

ARTICLE III. LAKE STRUCTURES

Sec. 6-47. Intent and application.

- (a) *Intent.* All land covered by the waters of Lake Lure at full pond is owned by the town. Lure is held in trust by the town for the benefit of the citizens of the town. Based on the above, the town council desires to establish regulations governing all structures to be erected and maintained within the boundaries of the lake for the purpose of enhancing the health, safety, and welfare of the general public and to preserve the property of the town and the properties of upland landowners.
- (b) *Application.* No structure shall hereafter be erected or maintained within the lake boundary of Lake Lure within the corporate limits of the town and no use made of the water surface and land thereunder or any facility or structure located thereon, except in conformity with the regulations of this article, or amendments thereto. Issuance of a permit or certificate for a lake structure does not confer any rights to ownership of land or water owned by the town.
- (c) *Preexisting structures.* The town recognizes that some lake structures with living quarters existed at the time of adoption of these regulations. It is the intent of the town that this nonconforming use of lake structures

eventually goes away. These structures may continue such use, including repairs and remodeling consistent with these regulations, until the structure is voluntarily removed or involuntarily destroyed.

(Code 1989, § 94.01; Ord. of 12-15-1992; Ord. of 4-12-2016)

Sec. 6-48. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boardwalk means a structure running parallel to the shoreline and used for pedestrian access along the shoreline of one or more properties.

Boathouse means any roofed structure enclosed with walls containing one or more slips designed principally for permanent or temporary storage and/or housing of watercraft.

Cluster mooring facility means a fixed or floating pier with more than three permanent moorings to provide dock space to owners of condominiums and other dwellings or customers of marinas.

Commercial use means any use of the lake or lake structure in a manner that will generate direct or indirect revenue or by a commercial entity that operates for profit or not for profit. The term "commercial use" can be, but is not limited to, activities that may occur in connection with any type of business, trade or commerce such as boat rentals, marinas, resorts, inns, lodging establishments, camps, ski schools, fishing guides, realtors, house rentals, tour boats, contractors, boat repair companies, real estate development companies or property owners associations.

Covered slip means any roofed structure not enclosed with walls and containing one or more slips designed principally for permanent or temporary storage and/or housing of watercraft.

Cutoff fixture means a fixture, which provides a cutoff (shielding) of the emitted light.

Distance from the shoreline means measured from the contour elevation of 990 feet MSL.

Dock means a platform generally parallel to the shoreline for the reception, loading, unloading and mooring of boats.

Glare means the discomfort or impairment of vision experienced when parts of the visual field are excessively bright in relation to the general surroundings.

Involuntary destruction means destroyed or rendered useless by an act of God or force of nature. This shall not include structures rendered useless due to decay or deterioration as the result of neglect and lack of maintenance.

Lake advisory board means the board appointed by the town council to advise the town council, the marine commission, and staff, on lake-related issues.

Lake boundary means the contour elevation 995 feet MSL. The term "lake boundary" is not synonymous with the term "lake shoreline."

Lake structure means anything constructed or erected within the lake boundary including any pier, dock, boathouse, slip, ramp, swimming float, sea wall, or similar facility whether fixed or floating or a combination thereof, used primarily as a stationary facility for the mooring or housing of watercraft and associated items; and, used for lake access and related recreational activities. Lake structures shall not be used as living quarters.

Lake structure administrator means the person responsible for administering and enforcing the lake structure regulations.

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Lake structure appeals board means the board appointed by the town council to review and rule on applications for lake structure permits and variances.

Lake structure certificate means the document that is issued to property owners following approval by the lake structure administrator that the lake structure adjacent to their property conforms to this article.

Lake structure tag means a metal tag, to be affixed to a lake structure, which indicates that a lake structure certificate has been issued.

Light trespass means light directed or projected beyond a perimeter of 50 feet from any light source on the lake structures or shore.

Living quarters means a room used as overnight housing, designed to be used as overnight housing or equipped with furnishings, appliances and accessories that create a domicile.

Lot of record means any lot for which a plat has been recorded in the register of deeds office of the county, or described by metes and bounds, the description of which meets the standards of the town's regulations.

Marina, restricted, means a facility with a lakefront location contiguous to a private development or commercial property which provides temporary or permanent watercraft moorings for rent or lease to occupants, guests, clients, or customers of that property only, and not to the general public not doing business with that property.

Marina, unrestricted, means a facility with a lakefront location which provides temporary or permanent watercraft mooring for rent or lease and may also include the rental, sale or repair of boats, boat motors, and accessories, and/or the sale of marine fuel and lubricants, bait and fishing equipment, and the like to the general public.

Markers means floating buoys or fixed signs that give navigational or warning information.

Measurable shoreline means the shoreline length used to determine what type of lakeside structures are permissible, the permissible number of such structures, and the permissible dimensions of such structures. The term "measurable shoreline" is the front footage of any upland lot where it meets the shoreline with the exclusion of creeks, streams or other tributaries, which may be covered with water at the elevation of 990 MSL and is 28 feet or less in width. The span of the tributary shall be included in the measurable shoreline; measured at the narrowest point at either the mouth if narrower than 28 feet at the 990 MSL or where it constricts to 28 feet.

Moored floating platform means a floating platform anchored near the shoreline for the use of swimmers, to include both solid surfaced swimming floats and inflatable water recreational platforms.

Mooring means a location adjacent to the shoreline or any lake structure, equipped with cleats, posts or any other devices intended to secure a boat.

Mooring, permanent, means a mooring that can be occupied at any time.

Mooring, temporary, means a mooring that can only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

MSL means the elevation above mean sea level, North Carolina Geodetic Survey Datum.

Multi-dwelling use means any use of the lake or lake structure in a manner that creates a lake portal for owners or occupants of multiple dwellings. The term "multi-dwelling use" can be, but is not limited to, activities that may occur in connection with any type of operation or association such as boat clubs, real estate development companies or property owners associations.

Permit means documents that are required prior to any construction of a structure on land or in the lake within the lake boundary.

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Pier means an uncovered structure extending from land out into the lake for the mooring of boats and to afford convenient passage of passengers and cargo to and from boats.

Ramp means a short slope extending from the shoreline into the lake for the purpose of launching or retrieving a boat.

Reconstruction means full or partial replacement of a lake structure or more than 50 percent of the structure's support base. The support base consists of all components underlying but within the exterior perimeter of the structure.

