CITY OF HENDERSONVILLE
CITY COUNCIL SPECIAL MEETING
Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Friday, July 02, 2021 – 9:00 AM

AGENDA

1. **CALL TO ORDER**

2. **PUBLIC HEARINGS**

   A. Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of NC General Statutes (P21-35-ZTA)

   B. Standard Rezoning: 305 S Whitted St. (P21-18-RZO) – *Matt Manley, Planning Manager, AICP.*

   C. Standard Rezoning: Monroe Drive and Asheville Highway (P21-36-RZO) *–Matthew Manley AICP, Planning Division Manager*

3. **ADJOURN**

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.

CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY
PLANNING DIVISION

SUBMITTER: Matthew Manley, Planning Manager

MEETING DATE: July 2, 2021

AGENDA SECTION: Public Hearing

DEPARTMENT: Community Development

TITLE OF ITEM: Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of NC General Statutes (P21-35-ZTA)

SUGGESTED MOTION(S):

Three Motions Required For Approval:	For Not Approving:
1. I move City Council adopt *An Ordinance of the City Of Hendersonville City Council To Readopt And Amend The Zoning Ordinance of the City of Hendersonville, North Carolina For Conformance With Chapter 160D of the North Carolina General Statutes* as presented, finding that the readoption of the Zoning Ordinance and amendments is consistent with the Comprehensive Land Use Plan, and that it is reasonable and in the public interest for the Zoning Ordinance, including the land development planning boundary for the City, to be in compliance with Chapter 160D of the North Carolina General Statutes. 2. I move City Council adopt *An Ordinance of the City of Hendersonville City Council To Readopt And Amend The Subdivision Ordinance of the City Of Hendersonville, North Carolina, For Conformance With Chapter 160D of the North Carolina General Statutes* as presented, finding that the readoption of the Subdivision Ordinance and amendments is consistent with the Comprehensive Land Use Plan, and that it is reasonable and in the public interest for the Subdivision Ordinance to be in compliance with Chapter 160D of the North Carolina General Statutes. 3. I move City Council adopt *An Ordinance of the City of Hendersonville City Council To*	1. I move that City Council not adopt *An Ordinance of the City of Hendersonville City Council To Readopt And Amend The Zoning Ordinance of the City Of Hendersonville, North Carolina, For Conformance With Chapter 160D of the North Carolina General Statutes*. 2. I move City Council not adopt *An Ordinance of the City of Hendersonville City Council To Readopt And Amend The Subdivision Ordinance of the City Of Hendersonville, North Carolina, For Conformance With Chapter 160D of the North Carolina General Statutes*. 3. I move City Council not adopt *An Ordinance of the City of Hendersonville City Council To Readopt And Amend Chapter 12, Chapter 24 Article II, Chapter 24 Article III, Chapter 28, And Chapter 40, of the Code Of Ordinances For Hendersonville, NC, For Conformance With Chapter 160D of the North Carolina General Statutes.*

Readopt And Amend Chapter 12, Chapter 24 Article II, Chapter 24 Article III, Chapter 28, And Chapter 40, of the Code of Ordinances For Hendersonville, Nc, For Conformance With Chapter 160D of the North Carolina General Statutes as presented, finding that the readoption of these Chapters and Articles of the Code, including the amendments, is consistent with the Comprehensive Land Use Plan, and that it is reasonable and in the public interest for these Chapters and Articles to be in compliance with Chapter 160D of the North Carolina General Statutes.	

SUMMARY:

The City is required by state law to update all of its land development codes and ordinances affected by the consolidation of Chapters 153A and 160A into a single, unified Chapter 160D by July 1, 2021. The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

These chapters deal with enabling statutes for development regulations (including planning and zoning, stormwater, floodplain, and minimum building standards for residential and nonresidential buildings). The process of reviewing and updating the language in the City's codes and ordinances was led by Land of Sky Council of Governments and a presentation of the changes will be provided by their staff member, Scott Adams.

