinance.

#### 901.02 Conditional Uses

The following uses are allowed when authorized by the Board of Adjustment after said Board holds a public hearing pursuant to the provisions of this ordinance.

- a. Two-family dwelling units, apartment buildings and townhouses up to four dwelling units in a single project, building, lot or development, provided such units are constructed in such a manner as to blend into and appears to maintain the same environmental condition for the neighborhood in which it is to be located. Lot area shall be required by the use district requirements herein, the McDowell County Watershed Ordinance and the McDowell County Health Department septic system regulations if necessary.

- b. Backyard workshops for building tradesmen and small appliance repair shops, provided such non-farm buildings be limited to 1,000 square feet under roof; but excluding open storage. These workshops are only permitted in the rear yard.
- c. Large scale poultry operations (e.g. more than 1,000 square feet) and feed lots.

#### 901.03 Other Requirements.

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### Section 902 RA-2 Residential Agricultural District

The RA-2 Residential District is intended to be a quiet, medium-density neighborhood consisting of limited home occupations, agriculture and limited private and public community uses.

#### 902.01 Uses-By-Right

- a. All uses-by-right in the R-A Residential Agricultural District excluding mobile or manufactured homes not built to North Carolina building code standards.
- b. Multifamily Dwelling units provided they meet minimum lot size, setback and minimum dwelling unit per acre requirements provided herein.
- c. Facilities for the extraction of water, for the purpose of selling it to a bottled water distributor. Such facilities shall be less than three acres in size and not located within one hundred feet of a property line.

#### 902.02 Conditional Uses

- a. Backyard workshops for building tradesmen and small appliance repair shops, provided such non-farm buildings be limited to 1,000 square feet under roof; but excluding open storage. These workshops are only permitted in the rear yard.
- b. Large scale poultry operations (e.g. more than 1,000 square feet) and feed lots.

#### 902.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

## Section 903 R-A3 Rural Historic Residential District

The R-A3 Rural Historic Residential District is a low-density residential area wherein (a) large tracts of land continue to be used for a variety of agricultural purposes and, (b) significant historic sites, landmarks, residences, and accessory buildings are preserved.

The regulations of this zoning district are intended (a) to preserve and protect the natural beauty and historical significance of the district, (b) to conserve individual properties within the district that embody important elements of the social, economic, cultural, political, and architectural history of the County, and (c) contribute to efforts to make the County attractive to visitors. The regulations of this zoning district are intended to discourage any use that, because of its nature, would substantially change the character of the district.

### 903.01 Uses-by-Right

- a. Single family dwellings including modular homes.
- b. Manufactured (mobile) homes having a minimum length of forty (40) feet and a minimum width of sixteen (16) feet.
- c. Churches and their customary related uses including cemeteries, provided that all graves be set back at least ten (10) feet from any property line.
- d. Signs, excluding off premise signs, not exceeding nine (9) square feet of sign area.
- e. Private swimming pools.
- f. Accessory buildings to residential and farm uses, provided that no accessory building shall be rented or occupied for gain.
- g. Home occupations, as defined in Section 402.
- h. Yard sales. No more than twelve (12) sales per year are permitted for each parcel of land.

### 903.02 Conditional Uses

- a. Public and private parks, playgrounds, clubs, golf courses and swimming pools.
- b. Public safety facilities such as fire and police stations and rescue squad headquarters, provided:
  1. That all vehicles and equipment shall be stored indoors;

2. All buildings shall meet the lot and setback requirements and be designed and landscaped in such a way as to blend in with the surrounding area. This includes a vegetative buffer of at least six (6) feet in width and a minimum of ten (10) feet in height at maturity; and
  3. All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.
- c. Public works and public facilities such as transformer stations, pumping stations, water towers and telephone exchanges, (excepting communication towers, waste dumps and junk or salvage yards) provided:
1. Such facilities are essential to the service of the immediate area;
  2. No vehicles or materials shall be stored outside the premises;
  3. No offices shall be permitted;
  4. All buildings shall meet the lot and setback requirements and be designed and landscaped in such a way as to blend in with the surrounding area. This includes a vegetative buffer of at least six (6) feet in width and a minimum of ten (10) feet in height at maturity; and
  5. All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.
- d. Home offices and backyard workshops for building tradesmen and small appliance repair shops, provided:
1. Such non-farm uses are limited to 600 square feet of working or office space;
  2. There be no open storage;
  3. That the office or workshop be an accessory use to a residence; and
  4. That the office or workshop area be located in the rear yard.

#### 903.03 Other Requirements

- a. Application for a zoning permit for uses in this district shall adhere to the requirements herein.
- b. A Site Plan must be submitted and approved for Uses-by-Right, Conditional Uses and all other uses.

- c. A compliance permit must be obtained for all conditional uses.

#### **Section 904 R-1 Residential District**

The R-1 Residential District is made up of medium density residential development. This development is composed of multifamily residences and single family residences, including mobile homes and other uses necessary for the community such as schools, fire stations and rest homes.

##### **904.01 Uses-By-Right**

- a. Single family dwellings including mobile homes and manufactured homes and accessory buildings to residential uses.
- b. Home occupations, including dressmaking, cooking and baking, barber and beauty shops, music instruction, the practice of such professions as insurance and accounting, shall be permitted as accessory uses in a residence provided not more than 50% of the total gross floor area be used for these purposes. The Board of Adjustment shall decide whether other home occupations not listed here are within the spirit of this category of accessory uses. (Refer to Section 402 for definition)
- c. Day care centers, provided that they meet State day care and local Health Department requirements.
- d. Rest homes, nursing homes and family care homes.
- e. Churches and their customary related uses including cemeteries provided that all graves shall be set back at least ten (10) feet from any property line.
- f. Public elementary and secondary schools and private schools having curricula approximately the same as ordinarily offered in public schools.
- g. Public or private parks, playgrounds, community centers, country clubs and lodges, golf courses and swimming pools.
- h. Public safety facilities such as fire and police stations and rescue squad headquarters, provided that all vehicles and equipment shall be stored indoors and shall be designed and landscaped in such a way as to blend in with the surrounding area.
- i. Public works and public facilities such as transformer stations, pumping stations, water towers, and telephone exchanges, provided:
  - (1) Such facilities are essential to the service of the immediate area and no vehicles or materials shall be stored outside on the premises;

- (2) No offices shall be permitted;
  - (3) All buildings shall be set back at least fifteen (15) feet from all property lines and shall be designed and landscaped in such a way as to blend in with surrounding area;
  - (4) All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.
- j. Garage apartments, provided they meet the requirements stipulated for two-family dwellings in the district, and meet all setback requirements required of the principal structure.
  - k. Two-family dwelling units, apartment buildings and townhouses up to four dwelling units per acre, provided such units are constructed in such a manner as to blend into and appears to maintain the same environmental condition for the neighborhood in which it is to be located.