Repair, internal, external or cosmetic, means actions that affect the general maintenance of a lake structure, but do not alter electrical or plumbing systems, or the outer dimensions of the structure. Examples of the term "repair; internal, external or cosmetic" include painting, staining, or pressure washing; replacing decking inside or outside of a structure; replacing exterior siding; replacing the roof covering, felt or sheeting; removing and replacing rooftop decks; replacing entrance or boat slip doors; replacing windows; or replacing any portion of approved decktop accessory structures. Also included are standard repairs of electrical or plumbing items by licensed professionals.

Repairs, Minor Structural. Structural repair or replace in like kind actions to an existing lake structure costing no more than \$4,999.

Repair, structural, means actions that affect sea walls and other shoreline stabilization methods; or the support base, framing, electrical or plumbing systems, or alteration of the outer dimensions of any lake structure. Examples of the term "repair, structural" are support posts, footers, studs, headers, top or bottom wall plates, load-bearing walls, floor joists, rafters, wiring, circuit breakers, or sewer connections; or repairs affecting height, length, width, or relationship of the structure to setbacks.

Sea wall means a structure built along the shoreline to resist the erosion of the land caused by the lake and which may also be used to moor boats and as a structure to receive and discharge a boat's passengers and cargo.

Shoreline means the line where the land or an existing seawall and waters of the lake meet. For the purpose of these regulations, the normal lake level of 990 feet MSL as it exists for the majority of each year shall be used to establish the shoreline. The official benchmark for MSL Datum shall be as marked on the Lake Lure dam. For the purpose of positioning lake structures along an irregular boundary, the term "shoreline" shall be defined as the straight line between the two widest points on the shoreward side of the lake structure, where they meet the shoreline.

Slip means a specific type of mooring, contiguous to a lake structure that is confined by two parallel sides of the lake structure, does not exceed 11 feet in width and that is designed for temporary or permanent mooring. A space confined by one side and one end may be a mooring, but is not a slip.

Upland lot means a lot having a boundary coexistent with the portion of the shoreline where a lake structure exists or is planned.

Usable shoreline means the shoreline length on lots of record that is available for use for lake structures after subtracting the required 30 feet from both 15-foot side yard setbacks from the measurable shoreline.

Water depth means measured from the average lake level of 990 feet above mean sea level, North Carolina Geodetic Survey Datum.

(Code 1989, § 94.02; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 6-18-2001; Ord. of 12-9-2003; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 4-12-2011; Ord. of 12-9-2014; Ord. of 4-12-2016)

Sec. 6-49. Permit to construct.

- (a) No structure of any kind, whether stationary, floating, or access ramp, or fuel dispensing system for boats, shall be constructed or installed before having first made written application for and obtained from the lake structure administrator a lake structure permit. A building permit must be obtained from the county building inspector except for structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms), so long as these structures do not exceed 150 pounds in total weight. Upon application for a lake structure permit, the applicant shall present to the lake structure administrator the following information and materials. The application and all plans shall be signed and dated by the property owner. Additional restrictions and regulations apply to commercial lake structures, cluster mooring facilities and marinas. Please see sections 6-58 through 6-60 for information regarding the permit to construct these types of lake structures.
- (1) Plans, drawn to scale, showing the location of the proposed installation with respect to the shoreline and the boundaries of the upland lot to which it is adjacent.
 - (2) A map of the measurable shoreline of upland lot showing the shoreline length.
 - (3) Plans certified by a licensed architect or engineer in accordance with the state code, drawn to scale, showing the height, length, width and configuration of the proposed installation. Excluded from this requirement are structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms) so long as these structures do not exceed 150 pounds in total weight.
 - (4) Whether covered or uncovered (enclosed or open).
 - (5) Specified materials for use in construction or installation.
 - (6) Water depth at the farthest point of projection.
 - (7) Distance from the farthest point of projection to the opposite shore.
 - (8) Proof of liability insurance (see section 6-50).
 - (9) Documents showing approval of fuel storage and dispensing systems from any appropriate federal, state and local agencies, if required.
 - (10) In the case of a boathouse, proof of ownership of a residence or residence under construction on the upland lot or an adjoining lot. This is not required for any other lake structures.
 - (11) Plans for the construction of a sea wall (if required) must be accompanied by all required permits (e.g., North Carolina Division of Water Quality, Army Corps of Engineers, North Carolina Game and Wildlife, etc.). The applicant is responsible for separately securing required permits from the applicable county, state, or federal agency.
 - (12) The application fee, the amount of which shall be established by the town council. Failure to obtain a required permit prior to commencing work shall subject applicant to double application fee.
 - (13) A deposit of compliance that is refundable if the structure receives a lake structure certificate. The deposit of compliance shall be a certified or cashier's check for \$500.00 for any structure or alteration costing more than \$1,000.00 and less than \$5,000.00 or \$1,000.00 for any structure or alteration costing more than \$5,000.00.
- (b) Dimensional and structural guidelines are provided in section 6-51 and in the town standards, specifications and details for construction.

- (c) Construction pursuant to the issuance of a lake structure permit must commence within six months of approval and may not, thereafter, cease for a period of 12 consecutive months or the permit shall become invalid. If the structure for which a permit was approved has not received a lake structure certificate within two years after the date of approval, the applicant shall be required to renew the permit and comply with all regulations in effect on the date of renewal.
- (d) The final approval of the construction shall require an inspection and certification by the lake structure administrator that the structure was built substantially in accordance with the approved plans. Where plans submitted for a dock, pier or boathouse show that any portion of the new structure or addition to an existing structure will be within 20 feet of either side lot line as extended into the lake or within five feet of the maximum distance the structure is allowed to extend into the lake, a survey prepared by a registered land surveyor or civil engineer shall be made to ensure that the proposed structure has been located as shown on the approved plans. The survey shall also indicate the location of roof overhangs, decks, and any other appurtenances that extend beyond the walls of any boathouse. This survey shall be submitted to the lake structure administrator for review. The lake structure administrator shall have the authority to require a survey where there is a question regarding the location of a new sea wall in relation to the approved plans. All approved structures, upon final inspection, shall be issued a lake structure certificate and tag. Upon issuance, the tag shall be attached to the structure to indicate it is an approved structure.

(Code 1989, § 94.03; Ord. of 8-9-1994; Ord. of 2-12-2002; Ord. of 7-11-2006; Ord. of 9-12-2006; Ord. of 8-14-2007; Ord. of 10-13-2009)

Sec. 6-50. Liability insurance.

All property owners having structures other than seawalls on Lake Lure (including existing lake structures as well as future lake structures) must at all times keep and maintain in force, at their sole expense, liability insurance coverage against claims for bodily injury, death or property damage occurring in or about the lake structure in the amount of at least \$500,000.00 per occurrence. Prior to applying for a lake structure permit or renewal of a lake structure certificate, proof of this liability insurance must be provided the town pursuant to section 6-49(a)(8).