PROJECT/PETITIONER NUMBER:	P21-35-ZTA
PETITIONER NAME:	City of Hendersonville
ATTACHMENTS:	1. *An Ordinance of the City Of Hendersonville City Council To Readopt And Amend The Zoning Ordinance of the City of Hendersonville, North Carolina For Conformance With Chapter 160D of the North Carolina General Statutes*. 2. *An Ordinance of the City of Hendersonville City Council To Readopt And Amend The Subdivision Ordinance of the City Of Hendersonville, North Carolina, For Conformance With Chapter 160D of the North Carolina General Statutes* 3. *An Ordinance of the City of Hendersonville City Council To Readopt And Amend Chapter 12, Chapter 24 Article II, Chapter 24 Article III, Chapter*

	28, And Chapter 40, of the Code of Ordinances For Hendersonville, Nc, For Conformance With Chapter 160D of the North Carolina General Statutes

Ordinance #___-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, the Session Laws 2019-111, 2020-3 and 2020-25 were signed into law in order to adopt a new Chapter 160D of the North Carolina General Statutes entitled "LOCAL PLANNING AND DEVELOPMENT REGULATION," hereinafter "Chapter 160D"; and

WHEREAS, Chapter 160D consolidates and updates the statutory authority and requirements for land development regulation within the City and its extraterritorial jurisdiction; and

WHEREAS, City Council desires to amend the Zoning Ordinance of the City of Hendersonville, North Carolina, sometimes hereinafter referred to as the "Zoning Ordinance," for conformance with Chapter 160D, including both prior law brought forward as part of Chapter 160D and the changes or clarifications made with the adoption of Chapter 160D;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina as follows:

SUBPART A: The readoption and amendment of the Zoning Ordinance of the City of Hendersonville, North Carolina:

The Zoning Ordinance of the City of Hendersonville, North Carolina, is hereby readopted and amended to read as shown on Attachment A to this Ordinance, Attachment A being incorporated herein by reference as if fully set forth in this Subpart A.

SUBPART B: General Provisions:

1. The provisions of the Zoning Ordinance, readopted and amended in Subpart A of this Ordinance, are hereby declared to be severable. If the provisions of the Zoning Ordinance as readopted and amended by this Ordinance, or the application thereof, to any person or circumstances, is held invalid, such invalidity shall not affect any other provisions or applications of the readopted and amended provisions of the Zoning Ordinance which can be given effect without the invalid provisions or application.

2. All actions taken by or on behalf of the City of Hendersonville, prior to the effective date of this Ordinance, in the administration and enforcement of the Zoning Ordinance are hereby ratified.

3. The adoption of this Ordinance shall not invalidate any pending enforcement actions, nor shall this Ordinance prohibit the enforcement of the Zoning Ordinance, as amended by this Ordinance, with respect any existing Zoning Ordinance violations.

4. This Ordinance shall be effective upon its adoption. All prior provisions of the Zoning Ordinance which are in conflict with this Ordinance, are hereby repealed.

5. City staff and the codifier shall have the authority to make technical corrections to the Zoning Ordinance to correct typographical errors, insert omitted words where insertion of such words will not change the substance of the Zoning Ordinance, and correct statutory references.

This Ordinance is adopted by the City Council of the City of Hendersonville, North Carolina on this 2nd day of July 2021.

Attest: Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Attachment A

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND THE ZONING ORDINANCE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER 160D
CITY OF HENDERSONVILLE ZONING ORDINANCE

TABLE OF CONTENTS

ARTICLE I AUTHORITY AND ENACTMENT 1
ARTICLE II TITLE 1
ARTICLE III JURISDICTION 1
Section 3-1 Zoning Jurisdiction 1

ARTICLE IV ESTABLISHMENT OF DISTRICTS 2
Section 4-1 Use Districts Named 2
Section 4-2 District Boundaries 3
Section 4-3 Rules Governing Boundaries 3
Section 4-4 Conditional Zoning Districts 3
Section 4-5 Classification of Uses 4