#### 904.02 Conditional Uses

The following conditional uses are permitted when authorized by the Board of Adjustment after said Board holds a public hearing:

- a. Backyard workshops for building tradesmen and small appliance repair shops, provided such non-farm buildings be limited to 1,000 square feet under roof; but excluding open storage. These workshops are only permitted in the rear yard.
- b. Large scale greenhouses (e.g. more than 1,000 square feet).

#### 904.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### Section 905 R-2 Residential District

The R-2 Residential District is composed of certain quiet, low density residential sections of the community, plus certain open areas where similar residential development appears likely to occur, as indicated by the Comprehensive Plan. The regulations of this zoning district are intended to discourage any use which, because of its character, would substantially interfere with the development of single family or multi-family residences and which would be detrimental to the quiet residential nature of the areas included within this district.

#### 905.01 Uses-By-Right

- a. All uses-by-right in the R-A Residential Agricultural District excluding mobile or manufactured homes not built to North Carolina building code standards and multifamily dwellings.
- b. Public water and wastewater treatment plants.

#### 905.02 Conditional Uses

The following conditional uses are permitted when authorized by the Board of Adjustment after said Board holds a public hearing:

- a. Backyard workshops for building tradesmen and small appliance repair shops, provided such non-farm buildings be limited to 1,000 square feet under roof; but excluding open storage. These workshops are only permitted in the rear yard.
- b. Duplexes, apartment buildings and townhouses provided such units are constructed in such a manner as to blend into and appears to maintain the same environmental condition for the neighborhood in which it is to be located and do not exceed two dwelling units per acre.
- c. Large scale greenhouses, (more than 1,000 square feet).

#### 905.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### **Section 906 O-I Office and Institutional District**

The O-I Office and Institutional District is designed to provide a wide range of professional and economic office space, as well as space for public and quasi-public uses. The regulations are intended to provide for adequate traffic access and parking facilities in addition to prohibiting any use which, because of its character, would interfere with the office/institutional nature of this district.

#### 906.01 Uses-By-Right

- a. Public or privately owned medical and dental clinics, and offices where medical or dental services are rendered.
- b. Funeral homes.

- c. Banks, loan offices and financial agencies, excluding pawn shops.
- d. Business, professional, government, religious, charitable or fraternal offices or agencies and private clubs not engaged in full-time in retail sales to the general public or the maintenance of a stock of goods, merchandise or supplies on the premises for retail sales.
- e. Libraries, art galleries, museums, music or dancing institutions or schools and colleges.
- f. Auditoriums, armories, and publicly or privately owned and operated recreational facilities, including spas and tanning facilities.
- g. Publicly owned institutions, jails, other types of correctional institutions, and hospitals or institutions operated principally for the treatment of mental, alcoholic or narcotic patients.
- h. Television and radio stations
- i. All uses by right and conditional uses allowed in district R-1.
- j. Signs as provided for in the Sign Control Ordinance.

#### 906.02 Conditional Uses

The following conditional uses are permitted when authorized by the Board of Adjustment after said Board holds a public hearing.

- a. Public utility and service uses.
- b. Boarding houses and tourist homes.
- c. Group Commercial or Office Projects.

#### 906.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### **Section 907 N-B Neighborhood Business District**

The N-B Neighborhood Business District is intended for the use of those businesses and other

uses which are properly located near the rural service centers.

#### 907.01 Uses-By-Right

- a. Banks and other financial institutions.
- b. Barbershops and beauty shops.
- c. Bakeries, retail.
- d. Convenience stores, including gas pumps.
- e. Customary accessory uses and structures when located on the same lot as the main structure, excluding open storage.
- f. Dry cleaning or laundry pickup stations.
- g. Drug stores.
- h. Electrical, video and other electronic products, sales and rentals.
- i. Electric repair shops
- j. Florists and gift shops.
- k. Furniture and household appliance stores.
- l. Grocery, food, produce, fruit and meat stores.
- m. Hardware stores.
- n. Jewelry repair shops and opticians.
- o. Laundromats and similar automatic laundries.
- p. Newspaper and publishing offices, excluding printing.
- q. Office supplies and equipment, sales and services.
- r. Photographic studios and camera supply stores.
- s. Parking lots and parking garages.
- t. Radio and TV repair shops.
- u. Restaurants.
- v. Shoe repair shops.
- w. Tailor and dressmaking shops.
- x. Schools and colleges.
- y. Churches, places of worship and cemeteries
- z. All uses by right and conditional uses allowed in district O & I.
  - aa. Mini warehouses.
  - bb. Signs as provided for in the Sign Control Ordinance.

#### 907.02 Conditional Uses

The following uses are permitted when authorized by the Board of Adjustment after said Board holds a public hearing:

- a. Mixed uses, that is, buildings erected for both dwelling and business purposes.
- b. Service stations, provided that all gasoline pumps and other stationary equipment shall be located at least fifteen (15) feet from the property line, provided further that on all sides where such stations abut residential districts, a buffer shall be constructed and maintained as defined in Section 1101 of this ordinance.

- c. Drive-in restaurants.
- d. Cabinet, woodworking and upholstery shops; not to exceed ten (10) employees.
- e. Kennels and animal hospitals.

907.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

**Section 908 G-B General Business District**

The G-B General Business District is established to provide suitable locations for those commercial activities which serve primarily the traveling public, including those which function rather independently of each other.

908.01 Uses-By-Right

- a. All uses allowed in districts N-B and RA-1
- b. Animal hospitals and kennels, provided there shall be no open kennels, provided further no pens and kennel fences shall be located closer than twenty (20) feet to any property line;
- c. Antique shops.
- d. Automobile sales, new and used; automobile vehicles, automobile parts and supply houses, repair garages and body shops, but excluding open storage of wrecked cars, salvage yards, and automobile graveyards.
- e. Banks.
- f. Barber and beauty shops.
- g. Baseball fields and miniature.golf courses.
- h. Boat and marine sales.
- i. Bowling alleys and skating rinks.
- j. Building material storage and sales yards; glass and mirror shops. A buffer shall be provided as required in Section 1101 of this ordinance.
- k. Convenience stores.
- l. Souvenir shops.
- m. Data processing service.
- n. Dairy bars, where the products are sold at retail on the premises only.
- o. Furniture stores and showrooms.
- p. Feed and seed stores.
- q. Floral shops and commercial greenhouses.
- r. Fruit stands and grocery stores.
- s. Fire and police stations, rescue squads and ambulance bases.
- t. Fabric stores.
- u. Finance companies.