(Code 1989, § 94.04; Ord. of 6-28-1994; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 9-12-2006)

Sec. 6-51. Design and construction standards.

The following standards shall be adhered to during the design and construction of any structure on Lake Lure. The lake structure administrator will carefully examine plans submitted with any applications for a lake structure permit as described in section 6-49, to be sure that the plans meet the following provisions. Requests for variances must be made when the lake structure permit application is submitted.

- (1) Effective the date of this regulation, December 15, 1992, the minimum measurable shoreline length required to construct any lake structure shall be 100 feet. Nonconforming lots of record that existed prior to these regulations, with 35 to 100 feet of measurable shoreline length, may construct any authorized lake structure, provided minimum setbacks are met, and the owner of the subject lot does not own contiguous upland property to enable conformity to the minimum measurable shoreline length through recombination. When contiguous upland property is owned by the same owner, it shall be legally recombined to achieve the longest shoreline length possible, before any lake structure is approved. In rare situations, recombination may not be legally possible. Should recombination not be allowed, the subject shoreline shall be treated as though it is not contiguously owned. See examples A and B in subsections (1)d.1 and 2 of this section. Sea walls are allowed on any lot subject to shoreline stabilization requirements in section 6-53.

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- a. Covered or enclosed structures, including boathouses, shall be limited to a width of 45 feet or 45 percent of the measurable shoreline length, or the usable shoreline length of the upland lot, whichever is less.
 - b. Lots with 100 feet or more of measurable shoreline length shall be limited to any authorized lake structure or combination thereof, with a maximum of three moorings or slips, provided minimum setbacks are met. Other provisions of these regulations shall apply and the maximum number of moorings or slips shall not be varied.
 - c. Lots of record with 35 to 100 feet of measurable shoreline length shall be limited to any authorized lake structure or combination thereof, with a maximum of two moorings or slips, and shall not exceed the usable shoreline length. Variances are not permitted for the maximum number of moorings or slips; or structures that are larger than what the usable shoreline will accommodate. Covered or enclosed structures shall require a lake structure appeals board determination the proposed structure will not materially obstruct the view of the lake from any adjacent upland property. Other provisions of these regulations shall apply. See examples C and D in subsections (1)d.3 and 4 of this section.
 - d. Lots of record with a minimum measurable shoreline length of less than 35 feet shall be limited to a single mooring, which shall not be varied. This mooring may be part of a pier not to exceed six feet in width. The pier will be centered on the subject shoreline to the greatest extent possible but, without variance, shall be allowed up to five feet off center. When placed off center, the tie up cleats will be on the side of the pier with the greatest area available between the pier and the projected property line. Other provisions of these regulations shall apply, which may require a variance.
 1. Example A. A lot of record has 50 feet of measurable shoreline which, after subtracting the 30 feet for both 15-foot side yard setbacks, could accommodate a boathouse with one slip in the 20 feet of remaining usable shoreline.
 2. Example B. The same owner in example A owns the small upland lot of record next door with 25 feet of measurable shoreline, which would normally allow a single pier. That owner could not build the small boathouse on the one lot and the pier on the other. Instead, that owner must recombine the lots to provide 75 feet of measurable shoreline before building any structure. If the recombination was not allowed for some legal reason, then both lots could be built upon.
 3. Example C. Assume the recombination in example B did occur. On the new 75-foot lot, the owner would be allowed to build any authorized lake structure that would fit in the resulting 45 feet of usable shoreline, but still subject to the lesser 45 percent of the measurable shoreline length for covered or enclosed structures, which is 33.75 feet in this scenario. The owner could then build a boathouse up to 33.75 feet wide with two slips anywhere within that 45 feet of usable shoreline. The remaining usable shoreline space could be used for docks and access.
 4. Example D. A lot of record with only 40 feet of measurable shoreline could build a small lake structure up to ten feet wide. Conversely, that same lot could not get a variance to build the structure 11 feet wide or wider. The usable shoreline, ten feet in this example, is less than 45 percent (18 feet) of the measurable shoreline.
- (2) No structure shall be placed in the water more than 30 feet or one third the distance to the opposite shore, whichever is less, as measured to and from the shoreline. At least one third of the waterway shall be left unobstructed. No portion of any lake structure shall extend beyond this boundary. For the

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- purpose of positioning lake structures along an irregular boundary, the shoreline shall be defined as the straight line between the two widest points on the shoreward side of the structure, where they meet the shoreline. The measurement to the opposite shore shall be made to the point on the opposite shore which results in the shortest distance from the proposed structure.
- (3) No portion of any structure shall be located closer than 15 feet to any side lot line, as projected into the lake. The projection of the lot line shall be a straight line on the same bearing as the lot line and shall extend no further than 30 feet or one third the distance to the opposite shore. This provision does not apply to sea walls.
- (4) Handrails should be constructed in such a way so as not to interfere with boaters' visibility.
- (5) Height.
- a. Except as provided in subsection (5)b of this section, lake structures shall not exceed 15 feet in height above the shoreline elevation of 990 feet MSL. This does not include the additional height of railings (no greater than 42 inches) around a rooftop deck. As actual lake levels may vary, establishing the 990 MSL on any particular day can be achieved by calling the town hall for the lake level reading at the dam on that day. The maximum allowable height of structures above the shoreline elevation can then be calculated. As an example, if the lake level is one foot below 990 MSL, then the maximum allowable height is 16 feet above the actual level of the lake on that particular day.
- b. Accessory structures to be used for protection from direct sun and rain may be erected above rooftop decks provided they meet the following standards and are approved by the lake structures appeals board.
- (6) Decktop accessory structures guidelines:
- a. Shall not exceed a height of ten feet above the surface of the rooftop deck. Thus, the maximum allowable height of any lake structure that includes a decktop accessory structure is 25 feet.
- b. Shall not exceed 50 percent of the area of the rooftop deck or 150 square feet, whichever is less.
- c. Shall be completely open on all sides except for partial walls not more than 42 inches in height above the surface of the rooftop deck and insect screens.
- d. Shall be located abutting the shoreward end of the rooftop deck and not extend towards the lake beyond the midpoint of the deck.
- e. Shall not include any sanitary facilities.
- f. May include one storage container not more than 42 inches in height to store deck furnishings.
- (7) Decktop accessory structures shall be approved by the lake structures appeals board upon a finding that the structures meet the standards in this subsection and that they do not materially obstruct the view of the lake from any adjacent or nearby properties.
- (8) Materials of construction for pilings shall include reinforced concrete, hot dipped galvanized steel, aluminum, or pressure-treated wood, provided railroad ties and other wood treated with creosote or similar material shall not be allowed. Anchorages for floating docks and piers shall be of galvanized steel cables or the equivalent secured to reinforced concrete anchorage on the lake bottom and/or to steel anchor piles in firm ground on shore. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat.