ARTICLE V ZONING DISTRICT CLASSIFICATIONS ..... 15~~12~~
Section 5-1 R-40 Estate Residential ..... 15~~12~~
Section 5-1-4 R-40 CZD Estate Residential Conditional Zoning District ..... 16~~13~~
Section 5-2 R-20 Low-Density Residential ..... 16~~13~~
Section 5-2-4 R-20CZD Low-Density Residential Conditional Zoning District ..... 17~~14~~
Section 5-3 R-15 Medium-Density Residential ..... 17~~14~~
Section 5-3-4 R-15CZD Medium-Density Residential Conditional Zoning District ..... 18~~15~~
Section 5-4 R-10 Medium-Density Residential ..... 18~~15~~
Section 5-4-4 R-10 CZD Medium-Density Residential Conditional Zoning District ..... 19~~16~~
Section 5-5 R-6 High-Density Residential ..... 20~~16~~
Section 5-5-4 R-6 CZD High-Density Residential Conditional Zoning District ..... 21~~17~~
Section 5-6 C-1 Central Business ..... 21~~18~~
Section 5-6-5 C-1 CZD Central Business Conditional Zoning District ..... 25~~22~~
Section 5-7 C-2 Secondary Business ..... 25~~22~~
Section 5-7-4 C-2 CZD Secondary Business Conditional Zoning District ..... 27~~24~~
Section 5-8 C-3 Highway Business ..... 28~~24~~
Section 5-8-4 C-3CZD Highway Business Conditional Zoning District ..... 30~~26~~
Section 5-9 C-4 Neighborhood Commercial ..... 30~~27~~
Section 5-9-5 C-4CZD Neighborhood Commercial Conditional Zoning District ..... 32~~28~~
Section 5-10 Medical, Institutional and Cultural ..... 32~~28~~
Section 5-10-4 MICCZD Medical, Institutional, Cultural Conditional Zoning District ..... 33~~29~~
Section 5-11 PMD Planned Manufacturing Development Conditional Zoning District ..... 34~~30~~
Section 5-12 I-1 Industrial ..... 35~~31~~
Section 5-12-4 I-1CZD Industrial Conditional Zoning District ..... 39~~35~~
Section 5-13 RCT Residential Commercial Transition ..... 39~~35~~
Section 5-13-5 RCTCZD Residential Commercial Transition Conditional Zoning District ..... 41~~36~~
Section 5-14 PRD Planned Residential Development Conditional Zoning District ..... 41~~37~~
Section 5-15 PCD Planned Commercial Development Conditional Zoning District ..... 46~~41~~
Section 5-16 PMH Planned Manufactured Housing Development Conditional Zoning District ..... 49~~45~~
Section 5-17 HHH Hyman Heights Historic Overlay ..... 51~~47~~
Section 5-18 EC Entry Corridor Overlay ..... 52~~47~~
Section 5-19 CMU Central Mixed Use ..... 54~~49~~
Section 5-19-4 CMUCZD Central Mixed Use Conditional Zoning District ..... 58~~54~~
Section 5-20 DHH Druid Hills Historic Overlay ..... 59~~54~~

Section 5-21 PID Planned Institutional Development Conditional Zoning District ..... 61~~56~~
Section 5-22 GHMU Greenville Highway Mixed Use ..... 61~~56~~
Section 5-22-5 GHMUCZD Greenville Highway Mixed Use Conditional Zoning District ..... 70~~64~~
Section 5-23 HMU Highway Mixed Use ..... 70~~65~~
Section 5-23-6 HMUCZD Highway Mixed Use Conditional Zoning District ..... 82~~75~~
Section 5-24 UV Urban Village Conditional Zoning District ..... 82~~76~~
Section 5-25 UR Urban Residential Conditional Zoning District ..... 89~~83~~
Section 5-26 MSH Main Street Historic Overlay ..... 98~~91~~
Section 5-27 CHMU Commercial Highway Mixed Use ..... 98~~91~~
Section 5-27-5 CHMUCZD Commercial Highway Mixed Use Conditional Zoning District ..... 107~~100~~