- v. Funeral homes.
- w. Gift shops.
- x. Hardware, and appliance stores.
- y. Hatcheries.
- z. Health clubs.
- aa. Laundries
- bb. Motorcycle, lawn mower and power saw sales and service.
- cc. Meat markets.
- dd. Medical and dental clinics.
- ee. Music stores.
- ff. Offices and agencies for business and civic purposes.
- gg. Paint and floor covering stores.
- hh. Parks and playgrounds.
- ii. Pharmacies.
- jj. Plumbing and heating supply houses; electrical supplies and equipment, sales and service.
- kk. Public health centers.
- ll. Public utility distribution lines and pumping utilities stations, water tanks and towers, transformer stations, transmission lines and towers, when operating requirements necessitate locating in this district, but excluding service and storage yards.
- mm. Radio and television repair shops.
- nn. Restaurants, including drive-in restaurants, provided such drive-in restaurants shall construct and maintain a buffer as defined in Section 1101 of this ordinance.
- oo. Retail food.
- pp. Rental stores.
- qq. Retail stores.
- rr. Service stations, provided that all gasoline pumps are located fifteen (15) feet from the property line. A buffer shall be constructed and maintained as defined in Section 1101 of this ordinance.
- ss. Signs as provided for in the Sign Control Ordinance.
- tt. Telephone exchanges.
- uu. Tire recapping shops.
- vv. Group commercial projects.
- ww. Shopping centers and malls.
- xx. Recreational vehicle parks and sales.

#### 908.02 Conditional Uses

The following uses shall be permitted subject to findings by the Board of Adjustment after said Board holds a public hearing:

- a. Flea markets.

### 908.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### Section 909 IND-Industrial District

The IND-Industrial District is established as a district in which the principal use of land is for industrial and warehousing uses which normally seek large tracts of land where the operations involved do not detract from the development potential of nearby undeveloped properties.

#### 909.01 Uses-By-Right

- a. Amusement, recreation and sporting goods manufacturing.
- b. Apparel and clothing manufacturing, including hosiery.
- c. Bakeries and other establishments manufacturing prepared food products for wholesale distribution.
- d. Bottling plants.
- e. Building materials storage and sales yards. A buffer shall be provided as required in Section 1101 of this ordinance.
- f. Manufacturing of business equipment.
- g. Cabinet, woodworking and upholstery shops.
- h. Contractors' offices and storage yards, provided all open storage is fenced by a solid fence not less than six (6) feet in height or screened from view by an appropriate greenery buffer composed of evergreen trees.
- i. Dairy products processing and distributing facilities.
- j. Drugs, medicines and cosmetics manufacturing.
- k. Dry cleaning and laundry plants.
- l. Electrical appliances and electronic equipment manufacturing.
- m. Electrical supply houses and repair shops.
- n. Produce and farmer's markets.
- o. Flour and feed mills.
- p. Furniture manufacturing, all types.
- q. Greenhouses and horticultural nurseries.
- r. Hardware and housewares manufacturing.
- s. Industrial supplies and equipment, sales and service. A buffer shall be provided as required in Section 1101 of this ordinance.
- t. Research laboratories.
- u. Leather products, including luggage and shoe manufacturing.
- v. Musical instruments manufacturing.
- w. Offices pertaining to any use-by-right in this section.
- y. Plastic products manufacturing.
- z. Plumbing and heating supply houses, provided all open storage is fenced by a solid fence not less than six (6) feet in height, or is screened from view by an

- appropriate greenery buffer composed of evergreen trees.
- aa. Precision instruments and jewelry manufacturing.
- bb. Printing, engraving and publishing establishments.
- cc. Public works and public utility facilities, including service and storage yards.
- dd. Service stations, including major vehicle repair work, provided that all gasoline pumps shall be located at least fifteen (15) feet from any property line or street right-of-way.
- ee. Sign painting and fabricating shops.
- ff. Textile and cordage manufacturing.
- gg. Trucking terminals.
- hh. Wholesale and warehousing establishments, except for the storage of dangerous or offensive items such as explosives or uncured hides.
- ii. Customary accessory uses and structures, including open storage, provided the area devoted to open storage is screened in accordance with Section 1101 herein.
- jj. Signs as provided for in the Sign Control Ordinance.

#### 909.02 Conditional Uses

The following uses shall be permitted subject to finding by the Board of Adjustment after said Board holds a public hearing:

- a. Manufacturing uses not otherwise named herein which come within the spirit or intent of this zoning.
- b. Group industrial projects.

#### 909.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

### **Section 910 O-U Open Use District**

The Open Use District is established as a district in which the use of the land is open to many types of development but does not allow certain types of undesirable uses such as mobile home parks, junkyards, and papermills.

#### 910.01 Uses-By-Right

- a. All uses by right and conditional uses in the R-1 Residential District.
- b. All uses by right and conditional uses in the G-B General Business District.
- c. All uses by right and conditional uses in the IND Industrial District.

### 910.02 Conditional Uses

The following uses shall be permitted subject to finding by the Board of Adjustment after said Board holds a public hearing:

- a. Manufacturing uses not otherwise named herein which come within the spirit or intent of this zoning.

### 910.03 Other Requirements

Applications for a zoning permit for uses in this district shall adhere to the requirements herein.

## ARTICLE X. OTHER REQUIREMENTS BY USE DISTRICTS

### Section 1001 Minimum Lot Area & Setbacks

1001.01 Within zoned areas of the County the following minimum lot area, maximum dwelling units per acre and setback requirements shall apply:

<u>District</u>	<u>Minimum Lot Area (sq.ft.) *</u>	<u>Maximum # of Dwelling Units Per Acre*</u>	<u>Minimum Frontyard Setback **</u>	<u>Minimum Sideyard Setback</u>	<u>Minimum Rearyard Setback</u>
R-A1	43,560	1	35'		
R-A2	14,520	3	35'		
R-A3	130,680	1/3	75'	50'	50'
R-1	10,890	4	35'	15'	15'
R-2	21,780	2	35'	15'	15'
O-I		2	50'		
N-B		2	50'		
G-B		2	50'		
IND		-	50'		
O-U	10,890***	4			

\*Lots created as a part of a family subdivision are exempt from minimum lot size and maximum dwelling units per acre requirements.

\*\*For the measurement of permanent structure setbacks, all measurements shall be from the edge of the road, street or highway.

\*\*\*Minimum lot sizes in the Open Use District apply to residential lots only.

1001.02 Commercial, Industrial and Other Uses. Within districts permitting commercial, industrial and other uses, there are no minimum lot area requirements for industrial or commercial uses except as provided herein in special circumstances and/or as may be required by the Board of Commissioners and/or the Board of Adjustment. Residential units constructed within districts allowing industrial or commercial uses will be subject to the minimum dwelling units per acre requirements in section 1001.01.

1001.03 Health Department Approval. In special circumstances larger lot areas may be required by the McDowell County Health Department.

1001.04 Family Subdivisions Exempt. All lots created within family subdivisions are exempt from the minimum lot area requirements and dwelling units per acre requirements herein. Dwelling units constructed in family subdivisions shall adhere to the minimum setback requirements where feasible.