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- (9) The town exercises no jurisdiction or control over the design of structures to be built over the lake, but strongly urges that the design of lake structures be architecturally compatible with that of the residence on the adjoining upland lots.
- (10) Any sewage or wastewater systems installed in or on lake structures must meet state and local codes.
- (11) No lake structure shall be designed, constructed or used as temporary or permanent living quarters.
- (12) Satellite dish antennae of not more than 30 inches in diameter may be installed on lake structures, provided they do not exceed the highest portion of the lake structure to which it is attached.
- (13) Moored floating platforms.
- a. Moored wooden or other solid surfaced floating swimming platforms shall be no greater than 64 square feet in area and have white or silver reflectors affixed to both sides of each corner. The frames for such structures shall be constructed of hot dipped galvanized steel or pressure treated lumber and with polystyrene floatation. Steel drums are prohibited. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat. Only one permanently moored floating platform (solid or inflatable) shall be permitted for each upland lake front lot, except as provided in subsection (13)c of this section.
 - b. Permanently moored inflatable floating platforms shall be no greater than 178 square feet in area or 15 feet in diameter and have white or silver reflectors affixed to both sides of each corner or, for circular platforms, at least every six feet of circumference. Such platforms shall be located not less than ten feet from the shore or any hard surfaced structures and shall be moored in water not less than ten feet in depth at any point below the platform. All permanently moored inflatable floating platforms shall be removed from the lake between November 1 and April 1 of each year and at any time they deflate or are in a state of disrepair. As part of the permit application process, the applicant shall provide a copy of the manufacturer's recommended safety specifications and shall specify the manner in which the applicant will adhere to said specifications. Only one permanently moored floating platform (solid or inflatable) shall be permitted for each upland lake front lot, except as provided in subsection (13)c of this section.
 - c. Permanently moored inflatable floating platforms larger than 178 square feet in area may be approved by the town council, but only for organized group recreation programs supervised by appropriately trained personnel meeting the standards of the American Red Cross. Said platforms shall only be approved adjacent to land zoned R-3, CG or GU under chapter 92 and shall have white or silver reflectors affixed to both sides of each corner or, for circular platforms, at least every six feet of circumference. All permanently moored inflatable floating platforms shall be removed from the lake between November 1 and April 1 of each year and at any time they deflate or are in a state of disrepair. As part of the permit application process, the applicant shall provide a copy of the manufacturer's recommended safety specifications and shall specify the manner in which the applicant will adhere to said specifications. At its discretion, the town council may allow more than one permanently moored inflatable floating platforms adjacent to land zoned R-3, CG or GU.
 - d. Anchorage for moored floating platforms shall be of galvanized steel cables, galvanized chain or stainless steel cables secured to reinforced concrete anchorage on the lake bottom, vertically below. Alternate materials may be approved if specified by a licensed engineer or architect and does not pose an environmental threat.

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- e. Temporarily moored inflatable water recreation devices shall be no greater than 80 square feet in area or ten feet in diameter and are allowed in the lake only from April 1 through November 30.
 - f. Any moored floating platform, whether permanent or temporary, shall be identified with the owner's name, local address, and local telephone number so that the platform can be identified and returned if it breaks loose from its mooring. This identification may be accomplished by attaching a metal or plastic tag to the platform or by printing the information directly onto the device using paint or ink.
- (14) Boardwalks shall not exceed four feet in width and shall not extend more than six feet into the lake. If approved by adjoining property owners, a boardwalk may run the full distance from property line to property line or even cross the property line if the adjacent properties' owners approve of its construction and wish it to continue along in front of their property.
- (15) No lake structure, other than sea walls, shall obstruct the free flow of water in the lake.
- (16) As a condition of issuance of a permit, all structures built above the roof of a boathouse or covered slip, including decks and deck top accessory structures, shall require certification by a licensed architect or engineer that the boathouse structure is capable of supporting the dead and live load of the rooftop structure. Excluded from this requirement are structures installed rather than built (such as umbrellas, awnings, canopies, or moored inflatable platforms) so long as these structures do not exceed 150 pounds in total weight.
- (17) Temporary mooring at commercial and resort locations shall be identified by a sign which states that the mooring may only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

These standards shall not apply to any lake structures owned or proposed by the town, providing that designs for such structures have been reviewed and approved by the lake advisory board and the town council.

(Code 1989, § 94.05; Ord. of 12-15-1992; Ord. of 10-20-1998; Ord. of 6-18-2001; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 10-13-2009; Ord. of 4-12-2011; Ord. of 4-12-2016)

Sec. 6-52. Repair, reconstruction, and removal of structures.

- (a) Internal, external, and cosmetic repairs do not require a lake structure permit, unless a county building permit is required. It is the property owner's responsibility to determine if a county building permit is required for the work being performed.
- (b) Minor structural repairs and replacements may be excluded from the requirement that plans be professionally sealed if presented plans are approved by the Lake Structure Administrator as sufficient to justify the applicant's assurance of structural integrity of the project.
- (c) Structural repairs and reconstruction of lake structures require a lake structure permit as described in section 6-49 before any work is performed. A survey shall be required, and must accompany the application for all structural repair and reconstruction endeavors that affect the physical location, outer dimensions (height, length, width), projection into the lake, or setbacks of a lake structure. A county building permit may also be required depending on the nature and extent of the work.
- (d) Reconstruction of lake structures shall be permitted as described in section 6-49; shall begin within 18 months from the date of condemnation, collapse, or destruction; and shall meet the following requirements:

- (1) The original structure may be replaced with a like structure, not necessarily of the same dimensions, (i.e., a dock with a dock, a boathouse with a boathouse) and shall not include living quarters over the water.
 - (2) Height and projection into the lake meets current standards as described in section 6-51.
 - (3) The number of permanent moorings meets current standards as described in section 6-51.
 - (4) The distance from the lake structure to the projected upland lot property lines, if less than 15 feet, shall be no closer to the projected lot line than the structure being replaced and shall not encroach on or over projected property lines.
- (e) Cleanup and removal of condemned, collapsed, or involuntarily destroyed structures shall begin within 90 days of the date of condemnation, collapse, or destruction. Hazardous items such as fuel, lubricants, paint, chemicals, unused boat batteries, etc., shall be removed immediately to protect water quality.
- (f) These standards shall not apply to any lake structures owned by the town, providing that designs for such structures have been reviewed and approved by the lake advisory board and the town council.