ARTICLE VI GENERAL PROVISIONS ..... 110~~102~~
Section 6-1 Application of Regulations ..... 110~~102~~
Section 6-2 Nonconformities ..... 110~~102~~
Section 6-3 Interpretation of District Regulations ..... 113~~105~~
Section 6-4 Visibility at Intersections ..... 114~~105~~
Section 6-5 Off-Street Parking ..... 114~~105~~
Section 6-6 Off-Street Loading and Unloading Space ..... 120~~111~~
Section 6-7 [Reserved.] ..... 120~~112~~
Section 6-8 [Reserved.] ..... 120~~112~~
Section 6-9 Outdoor Retail Sales, Outdoor Retail Display and Outdoor Retail Storage ..... 120~~112~~
Section 6-10 Storage Containers ..... 122~~113~~
Section 6-11 Use of Manufactured/Mobile Homes ..... 122~~114~~
Section 6-12 Sidewalks ..... 122~~114~~
Section 6-13 Nuisances ..... 124~~116~~
Section 6-14 Burden of Proof ..... 124~~116~~
Section 6-15 Rights-of-Way for Roads and Streets ..... 124~~116~~
Section 6-16 Common Open Space Standards ..... 125~~117~~
Section 6-17 Separability ..... 127~~119~~
Section 6-18 Transportation Impact Analysis ..... 127~~119~~

ARTICLE VII DEVELOPMENT REVIEW ..... 132~~123~~
Section 7-1 Purpose and Structure ..... 132~~123~~
Section 7-2 Zoning Compliance Review ..... 132~~123~~
Section 7-3 Site Plan Review ..... 132~~123~~
Section 7-4 Conditional Zoning Districts ..... 138~~129~~
Section 7-5 Project Phasing ..... 143~~133~~
Section 7-6 Modification of Development Authorizations ..... 143~~134~~
Section 7-7 Expiration and Revocation of Zoning Compliance Permits ..... 145~~135~~
Section 7-8 Planned Developments ..... 145~~136~~
Section 7-9 “As-Built” or Record Drawings ..... 146~~137~~
Section 7-10 Project Infrastructure ..... 146~~137~~
Section 7-11 Adequate Facilities Review ..... 147~~138~~
Section 7-12 Aggregation ..... 148~~138~~
Section 7-13 Appeals of Development Decisions ..... 148~~139~~

ARTICLE VIII EXCEPTIONS AND MODIFICATIONS ..... 152~~142~~
Section 8-1 Minimum Required Front Yard for Dwellings ..... 152~~142~~
Section 8-2 Height Limitations ..... 152~~142~~
Section 8-3 Temporary Use Permits for Manufactured/Mobile Homes ..... 152~~142~~

ARTICLE IX ADMINISTRATION, ENFORCEMENT, BUILDING PERMITS, CERTIFICATE OF ZONING COMPLIANCE AND PENALTIES ..... 154~~144~~
Section 9-1 Administrative Officer ..... 154~~144~~
Section 9-2 Building Permits Required ..... 154~~144~~
Section 9-3 Application for a Building Permit ..... 154~~144~~
Section 9-4 Construction and Use to be as Provided In Applications, Plans, Permits and Certificates of Zoning Compliance ..... 154~~144~~
Section 9-5 Remedies ..... 155~~145~~
Section 9-6 Procedures Upon Discovery of Violations ..... 155~~145~~
Section 9-7 Violations ..... 155~~145~~