**Section 1002 Minimum Square Footage**

1002.01 Within all R-2 Residential Districts of McDowell County all new dwelling units must be constructed with at least twelve hundred (1,200) square feet of floor area. For calculation of floor area see section 104.37.

## ARTICLE XI. SPECIAL PROVISIONS

### Section 1101 Buffer/Screening Requirements

Unless otherwise required herein, the following requirements for buffer strips and screening of property shall be adhered to in the zoned areas of the County.

1101.01 Buffer Strip Area Dimensions. A buffer strip shall consist of a planted strip at least fifteen (15) feet in width composed of evergreen trees spaced not more than ten (10) feet apart and not less than one (1) row of dense shrubs, spaced not more than five (5) feet apart. Buffers located on property designated for industrial uses shall be twenty-five (25) feet in width. Once the buffer strip is erected, it shall be properly maintained. Where natural features such as topography or natural vegetation are preserved and prevent the project from being casually visible from adjoining properties, the Board of Adjustment may waive requirements for screening.

1101.02 Fences and Retaining Walls. Where fences and/or retaining walls are required, or may be allowed in lieu of a buffer strip, such structures shall be at least seven (7) feet in height at the original elevation of the property unless otherwise stated herein. For retaining walls, the height requirement shall apply only to the height above the top of the soil retained by such wall. Fencing and retaining walls shall be maintained in a safe condition and shall be kept in good repair. Wooden fences shall be painted, stained, or specially treated for protection from the weather.

1101.03 Zoning Requirements. Buffer strips, fences, or retaining walls are required in non-residential zoning, whenever the non-residential use in said district abuts an established residential subdivision or residential zoning.

### 1101.04 Special Buffer/Screening Requirements

1. Group or Multi-Family Projects. Fencing or vegetative screening shall be provided to a height of six (6) feet and of such a density that no part of the project shall be visible to a casual observer on any side of the project abutting any yard of a residential structure. Where natural features such as topography or natural vegetation are preserved and prevent the project from being casually visible from adjoining residential properties, the Board of Adjustment may waive requirements for screening.
2. A shopping center shall be permanently screened from adjoining residential zoning by a wall, fence, evergreen hedge and/or other suitable enclosure of a minimum height of seven (7) feet at the original elevation of the property line.
3. Extraction of Natural Resources. Vegetation shall be retained and/or fully

developed to screen extraction processes from nearby residential areas and adjoining roadways. Quarry areas being excavated shall be entirely closed within a fence located at least ten (10) feet back from the edge of any excavation. Borrow pits are exempt but must comply with State of North Carolina mining regulations if applicable.

1103.05 Administrative Requirements. Each application for a compliance permit or certificate of occupancy shall include information as to the location and type of buffer strip, fence or retaining wall to be erected with those uses requiring such structures.

## **Section 1102 Manufactured Homes and Manufactured Home Parks**

### **1102.01 Intent**

The intent and purpose of the manufactured home regulations are to: prevent overcrowding the land; provide adequate open area to assure privacy, natural light, and ventilation for each manufactured home; provide sufficient open area for outdoor uses essential to the manufactured home; insure the furnishing of adequate water supply and sewage disposal systems; provide access by emergency vehicles thereby protecting the health and property of manufactured home residents; and in general, to provide those amenities available in sound residential areas.

### **1102.02 Individual Manufactured Homes**

Individual manufactured homes may be placed on individual lots in compliance with the requirements herein and shall also comply with setback and minimum lot size requirements applicable to single family dwellings.

### **1102.03 Responsibility**

The owner of the land on which a manufactured home is to be placed, and the manufactured home park owner in the case of a park, is responsible to see that the manufactured home set-up meets all county, state, and federal regulations.

Once the owner authorizes an individual, firm or corporation to engage in setting up a manufactured home, the said individual, firm or corporation shall be deemed to be the expressed or implied agent of the owner for purpose of complying with these placement regulations that follow.

### **1102.04 Distance Between Manufactured Homes**

No manufactured home shall be situated or placed closer than a distance of thirty (30) feet to any building (including another manufactured home, but excluding utility buildings). Street rights-of-way and private manufactured home park roads shall not be included in

the computation of said distance.

1102.05 Records

All manufactured home park owners or operators shall keep an accurate up-to-date record of each tenant's name, location in the park, year, make, and model of the manufactured home for each site. These records shall also include the dates of tenancy and vacancy periods for each site and shall be open to inspection by the Building Inspection and Planning Departments and the McDowell County Sheriff's Department. The records required herein shall be kept for not less than two (2) years.

1102.07 Watershed Protection Ordinance

All manufactured homes as well as regular homes must comply with the McDowell County Watershed Protection Ordinance whether located in a zoned or unzoned area of the County.

## ARTICLE VII. CONDITIONAL USES

### Section 1201 Purpose

The conditional uses listed in Article IX herein, would not be appropriate without restriction throughout the zoning districts but could be acceptable if controlled as to number, area, location or relation to the neighborhood. Such uses may be permitted in a zoning district as conditional uses if the provisions of this and all other Articles of this ordinance have been met.

### Section 1202 Procedure for Obtaining a Conditional Use Permit.

- 1202.01 A written application for a conditional use permit is submitted to the Planning Administrator.
- 1202.02 After submission of an application for a conditional use permit, the Planning Administrator shall arrange a conference with the applicant. At the conference the applicant shall submit a sketch development plan and a brief description of the proposed development strategy. The conference is designed to inform the applicant of the local governments regulations and policies concerning development alternatives and to inform the local government of the applicant's intentions, enough to be able to give him some informal, nonbinding feedback on the acceptability of his plan.
- 1202.03 Notice of Hearing. The Board of Adjustment shall give public notice of the hearing in the newspaper having general circulation in McDowell County published at least five (5) days prior to the date of the hearing. The Board shall mail notices of the hearing to the adjoining property owners, to members of the Planning Board, and to such other persons as the Planning Administrator shall direct, at least ten days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the applicant's request, and the time and place of the hearing.
- 1202.04 At least one week prior to the date set for the public hearing, the applicant shall submit three (3) copies of the final development plan to the Planning Administrator. The development plan shall contain a map or maps drawn to scale with the date of preparation, and shall contain, where applicable, all information required in Section 1304 of this Ordinance.
- 1202.05 Conduct of Hearing. Any party may appear in person or by agent or by attorney at the hearing held by the Board of Adjustment. The order of business for hearing shall be as follows: (a) the Chairman, or such person as he shall direct, shall give preliminary statement of the case; (b) the applicant shall present the argument in support of his application; (c)

persons opposed to the granting the application shall present the argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the Chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections and corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath, and the opposing party may cross examine them.