(Code 1989, § 94.06; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 4-12-2016)

Sec. 6-53. Shoreline stabilization.

Preserving the shoreline and the water quality of the lake is dependent on following established BMPs (best management practices) of riparian and shoreline stabilization. Land disturbance creates sedimentation from the erosion of the upland lot and waves generated by wind and boating activities can attack the disturbed shoreline from the lakeside. To minimize the effects of these disturbances, several routes may be taken. Whether retaining a natural buffer along the majority of the shoreline or utilizing a variety of construction methods and materials to reduce the effects of the disturbance, the town requires plans for some form of shoreline stabilization be included with any lake structure permit application.

- (1) Property owners are required to stabilize the shoreline on any lot with a lake structure. The lake structures appeals board may waive this requirement if the property is determined by to be substantially free of erosion potential by the town's erosion control officer and is also determined to be eligible for exemption from this requirement by the lake structure administrator. If necessary, the construction of sea walls for shoreline stabilization shall only disrupt the contour of the shoreline to a minimum. The application for the construction of the shoreline stabilization shall include the following:
 - a. An existing site plan with an overlay showing any proposed changes to the contours and profiles of the shoreline.
 - b. Dimensions and proposed type of construction.
 - c. Signature of property owner and date.
 - d. Plans drawn by a licensed engineer or architect—sea walls only.
- (2) The shoreline stabilization or construction shall address erosion above and below the shoreline elevation of 990 feet MSL. The level of protection depends on the lakeside wind and boat activity at the particular location and the potential of erosion of the upland lot. (Note: Refer to section 6-51 for details on how to establish the shoreline elevation of 990 feet MSL.) The erosion control officer will determine the type of stabilization required.

- a. Retained natural stabilization is allowed for lots that are 90 percent undisturbed to the building buffer boundary of 35 feet from the shoreline and no tree lap is removed from the shoreline. This is also allowed on banks located within no wake coves, protected from the wind, and the lot is undisturbed within the 25-foot trout buffer with no tree lap removed from the shoreline. A sea wall or rip-rap stabilization will be required shoreward of lake structures to ensure their structural integrity.
 - b. Moderate stabilization is required where the land disturbance on the upland lot creates moderate to severe erosion potential and the lakeside is not threatened from the wind and is located within a no wake cove. If sea walls are utilized, underwater reinforcement of the toe with rip-rap to the shoreline height is required.
 - c. Extreme stabilization is required where the land disturbance on the upland lot creates moderate to severe erosion potential and the lakeside is threatened from the wind and by boat traffic at wake speed. If sea walls are utilized, underwater reinforcement of the toe with rip-rap extending to a height of two feet above the shoreline is required.
- (3) Earth fills on the lakeside of the shoreline are prohibited.
- (4) When possible, rip-rap laid on a layer of geotextile filter fabric should be considered as the optimum choice for moderate or extreme stabilization. While this stabilization method does not require an engineer's or architect's design, the illustrated method of installation with the prescribed slope of 2:1 and elevations above the shoreline of three feet must be adhered to. Please refer to the illustration within the town's standards, specifications and details for construction.
- (5) If rip-rap is not selected for the shoreline stabilization, sea walls, designed by a licensed engineer or architect, and reinforced at the toe with rip-rap to the shoreline or two feet above the shoreline on the lake side for extreme stabilization shall be constructed of one of the following materials:
- a. Concrete—to conform to NC DWQ regulations, it must cure 28 days prior to making contact with the lake water.
 - b. Stone—to conform to NC DWQ regulations, the mortar must cure 28 days prior to making contact with the lake water.
 - c. A properly designed plastic, steel or aluminum sheet piling system.
 - d. A properly designed pressure treated wood piling system. Railroad ties and other wood treated with creosote or environmentally hazardous materials shall not be allowed.
- (6) All sea walls shall be in a good state of repair or the property owner will be subject to penalties outlined in section 6-65.

(Code 1989, § 94.07; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 7-11-2006; Ord. of 9-12-2006; Ord. of 4-12-2016)

Sec. 6-54. Lake structure certificate and tag; maintenance of structures.

- (a) All structures on the waters of Lake Lure, either new or existing, prior to the adoption of the ordinance from which this section is derived, shall require a lake structure certificate and tag issued in accordance with this section. All owners of existing structures deemed in compliance with sections 6-51, 6-53, 6-55 through 6-57 and 6-61 will be issued a lake structure certificate and accompanying tag after the lake structure administrator receives the lake structure certificate fee and approves the property owner's lake structure certificate application. The tag must be attached to the lake structure so it is visible from the water before

December 1, 1994, and be renewed every five years. Therefore, any structure not having a lake structure tag attached by December 1, 1994, shall be considered in violation of this article. Any boathouse which cannot qualify for a certificate and tag either because it is not in compliance with this section, or because it is not in the same ownership as the upland lot, shall be removed at the owner's expense. Owners of upland property who fail to comply with this section shall be ineligible to receive a boat permit.

- (b) The property owner shall be responsible for maintaining all lake structures covered by this article in good repair. The town shall have the authority to condemn any lake structure due to decay, disrepair, or any hazardous condition. The property owner will be given a written notice and 90 days to comply with the town council's determination. If the owner fails to appeal to the town council for a hearing or comply with their determination, council may revoke their lake structure certificate and accompanying tag (if one had been issued) and remove the structure at the property owner's expense.
- (c) The purpose of a lake structure permit is to ensure compliance with the lake structures regulations, and is not in the nature of a building permit, which is additionally required. Neither the issuance of a lake structures permit nor the failure of the town to inspect said lake structure periodically and reissue a lake structure permit, or revoke a lake structure permit, or take action to condemn a lake structure, shall imply warranty or constitute either a contract or assurance that any lake structure is safe for the general public because it has a lake structure permit.

(Code 1989, § 94.08; Ord. of 8-9-1994; Ord. of 10-20-1998; Ord. of 9-9-2003; Ord. of 8-14-2007; Ord. of 4-12-2006)

Sec. 6-55. Markers.

No markers or signs, other than navigational aids that comply with the uniform waterway marking system and the state wildlife resources commission's regulations, shall be placed within the lakebed. Placement of these markers will be reviewed and approved by the lake advisory board. Appeals of the lake advisory board decision shall be sent to the marine commission. Unauthorized movement or removal of markers will result in the revocation of all lake lure boat permits held by the owner of the boat used for such activity and the penalties and civil fines described in section 6-65.