Rehearings. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the Board in from the record it finds that there has been no substantial change in facts, evidence or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

1202.06

Conditions for Granting Approval. If the Board of Adjustment finds that, in the particular case in question, the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, a permit may be granted. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements of this ordinance. The conditional use permit shall be issued to the applicant only, an may not be transferred or assigned without the approval of the Board of Adjustment upon application to the Board of Adjustment and the Board's review of the proposed transferee or assignee.

If at any time after a conditional use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing has been held.

The Board of Adjustment may vary the minimum lot size requirement when issuing a conditional use permit.

1202.07

Decisions

- (1) Time. A decision by the Board shall be made within thirty (30) days from the time of the hearing.
- (2) Form. Written notice of the decision in a case shall be given by certified or registered mail to the applicant by the Secretary as soon as practicable after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairman upon approval of the minutes by the Board. Such record shall show the reasons for the determination, with a summary of evidence introduced and the finding of fact made by the Board. The record shall state in detail any fact made by the Board. The record shall state in detail any facts supporting findings required to be made prior to the issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a conditional use permit.
- (3) Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a conditional use 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 the decision.
- (4) Voting. The concurring vote of four-fifths of the members of the Board shall be necessary to grant a conditional use permit.
- (5) Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

1202.08

The Planning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met.

## ARTICLE XIII. SITE PLAN REVIEW REQUIREMENTS

### Section 1301 Intent

Site plan review is intended to insure proper design in types of development which can have potentially harmful effects on their surroundings. These effects are subject to modification or reduction through the physical design of such development. Review of the design, therefore, is aimed at the greatest possible benefit to the community as a result of building and site design.

### Section 1302 Procedure for Site Plan Review

When the Planning Administrator determines that an application involves development requiring site plan review, the Planning Administrator shall notify the applicant that such review is required and shall require the documentation listed in this section.

### Section 1303 Uses Subject to Special Site Plan Review

The following types of development shall be subject to the site plan review provisions under this ordinance:

- 1303.01 All commercial and industrial facilities;
- 1303.02 All institutional facilities such as schools, hospitals and clubs;
- 1303.03 All residential developments involving more than four (4) dwelling units in one building or on one lot;
- 1303.04 Manufactured (mobile) home park;
- 1303.05 Special exceptions when specified in this ordinance;
- 1303.06 Other uses when specified by the Board of Adjustment or the Planning Board.

### Section 1304 Documentation

The following requirements shall govern documents submitted for site plan assessment:

- 1304.01 Site plans shall be submitted at a scale of not less than one (1) inch equals one hundred (100) feet.
- 1304.02 Two (2) clearly legible blue-line or black-line copies of the site plan shall be submitted. Additional copies may be requested as deemed necessary.

1304.03 The names and addresses of owner and developer and a scale and north arrow shall be included on all maps.

1304.04 The following information shall be included on the map of existing conditions:

- (1) Lot dimensions with property line monuments located thereon;
- (2) Location, size and use of existing and proposed structures;
- (3) Yard dimensions;
- (4) Easements (private and public);
- (5) Water courses;
- (6) Fences;
- (7) Street names and street right-of-way lines;
- (8) Other information regarding abutting property as directly affects the application;
- (9) Other information as required by the Planning Administrator.

1304.05 The following additional information is required for a conditional use application:

- (1) Names and addresses of all adjacent properties;
- (2) Current zoning boundaries, including surrounding areas to a distance of three hundred (300) feet;
- (3) Relevant topographic information;
- (4) Layout of off street parking;
- (5) Proposed planting, including all landscaping and screening, and indicating existing trees to be retained and areas to be left undisturbed.
- (6) Proposed location of outdoor lighting;
- (7) Location of proposed utility lines, indicating where they already exist and whether they will be underground;

- (8) Proposed storm and sanitary drainage systems, both surface and subsurface, showing pipe sizes, grades, flow and design loads;

1304.06 The Planning Board may require additional information for any use to determine its eligibility under this ordinance. The Planning Administrator or the Board of Adjustment may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision on the project.

## ARTICLE XVI. VESTED RIGHTS

As provided in G.S. 133A - 344 and G.S. 133A - 344.1, as amended, nothing in this ordinance shall be construed to impair any vested right except for the elimination of existing uses, lots or structures not in conformity with this ordinance as described herein.

### Section 1401 Initial Adoption of Ordinance

Upon the effective date of this ordinance, or any amendment thereto, a vested right shall be determined in accordance with the following criteria:

- 1401.01 The existence of a use, structure or parcel of land at the time of enactment of this ordinance, or any amendment thereto.
- 1401.02 The existence of an officially approved building permit so long as said permit is valid, unexpired or unrevoked at the time of enactment of this ordinance, or any amendment thereto.
- 1401.03 The existence of an officially approved improvement permit so long as said permit is valid, unexpired, or unrevoked at the time of enactment of this ordinance, or any amendment thereto.

### Section 1402 Site Plan Vested Right

The purpose of this section is to implement the provisions of G.S. 133A - 344.1 pursuant to which a statutory vested right is established upon the approval of a site plan as define herein.

1402.01 Establishment of Vested Right. A vested right authorized under this section shall be deemed established upon the valid approval by the appropriate board of a site plan in accordance with the provisions herein.

1. A vested right may be granted for site plans identified in Section 1303 herein and describing with reasonable certainty the type and intensity of use for said parcel or parcels of property.

2. An approval of a site plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.
3. A site plan shall be deemed approved upon the effective date of the appropriate board's action required herein and related thereto.

1402.02 Approval Procedures. Except as otherwise provided in the section, an application for a site plan approval shall be processed in accordance with articles herein and Sections 1302 through 1304 herein.

1. In order for a vested right to be established upon approval of a site plan as provided for under this section, the applicant must indicate on the application that a vested right is being sought.
2. Each map, plat, site plan or other document evidencing a site plan shall contain the following notation: "Approval of the site plan establishes a vested right under G.S. 133A - 344.1. Unless terminated at an earlier date, the vested right shall be valid until (date)."
3. Following approval of a site plan, nothing in this Section shall exempt such site plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
4. Nothing in this Section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this ordinance.

1402.03 Duration of a Vested Right

1. A right that has been vested as provided in this Section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site plan unless expressly approved by the appropriate board at the time of the amendment or modification.
2. Upon issuance of a building permit, the expiration provisions of G.S. 133A - 358 and the revocation provisions of G.S. 133A - 362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

1402.04 Termination of a Vested Right. A right that has been vested as provided in this section

shall terminate:

1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
2. With the written consent of the affected landowner;
3. Upon findings by the Board of Adjustment, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site plan;
4. Upon payment by the County to the affected landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the appropriate board, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such notice;
5. Upon findings by the Board of Adjustment, by ordinance after notice and a public hearing, that the landowner intentionally supplied inaccurate information or made material misrepresentations which made a difference in approval of the site plan by the appropriate board; or
6. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site plan, in which case the appropriate board that approved the site plan may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the site plan, after notice and a public hearing.

1402.05 Limitations. Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 133A - 344.1.

1402.06 Repealer. In the event that G.S. 133A - 344.1 is repealed, this section of this ordinance shall be deemed repealed and the provisions hereof no longer effective.

### 1403 Vested Right Attached to Property

A vested right is not a personal right but shall attach to and run with the applicable property. After approval of a site plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

#### **1404 Judicial Determination**

Nothing in this Article shall preclude determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this Article, nothing in this Article shall be construed to alter the existing common law.

### **ARTICLE XV. ADMINISTRATIVE PROVISIONS**

#### **Section 1501 Appointment of the Planning Administrator**

This ordinance shall be administered by the Planning Administrator in accordance within the provisions set forth herein. The Planning Administrator shall be appointed by and shall serve at the pleasure of the County Manager.

#### **Section 1502 Powers and Duties of the Planning Administrator**

The Planning Administrator is authorized and empowered on behalf of and in the name of the Board of Adjustment to administer and enforce the provisions set forth herein to include receiving applications, inspecting premises, issuing compliance permits, and reviewing and taking appropriate action on site plans, all of which in conformance with the provisions of this ordinance. The Planning Administrator shall have all necessary authority on behalf of the Board of Adjustment to administer and enforce this ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance, and the bringing of legal action, including injunction, abatement, or the appropriate action proceeding, to insure compliance with this ordinance. The Planning Administrator does not have the authority to take final action on applications, nor matters involving variances, on which final action is reserved to the Board of Adjustment or the Planning Board.

#### **Section 1503 Application Procedures**

In order for an applicant to obtain permission to commence construction or alterations on a proposed development activity, he shall seek a compliance permit in accordance with this section, except those exempt uses listed in Section 700<sup>a</sup> herein. An applicant seeking a compliance permit in any use district shall be required to adhere to the application procedures prescribed herein.

#### **Section 1504 The Pre-Application Conference**

Prior to the submission of an application for a compliance permit, the developer shall meet with the Planning Administrator for the purpose of discussing the proposed project and determining the appropriate procedure to be followed as outlined in this ordinance. The pre-application conference shall include a discussion of the provisions within this ordinance affecting the

proposed project that must be adhered to, and any other appropriate item affecting the proposal.

### **Section 1505 Submittal of Application**

**1505.01 Application Procedures for Uses-By-Right.** Applications for a compliance permit shall be submitted to the Planning Administrator according to the following provisions:

1. An application for a compliance permit for a use-by-right other than a single family dwelling unit and accessory uses thereof, shall be accompanied by site plan documentation as required herein.
2. If the proposed documentation is in conformity with the provisions set forth herein, and other appropriate codes and regulations of the County then in effect, the Planning Administrator shall sign and return one (1) copy of the site plan to the applicant and shall issue a compliance permit. The Planning Administrator shall retain the application and one (1) copy of the site plan for his records.

### **Section 1506 Issuance of Compliance Permit**

The Planning Administrator shall issue a compliance permit, in conjunction with a building permit, if necessary, for any approved use or structural alteration, provided such proposed use of land or structure, or structural alteration, is in compliance with the provisions set forth herein. The compliance permit shall indicate the terms of compliance and shall be conspicuously posted and displayed on the premises during the period of construction or reconstruction. A compliance permit must be obtained from the Planning Administrator prior to the issuance of a building permit by the building inspector. The compliance permit shall be issued only after all appropriate federal, state, and local permit or license requirements are met.

**1506.01 Expiration.** Any compliance permit shall automatically expire twelve (12) months from the date of issuance if the persons, firm, or corporation to which the permit was issued has not clearly demonstrated that the permit is being exercised for the purpose for which it was issued, or if the work so authorized is suspended or discontinued for a period of twelve (12) months.

### **Section 1507 Denial of Application**

**1507.01 General Denial.** If the application and site plan submitted for all uses except conditional uses describe work which does not conform to the requirements set forth herein, the Planning Administrator shall not issue a compliance permit, but shall return one (1) copy of the site plan to the applicant along with a signed denial in writing. Such disapproval shall state the reasons for denial and shall cite the portions of this ordinance with which the submitted site plan does not comply and shall generally identify such modification or correction as will permit approval. The Planning Administrator shall

retain copy of the site plan and one (1) copy of the refusal.

1507.02 Denial of Conditional Uses. If the Board of Adjustment disapproves the application for a compliance permit for a proposed conditional use, the board shall inform the applicant of the decision in writing within sixty (60) days from the date of the public hearing, stating the reasons for disapproval. The Planning Administrator shall retain one (1) copy of the site plan and one (1) of the refusal, and keep them as a public record.

1507.03 Resubmittal of Application. A property owner, or his appointed agent, shall not initiate action for a compliance permit relating to the same use affecting the same parcel of land more often than once every twelve (12) months.

### **Section 1508 Burden of Proof**

The burden of proof shall rest with the applicant in all proceedings required by this ordinance.

## **ARTICLE XVI. ADMINISTRATIVE REMEDIES**

### **Section 1601 Procedures for Requesting an Amendment to This Ordinance**

The Board of Adjustment may, from time to time, after examination, review and public hearing thereon, amend, supplement or change the provisions herein or subsequently established. Proposals for amendments, whether initiated by the Board of Adjustment, the Planning Board, or any person, firm, corporation, or group of citizens shall be treated in accordance with one of the following procedures:

1601.01 Creating Other Use Districts. Section 602 herein allows for the conversion of land from the unzoned area to a zoned area, and anyone requesting such change in use district designation as an amendment to this ordinance shall adhere to the following process.

1. An application must be submitted in writing to the Planning Administrator and must be accompanied with a map describing the proposed use districts, the required petition supporting the proposed change, a statement delineating the reasons for such change, and any other supporting documentation furnished by the applicants or required by the Planning Administrator. The Planning Administrator shall submit said application concurrently to the Planning Board and Board of Commissioners.
2. The Planning Board shall consider the proposed amendment after notice and a public hearing in accordance with North Carolina General Statute 133A-323 and shall present its recommendations to the Board of Commissioners. If the

Planning5454 Board fails to submit its recommendation to the Board of Commissioners within sixty (60) days of the first meeting of the Planning Board after the proposed amendment has been referred to it, the Planning Board shall be deemed to have approved the proposed amendment.

3. The Board of Commissioners shall consider the proposed amendment after notice and a public hearing and shall take action on the proposed amendment within sixty (60) days from the date of the public hearing. At the Commissioners discretion this public hearing may be combined with the Planning Board public hearing
4. Any petition for an amendment to convert land to other use districts may be withdrawn prior to action thereon by the Board of Commissioners at the discretion of the applicant initiating such a request, upon written notice to the Planning Administrator.
5. No applicant shall initiate action for an amendment to convert land to other use districts affecting any of the same parcels of land more often than once every twelve (12) months.