(Code 1989, § 94.09; Ord. of 8-14-2007; Ord. of 4-12-2016; Ord. of 9-11-2018)

Sec. 6-56. Electrical and plumbing.

All electrical wiring and fixtures and all plumbing must be inspected and approved by the county building inspector. Lighting, whether public or private, which offers navigational aid on the lake shall comply with the state wildlife resources commission's regulations. Non-navigational lighting must be non-flashing white or yellow, with the exception of bug lights, and shall be of such a low intensity as to not cause blindness of boat operators on the lake or inhibit their vision in any way. In addition to all state and local requirements, all pole mounted outdoor fixtures on the lake structure or within the lake boundary must be cutoff fixtures. All lighting shall be mounted and maintained to avoid light trespass and glare on the waterway of Lake Lure.

(Code 1989, § 94.10; Ord. of 8-14-2007)

Sec. 6-57. Swimming areas.

Swimming areas, whether adjacent to public or private property, shall be marked in accordance with the state wildlife resources commission's regulations and the town's ordinances regulating boating and water safety.

(Code 1989, § 94.11; Ord. of 8-9-1994)

Sec. 6-58. Commercial and multi-dwelling use lake structures.

- (a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for any new or existing structure that is to be built or converted for commercial or multi-dwelling use. The application review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area with single-family dwellings. A recommendation based on this review will then be submitted to the town council. The town council shall approve or deny the request after examining the report. Specific design standards, restrictions, and/or prohibitions may be varied by a special grant from the town council if specifically requested by the petitioner as part of a commercial lake structure application and if the special grant is found to secure general welfare and the best overall interest of the public and the municipality. The town council may also apply specific conditions with nonconforming upon commercial lake structures as council deems necessary.
- (b) As an exception to subsection (a) of this section, any application to change the use of a lake structure with nonconforming living quarters to a commercial use, shall be submitted to the lake structure appeals board for approval or disapproval, and then to the town council for further appeal if necessary. The lake structure appeals board will determine if the application is consistent with section 6-47(a) concerning the health, safety, and welfare of the general public. Further, the board will determine if the change in use positively or negatively impacts the preservation of town property or the properties of upland and adjacent landowners.

(Code 1989, § 94.12; Ord. of 8-14-2007; Ord. of 12-22-2015; Ord. of 4-12-2016)

Sec. 6-59. Cluster mooring facilities.

- (a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for a cluster mooring facility. The application review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to council. The council shall approve or deny the request after examining the report.
- (b) Cluster mooring facilities shall only be installed adjacent to upland lot zoned for resort or commercial use. The same requirements apply to cluster mooring facilities as do to all other lake structures except they shall have no walls or roofs. Canopies attached to or installed above boat lifts are considered roofs and are prohibited in cluster mooring facilities. Such facilities may not have more than three individual permanent moorings per 100 feet of measurable shoreline of lake front property that is owned by the applicant and that is free of any lake structures (other than sea walls and boardwalks). Existing private docks or boathouses must be removed prior to construction of a cluster mooring facility and no private docks or boathouses can be applied for or constructed adjacent to the upland lot for which a cluster mooring facility has been approved. All moorings shall be classified as permanent or temporary, numbered, and with signage that is viewable from the lake which indicates classification and number of each mooring.
- (c) For areas with upland lots that are zoned for resort use, the lake front property that is used in the formula for determining the number of moorings must be contiguous with the site of the proposed cluster mooring facility and the same lake front property must be developed with roads and structures in place prior to review of the application. If any existing mooring facilities are to be included in the total moorings of the mooring facility, they will be factored into the total slips calculated with the above formula.

- (d) For areas with upland lots zoned and utilized for commercial purposes, only temporary moorings shall be allowed. A maximum of three craft owned by the operators of the commercial establishment may be permanently moored at the establishment's cluster mooring facility.

(Code 1989, § 94.13; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2016)

Sec. 6-60. Marinas.

- (a) The lake structure administrator and the lake advisory board shall review each lake structure permit application for a marina, restricted and unrestricted. The review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to council. The council shall approve or deny the request after examining the report.
- (b) Marinas must meet the following standards:
- (1) Marinas shall only be installed adjacent to upland lot zoned for commercial or resort use.
 - (2) The same requirements shall apply to marinas as do to all other lake structures except individual slips or moorings shall not be enclosed or covered. Canopies attached to or installed above boat lifts are considered roofs and are prohibited in marinas.
 - (3) Such facilities may not have more than five permanent or temporary moorings for each 100 feet of shoreline that is owned by the applicant. The lakefront property that is used in the formula for determining the number of moorings must be contiguous with the site of the proposed marina.
 - (4) The shoreline must be free of any other lake structures that could be used specifically for the purpose of mooring boats. This does not include seawalls, boardwalks, docks, or gazebos that are used for access, protection from direct sun and rain, and as collection areas for users of the facility. Such structures must meet the following standards:
 - a. Shall not have any tie-up points or cleats that would allow a boat to be moored, thereby changing the structure's function.
 - b. Shall not exceed a height of 15 feet above the shoreline elevation of 990 feet MSL.
 - c. Shall not exceed 1,200 square feet.
 - d. Shall be completely open on all sides.
 - (5) Existing private docks or boathouses must be removed prior to construction of a marina and no private docks or boathouses can be applied for or constructed adjacent to the upland lot that are associated with a marina.
 - (6) All moorings shall be classified as permanent or temporary, numbered, and with signage that is viewable from the lake which indicates classification and number of each mooring.
 - (7) These limitations shall not apply to any marina owned by the town.
- (c) Moorings shall only be rented or leased for the permanent mooring of any watercraft with a valid boat permit issued by the town for the current year. The town may assess the marina owner an annual commercial use fee for each permanent mooring leased or rented.
- (d) Docks and piers at a marina may be either fixed or floating structures.

- (e) Sale of fuel, lubricants, boats, marine accessories, bait and fishing supplies and repair of boats shall be permitted only at unrestricted marinas, provided the upland property is zoned for commercial use.

(Code 1989, § 94.14; Ord. of 10-20-1998; Ord. of 4-12-2005; Ord. of 7-11-2006; Ord. of 8-14-2007; Ord. of 3-11-2008; Ord. of 5-12-2015; Ord. of 4-12-2016)

Sec. 6-61. Prohibited uses.