1601.02 Changes Between Other Use Districts. Once a use district has been created from the unzoned area, a change to another use district may be requested by a person, firm, or corporation affecting one (1) or more parcels of land, and any such request to amend this ordinance shall adhere to the following process:

1. An application must be submitted in writing to the Planning Administrator and must be accompanied by two (2) copies of an acceptable site plan, where applicable, of the proposed amendment in accordance herein and with such other reasonable information shown thereon as shall be required by the Planning Administrator. The Planning Administrator shall submit said application concurrently to the Planning Board and the Board of Commissioners.

4. Any petition for an amendment to change to another use district may be withdrawn prior to action thereon by the Board of Commissioners at the discretion of the person, firm, or corporation initiating such a request, upon written notice to the Planning Administrator.
5. A property owner, or his appointed agent, shall not initiate action to change to another use district affecting the same parcel of land more often than once every twelve (12) months.
6. Applications to change of a use district to another use district shall be accompanied by a processing fee of seventy-five (\$75) dollars. In addition, the applicant shall be responsible for the cost of public notification, primarily postage, and shall be billed the appropriate amount.

1601.03 Text Amendments. Proposals for amendments to the text of this ordinance, whether initiated by the Board of Commissioners or the Planning Board shall be treated in accordance with the following process:

1. The Planning Board shall consider a proposed text amendment after notice and a public hearing and shall present its recommendations to the Board of Commissioners. If the Planning Board fails to submit its recommendations to the Board of Commissioners within sixty (60) days of the first meeting of the Planning Board after the proposed text amendment has been referred to it, the Planning Board shall be deemed to have approved the proposed amendment.
2. Upon the receipt of a recommendation from the Planning Board, the Board of Commissioners shall consider the proposed text amendment after notice and a public hearing and shall take action on the proposed text amendment within sixty (60) days from the date of the public hearing. The Commissioners at their discretion may combine this public hearing with the Planning Board public hearing.

#### **Section 1602 Procedure for Requesting a Variance or an Interpretation of the Use District Map**

Request for a hearing before the Board of Adjustment for a variance or an interpretation of the use district map shall observe the following procedure:

1602.01 Applications for a variance, or an interpretation of the use district map, as provided for under Section 1602 herein, shall be submitted in writing to the Planning Administrator and shall be accompanied by two (2) copies of an acceptable site plan, where applicable, of the proposed request and with such other reasonable information shown thereon as shall be required by the Planning Administrator. The Planning

Administrator shall submit said application concurrently to the Planning Board and the Board of Adjustment.

1602.02 The Planning Board may consider the proposed request and may present its recommendations to the Board of Adjustment, or appear as a party at the hearing.

1602.03 The Board of Adjustment shall consider the proposed request after notice and a public hearing and shall take action on the proposed request within sixty (60) days from the date of the public hearing. This hearing may be combined with the Planning Board public hearing.

1602.04 Any petition for a variance or interpretation of the use district map may be withdrawn prior to action thereon by the Board of Adjustment at the discretion of the person, firm, or corporation initiating such request, upon written notice to the Planning Administrator.

1602.05 A property owner, or his appointed agent, shall not initiated action for a variance or interpretation of the use district map affecting the same parcel of land more often than once every twelve (12) months.

1602.06 Each application for a variance or interpretation of the use district map shall be accompanied by payment of a seventy-five dollar (\$75) non-refundable fee to help defray the cost of publicizing and conducting the public hearing.

### Section 1603 Appeals Procedure

1603.01 Decisions by the Planning Administrator. Decisions of the Planning Administrator relating to the administrative enforcement of the provisions herein are subject to an appeal to the Board of Adjustment by any person aggrieved, or by any officer, department, or agency of the County affected by said decision or decisions.

1. An appeal shall be submitted in writing to the Planning Administrator who shall immediately refer the written appeal to the Board of Adjustment; such appeal shall specify the grounds for the appeal.
2. An appeal stays all proceedings in the furtherance of the action appealed from unless the Planning Administrator certifies to the Board of Adjustment after by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order on application of notice to the officer from whom the appeal is taken and on due cause shown.
3. Each appeal shall be accompanied by payment of a seventy-five dollar (\$75) non-refundable fee to help defray the cost of publicizing and conducting the public

hearing.

4. The Board of Adjustment shall fix a reasonable time for the hearing of appeals referred to it, and shall consider appeals after notice and a public hearing and decide the same within sixty (60) days from the date of such public hearing.
5. The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Planning Administrator; to decide in favor of the applicant any matter upon which the Board is required by ordinance to pass; or to grant a variance from the ordinance provisions.

1603.02 Decisions by the Board of Commissioners. All Decisions by the Board of Commissioners are subject to an appeal to the superior court by any person, firm, corporation, or government agency aggrieved by said decision or decisions.

1603.03 Decisions by the Board of Adjustment. Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the Board of Adjustment is filed in such office, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board of Adjustment at the time of its hearing of the case, whichever is later. The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

## **ARTICLE XVII. RELATIONSHIP OF THIS ORDINANCE TO PUBLIC BODIES**

### **Section 1701 Intent**

This article serves to present clearly the responsibilities of the public bodies which administer this ordinance. The responsibilities include those delegated by Section 345, Chapter 153A, Article 16, of the General Statutes of North Carolina as amended, as well as those responsibilities left to local options and assigned by enactment of this ordinance.

### **Section 1702 The Board of Adjustment**

1702.01 Membership. A Board of Adjustment consisting of eleven members shall be appointed by the Board of Commissioners, with appointments and terms of office as follows:

1. The Board of Adjustment members appointed hereunder shall serve respectively for terms of one (1) year for three (1) member, two (2) years for four (2)

members, and three (3) years for four (2) members. Subsequent appointments shall be for terms for three (3) years each. Members may be reappointed to succeed themselves.

2. The Board of Commissioners shall also appoint two (2) alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate members shall be appointed for three (3) year terms, provided however, that in the case of the first appointment of alternate members, one (1) shall be appointed for a three (3) year term and one (1) shall be appointed for a two (2) year term. Such alternate members while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member shall have and exercise all the powers and duties of such regular member so absent.
4. A member whose term expires shall continue to serve until his successor qualifies and is appointed.
5. The Secretary of the Board of Adjustment shall notify the Board of Commissioners in advance of the expiration of any term of office, and promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
6. Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Board of Commissioners after hearing held after at least fifteen (15) days notice.

*trumped  
by statute*

1702.02 Rules for Procedure. The Board of Adjustment shall observe the following procedures:

1. The Board of Adjustment shall adopt rules in accordance with the provisions of this ordinance and consistent with other ordinances of the county and general laws of the State of North Carolina for the conduct of its affairs.
2. The Board of Adjustment shall elect a chairman and vice-chairman from its own membership who shall serve annual terms and may succeed themselves. The Board of Adjustment may elect as its secretary either one of its members or a qualified individual who is not a member of the Board of Adjustment. A secretary who is not a member of the Board of Adjustment shall not be entitled to vote on matters before the Board of Adjustment.
3. The Board of Adjustment shall keep a full public record of its proceedings.
4. All meetings of the Board of Adjustment shall be open to the public.

5. Any member of the Board of Adjustment shall be disqualified to act upon a matter before the Board of Adjustment with respect to property in which the member has an interest.
6. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as a quorum of the board may determine.
7. The chairman, or in his absence, the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
8. A quorum shall be at least six (6) members.
9. A favorable vote of at least four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass.

1702.03 Duties and Powers. The Board of Adjustment shall have the following duties and powers:

1. To hear and decide appeals from any order, requirement, decision or determination made by the Planning Administrator, or an administrative official in the administration or enforcement of this ordinance, as provided in Sections 1502 and 1603 herein.
2. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provisions will result in unnecessary

- b. No such variance shall be authorized by the Board of Adjustment unless it finds that all three of the following conditions apply: (1) that the strict application of this ordinance would produce undue hardship; (2) that such hardship is not shared generally by other properties in the county and the same vicinity; and (3) that the authorization of such variance will not be a substantial detriment to adjacent property and that the character of the area will not be changed by the granting of the variance.
  - c. No such variance shall be authorized except after reasonable due hearing thereon.
  - d. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this ordinance.
  - e. In authorizing a variance the Board of Adjustment may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
3. As an appeal, to hear and decide applications of interpretation of the use district map where there is any uncertainty as to the location of a district boundary, utilizing the rules for determining boundaries as prescribed in Section 606 of this ordinance. After notice to the owners of the property affected by any such question, and after public hearing with due notice thereon, the Board of Adjustment may interpret the map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board of Adjustment shall not have the power to change substantially the locations of district boundaries as established by this ordinance.
  4. To grant in particular cases and subject to appropriate safeguards, permits for Conditional Uses under the various use districts. The Board shall follow the requirements and procedures outlined in Section prior to issuance of a conditional use permit.
  5. No provisions of this ordinance shall be construed as granting the Board of Adjustment the power to change the use of a parcel of land except as otherwise provided herein.

1702.04 Financing the Board of Adjustment. Within the limits of funds appropriated by the Board of Commissioners, the Board of Adjustment may employ or contract for

secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Board of Adjustment may receive such compensation as may be authorized by the Board of Commissioners.

1702.05 Appeals to the Board of Adjustment. Requests for compliance permits, administrative review, or variances shall follow procedures specified herein.

1702.06 Decisions of Board of Adjustment. Each decision of the Board of Adjustment is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the Board of Adjustment is delivered to the aggrieved party, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board of Adjustment at the time of its hearing of the case, whichever is later. The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

### **Section 1703 The Planning Board**

The Planning Board shall serve in the advisory capacity to the Board of Commissioners and the Board of Adjustment in the administration of this ordinance. Specifically, the Planning Board will have the following responsibilities:

1703.01 Review applications for any amendments to this ordinance and make recommendations to the Board of Commissioners as necessary and in accordance with Section 1601 herein.

1703.02 Review and make comments and/or recommendations on special matters referred to the Planning Board by the Board of Commissioners or the Board of Adjustment as required in this ordinance or for the purpose of carrying out the intent of this ordinance.

### **Section 1704 The Board of Commissioners**

The Board of Commissioners shall have the following responsibilities in the administration of this ordinance:

1704.01 Review and decide requests for amendments to this ordinance as specified in Section 1601 herein.

1704.02 Review and decide on the disposition of public facilities and related improvements proposed on site plans in accordance with appropriate provisions herein.

## ARTICLE XVIII. LEGAL PROVISIONS

### **Section 1801 Conflict with Other Laws and Private Contracts**

**1801.01 Governmental Laws.** Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted statues, rules, regulations or ordinances, the most restrictive or that imposing higher standards shall govern.

**1801.02 Private Contracts.** This ordinance bears no relation to any private easement, covenant, agreement or restricting, nor does this ordinance grant the authority to any public official the responsibility of enforcing such private easement, covenant, agreement, or restriction implied herein. In the enforcement of the provisions herein, where such provisions are more restrictive than those required by private contracts, the provisions of this ordinance shall govern.

### **Section 1802 All Permits and Licenses to Conform**

All departments, officials, and public employees of the county who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

### **Section 1803 Violations**

**1803.01 General.** In addition to those remedies provided in North Carolina General Statutes 14-4, 153A-123 and 153A-324, as amended and otherwise as law provided, whenever, by the provisions of this ordinance, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use of any land and water, or on the erection or removal alteration of a structure, a failure to comply with such provisions shall constitute a violation of this ordinance.

**1803.02 Liability.** The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinances shall be held responsible for the violation and be subject to the penalties and remedies provided herein.

**1803.03 Complaints Regarding Violations.** Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Administrator. The Planning Administrator shall record such complaint, immediately investigate, and take action thereon as provided by this ordinance.

**1803.04 Procedures Upon Discovery of Violation.** Upon the determination that any

provision of this ordinance is being violated, the Planning Administrator shall send, within five (5) working days, a written notice by registered mail to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Planning Administrator's discretion.

The final written notice, which may also be the initial notice, shall state the action the Planning Administrator intends to take, if the violation is not corrected, and shall advise that the Planning Administrator may seek enforcement without prior written notice by invoking any of the remedies contained in Sections 1803.05 and 1803.06 herein.

1803.05 Civil Penalties. Violation of any provision of this ordinance shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00), to 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. Citation shall be in writing, signed by the Planning Administrator, 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. Each day that a violation continues to exist after being cited shall constitute a separate and distinct offense without multiple citations being issued.

1803.06 Judicial Penalties. Any person, firm, or corporation who violates the provisions of this ordinance, shall upon conviction be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty (30) days. Each day that a violation continues to exist shall be considered a separate offense, provided the violation was not corrected within thirty (30) days after the notice of said violation has been given.

#### Section 1804 Validity

Should any section or provisions of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 1805 Effective Date**

This Ordinance was adopted by the McDowell County Board of Commissioners on the 5th day of August 1996 and became effective immediately. This ordinance shall contain all amendments duly adopted after August 5, 1996.

This Ordinance was amended on the-\_\_\_\_ day of \_\_\_\_\_,1999.

These amendments will become effective on the-\_\_\_\_ day of \_\_\_\_\_,1999.

\_\_\_\_\_  
Larry Seagle, Chairman,  
McDowell County Board of Commissioners

Attest:

\_\_\_\_\_  
Carrie Padgett, Clerk to the Board