The following uses or activities shall be prohibited unless written approval is given by the town council:

- (1) Any activity such as dredging or filling at or below the shoreline without written permission from the town or any land disturbance which alters the shoreline other than as required by action of the town council.
- (2) The cutting of standing trees at or below the lake boundary.
- (3) Disposal of any trash, brush, leaves, or scrap building materials into the lake.
- (4) Allowing any livestock or commercially raised animals to have access to the lake or its shoreline.
- (5) Allowing a boat to remain on the lake bottom after sinking.
- (6) Using the waters of the lake for commercial irrigation purposes.
- (7) The permanent or temporary mooring of a boat or any other floating object in such a way that it extends beyond the boundaries established in section 6-51 and restrict the passage of boats.
- (8) The permanent mooring of more than three motorized boats at any one lake structure or combination of lake structures, other than a marina or cluster mooring facility, adjacent to an upland lot with a measurable shoreline length of 100 feet or more.
- (9) The permanent mooring of more than two motorized boats at any one lake structure or combination of lake structures, other than a marina or cluster mooring facility, adjacent to an upland lot of record with a measurable shoreline length of 35 to 100 feet.
- (10) The permanent mooring of more than one motorized boat at any one lake structure, other than a marina or cluster mooring facility, adjacent to an upland lot of record with a measurable shoreline length of less than 35 feet.
- (11) The permanent mooring at a cluster mooring facility of more than three motorized boats per 100 front feet at shoreline of upland lot adjacent to a cluster mooring facility.
- (12) The permanent mooring at a marina of more than five motorized boats per 100 front feet at shoreline of upland lot adjacent to a marina.
- (13) The permanent mooring of any boats licensed for commercial use at a lake structure with an upland lot that is not zoned in accordance with or having a special use permit to comply with section 1.59 of the lake use regulations requirements for lake commercial licensing and supporting criteria.
- (14) The use of any lake structure as temporary or full-time living quarters.
- (15) The rental of a mooring at a dock, boathouse or any other lake structures in the manner of a marina when the adjacent upland lot is zoned R-1.
- (16) The commercial or multi-dwelling use of a lake structure adjacent to an upland lot that is zoned R-1 with the exception of lake structure approved by town council for commercial or multi dwelling use or

those lake structure that are approved as the permanent mooring address on an annual lake commercial license during the applicable calendar year.

- (17) Any temporarily moored inflatable water recreation device larger than 80 square feet in area or ten feet in diameter, and any such device in the lake from December 1 through March 31.
- (18) Sale of fuel, lubricants, boats, marine accessories, bait and fishing supplies and repair of boats shall be prohibited at restricted marinas.

(Code 1989, § 94.15; Ord. of 10-20-1998; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2011; Ord. of 4-12-2016)

Sec. 6-62. Lake structure appeals board.

- (a) *Membership.* The lake structure appeals board shall consist of five regular and three alternate members to be appointed by the town council. Members of the board shall serve a term of three years, provided that terms of office may be adjusted at the time of appointment in order that terms are staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Each alternate member while attending any regular or special meeting of the board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the lake structure appeals board.
- (b) *Rules of conduct.* Board members shall comply with the following rules of conduct. Members may be removed by the town council for cause, including violation of the rules stated in the following subsections:
 - (1) Faithful attendance at meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite to continuing membership on the board.
 - (2) A board member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
 - (3) No board member shall discuss any case with any parties thereto prior to the hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the lake structure administrator, any other member of the board, or the clerk prior to the hearing.
 - (4) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
 - (5) Members of the board shall give notice to the chairperson at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the board.
 - (6) No board member shall vote on any matter that decides an application or appeal unless he has attended the hearing on that application or appeal.
- (c) *General proceedings.* The board shall annually elect a chairperson and a vice-chairperson from among its regular members. A clerk shall be provided by the town; however, when necessary, the chairperson shall appoint a clerk, who may be an employee of the town, a municipal officer, or a member of the lake structure appeals board. The chairperson, or any member acting as chairperson, and the clerk, may administer oaths. The chairperson, or any member acting as the chairperson, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d)

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may make a written request to the chairperson explaining why it is necessary for certain witnesses or evidence to be compelled. The chairperson shall issue requested subpoenas he determines to be relevant, reasonable in nature and scope, and not oppressive. The chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chairperson may be appealed to the full lake structure appeals board. The board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

- (d) *Meetings.* The board shall hold regular monthly meetings at a specified time and place. Special meetings of the board may be called at any time by the chairperson or by request of three or more members of the board. At least 48 hours written notice of the time and place of meetings shall be given, by the chairperson, to each member of the board. All board meetings are to be held in accordance with G.S. ch. 143, art. 33C (G.S. 143-318.9 et seq.), commonly referred to as the Open Meetings Act.
- (1) *Cancellation of meetings.* Whenever there are no appeals, applications, or variances, or other business for the board, or whenever so many members notify the clerk of inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.
 - (2) *Quorum.* A quorum shall consist of three members of the board, but the board shall not pass upon any questions relating to an appeal from a decision or determination of the lake structure administrator, or an application for a variance or decktop accessory structure when there are less than four members present.
 - (3) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in subsection (b)(2) of this section. The required vote to decide appeals and applications shall be as provided in subsection (h) of this section and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the board.
- (e) *Powers and duties.* The powers and duties of the lake structure appeals board shall be as follows:
- (1) *Administrative appeals.* To hear and decide appeals from any decision or determination made by the lake structure administrator in the enforcement of this article.
 - (2) *Variances.* Upon application, the lake structure appeals board may authorize in specific cases such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The lake structure appeals board shall not have authority to grant a variance when to do so would permit a use of land, building or structure which is not permitted within the applicable zoning district. In judging an application for a variance, the lake structure appeals board shall be guided by the following:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
 - b. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
 - c. A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

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- d. The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood or to the general welfare.
- e. The special circumstances are not the result of the actions of the applicant.
- f. The variance is the minimum necessary for the proposed use of the land, building or structure.
- g. A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

In granting any variance, the lake structure appeals board may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable under section 6-65.

(3) *Other matters.* The board shall hear any other matters specified in this article.

(f) *Procedure for filing appeals and applications.* No appeal shall be heard by the board unless written notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the lake structure administrator. Applications for variances or for other matters governed by this article may be filed at any time. Both appeals and applications shall be filed with the lake structure administrator, who shall act as clerk for the board in receiving this notice. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the lake structure administrator, the lake structure administrator shall notify the chairperson of the board that such appeals or applications have been received.

(g) *Hearings.* Hearings before the board shall be governed by the provisions contained herein.

(1) *Time.* After receipt of notice of an appeal or a variance, the chairperson shall schedule a time for a hearing which shall be within 41 days from the filing of such notice of appeal or application.

(2) *Notice of hearing.* Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing, to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(3) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

- a. The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.
- b. The applicant shall present the argument in support of his appeal or application.
- c. Persons supporting or opposed to the appeal or application shall present arguments for or against the application or appeal.
- d. Both sides will be permitted to present rebuttals to opposing testimony.

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- e. Witnesses may be called and factual evidence may be submitted, but the board shall not be limited to consideration of 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. Attorneys representing any party may cross examine any witness.
- (h) *Decisions.* A decision by the board shall be made within 35 days from the date of hearing. The 35-day period shall begin on the date the public hearing ends.
 - (1) *Form.* The decision shall be reduced to writing and reflect the board's determination of contested facts, if any, and their application to applicable standards. The written decision shall be signed by the chairperson or other duly authorized member of the board. The decision of the board shall be effective upon filing such decision with the clerk to the board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the hearing, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective, and shall certify that proper notice has been made.
 - (2) *Voting.* The concurring vote of four-fifths of the members of the board entitled to vote on a matter shall be necessary to reverse any decision or determination of the lake structure administrator, or to grant a variance or to approve any other request under this subsection.
 - (3) *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.
- (i) *Appeals of decisions of the board.* Decisions of the lake structure appeals board shall be final unless appealed by the applicant or an affected property owner to the town council within 30 days of such decision. The town council shall hold a hearing on the record within 45 days of the appeal, and council's decision shall be final.
- (j) *Fees for applications and appeals.* The fee for an application for a variance or other matter regulated by this article, or for an administrative appeal shall be determined by resolution of the town council and shall be payable to the town.

(Code 1989, § 94.16; Ord. of 5-12-2009; Ord. of 11-12-2013)

Sec. 6-63. Injunctive relief.

- (a) In the event any lake structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or used in violation of these regulations, the lake structure administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.
- (b) Whenever the town council has reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved lake structure permit, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county.
- (c) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed in section 6-65 for violations of this article.

(Code 1989, § 94.17; Ord. of 4-12-2005; Ord. of 8-14-2007; Ord. of 4-12-2011)

Sec. 6-64. Inspections and investigations.

- (a) *Inspection.* The lake structure administrator or a designee will periodically inspect lake structures to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article. Notice of the right to inspect shall be included in the certificate of approval of each lake structure permit.
- (b) *Willful resistance, delay or obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town while that person is inspecting or attempting to inspect a lake structure under this article.
- (c) *Notice of violation.* If it is determined that a person engaged in activities in violation of this article, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. The notice shall specify a date by which the person must comply with this section, or rules, or orders adopted pursuant to this article, and inform the person of the actions that need to be taken to comply with this article, or rules, or orders adopted pursuant thereto. However no time period for compliance need be given for failure to submit a lake structure permit application for approval or for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this article.
- (d) *Investigation.* The lake structure administrator shall have the power to conduct such investigation as may reasonably be deemed necessary to carry out the duties prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the site of any lake structure.
- (e) *Statements and reports.* The town shall also have the power to require written statements, or filings of reports under oath, with respect to pertinent questions relating to lake structures.

(Code 1989, § 94.18; Ord. of 4-12-2011)

Sec. 6-65. Penalties.

- (a) Generally. This section may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 160A-175.
- (b) Criminal penalties.
 - (1) All lake structures built after December 15, 1992 are required to have a permit prior to commencement of any construction or alteration for which a permit is required (see section 6-49). Any person who knowingly or willfully violates any provision of this section, or rule, or order adopted pursuant to this article, or who knowingly or willfully initiates or continues construction or alteration of a lake structure for which a permit is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 3 misdemeanor which may include a fine not to exceed \$500.00 as provided in G.S. 14-4.
 - (2) Failure to receive a lake structure permit as required by this section prior to commencement of construction or alteration of a lake structure shall subject both the owner of the upland property and any contractor engaged for the purpose of performing the work to a fine not to exceed \$500.00. If the illegal construction or alteration meets all requirements of this section, a permit and a lake structure certificate shall be issued upon payment of the fine and submittal of a completed application, including detailed plans, other required documentation, and fees. If the illegal structure or alteration does not

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- meet said requirements, the structure shall either be removed, be brought into compliance, or receive a variance (see section 6-62) prior to approval of a permit and receipt of the certificate.
- (3) The owner of the illegal structure shall either apply for a permit or apply for a variance within 30 days or remove the structure within 60 days of receipt of notification that the structure is in violation of this section. Failure to comply with this requirement shall subject the owner to an additional fine, not to exceed \$500.00, payable immediately upon notification.
 - (4) The fines imposed in subsection (b)(1) of this section shall be due and payable by the owner within 30 days of approval of a permit and due and payable by the contractor within 30 days of notification that the structure is in violation of this chapter.
 - (5) In the event that a petition for variance is submitted, the petitioner shall have 30 days in which to apply for a permit in conformance with the conditions of an order granting the variance or 60 days in which to remove the illegal structure if an order denying the variance is issued. Failure to comply with this subsection shall result in an additional fine, not to exceed \$500.00, payable immediately upon notification.
- (c) Civil penalties.
- (1) Civil penalty for a violation. Any person who violates any of the provisions of this section, or rule or order adopted or issued pursuant to this article, or who initiates or continues construction or alteration of a lake structure for which a permit is required except in accordance with the terms, conditions, and provisions of an approved permit, is subject to a civil penalty. The maximum civil penalty amount that the town may assess per violation is \$500.00. A civil penalty may be assessed from the date of violation. Each day of a continuing violation shall constitute a separate violation.
 - (2) Notice of civil penalty assessment. The lake structure administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment, by written demand for a hearing (see section 6-62).
 - (3) Collection. If payment is not received within 30 days after it is due, the town may institute a civil action to recover the amount of the assessment. The civil action may be brought either in the superior court of the county or in a court in the location of the violator's residence or principal place of business, as the town shall elect. Such civil actions must be filed within three years of the date the assessment is due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (d) Any provision of this section that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of civil procedure in general and rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; the fixtures, furniture or other movable property be removed from the building on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be

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cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the upland property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

- (e) The provisions of this section may be enforced by any one, all, or any combination of the remedies authorized and prescribed by this article.
- (f) Except as otherwise specifically provided, each day's continuing violation of any provision of this section shall be a separate and distinct offense.

(Code 1989, § 94.99; Ord. of 10-20-1998; Ord. of 4-12-2011)

Secs. 6-66—6-88. Reserved.