ARTICLE X BOARD OF ADJUSTMENT ..... 157~~147~~
Section 10-1 Establishment of Board of Adjustment ..... 157~~147~~
Section 10-2 Powers of the Board of Adjustment ..... 157~~147~~
Section 10-3 Officers ..... 159~~148~~
Section 10-4 Meetings ..... 159~~148~~
Section 10-5 Quorum and Voting ..... 160~~149~~
Section 10-6 Appeals of Administrative Decisions ..... 160~~149~~
Section 10-7 ~~Conditional Use Permits~~ Special Use Permits ..... 161~~150~~
Section 10-8 Variances ..... 163~~152~~
Section 10-9 Processing of Applications Before the Board of Adjustment ..... 164~~153~~
Section 10-10 Quasi-Judicial Decisions and Judicial Review ..... 164~~153~~

ARTICLE XI AMENDMENTS ..... 167~~155~~
Section 11-1 Initiation of Amendments ..... 167~~155~~
Section 11-2 Application ..... 167~~155~~
Section 11-3 Fee ..... 167~~155~~
Section 11-4 Standards ..... 167~~155~~
Section 11-5 Action by the City Council ..... 168~~155~~
Section 11-6 Scope of Proceedings ..... 169~~157~~

ARTICLE XII DEFINITION OF TERMS ..... 171~~159~~
Section 12-1 Interpretation of Commonly Used Terms and Words ..... 171~~159~~
Section 12-2 Definition of Commonly Used Terms and Words ..... 171~~159~~

ARTICLE XIII SIGN REGULATION MAINTENANCE AND ENFORCEMENT ..... 193~~174~~
Section 13-1 General Sign Compliance ..... 193~~174~~
Section 13-2 Advertising Sign Regulations ..... 196~~177~~
Section 13-3 Maintenance and Enforcement ..... 197~~178~~
Section 13-4 Nonconforming Signs ..... 198~~179~~

ARTICLE XIV COMPREHENSIVE PLAN ..... 201~~181~~
Section 14-1 Role of the Comprehensive Plan ..... 201~~181~~
Section 14-2 Amendments to the Comprehensive Plan ..... 201~~181~~

ARTICLE XV BUFFERING, SCREENING & LANDSCAPING ..... 204~~183~~
Section 15-1 Purpose and Intent ..... 204~~183~~
Section 15-2 Landscaping, Buffering and Screening Required ..... 204~~183~~
Section 15-3 Alternative Compliance ..... 205~~184~~
Section 15-4 Existing Vegetation ..... 205~~184~~
Section 15-5 General Standards ..... 207~~186~~

Section 15-6 Bufferyards 2
Section 15-7 Screening ..... 210~~189~~
Section 15-8 Letter of Compliance ..... 211~~190~~
Section 15-9 Landscaping for Vehicular Use Areas ..... 211~~190~~
Section 15-10 Buffer Requirements When a Street Separates Incompatible Uses ..... 212~~191~~
Section 15-11 Bufferyards in the Central Business District ..... 213~~192~~
Section 15-12 Special Provisions Regarding Residential Dwellings in Nonresidential Zoning Designations 213~~192~~
Section 15-13 Special Provisions Regarding Open Space Landscaping in Mixed Use Districts ..... 213~~192~~

ARTICLE XVI ~~SPECIAL REQUIREMENTS~~ SUPPLEMENTARY STANDARDS FOR CERTAIN USES ..... 215~~194~~
Section 16-1 Purpose ..... 215~~194~~
Section 16-2 Applicability ..... 215~~194~~
Section 16-3 Procedures for Applying Standards ..... 215~~194~~
Section 16-4 Standards ..... 215~~194~~
16-4-1 Accessory Dwelling Units ..... 215~~194~~
16-4-2 Adaptive Reuses ..... 215~~194~~
16-4-3 Adult Establishments ..... 216~~195~~
16-4-4 Animal Boarding Facilities ..... 218~~197~~
16-4-5 Bed and Breakfast Facilities ..... 219~~198~~
16-4-6 Bus Stations ..... 220~~199~~
16-4-7 Cemeteries ..... 220~~199~~
16-4-8 Child Care Centers ..... 221~~200~~
16-4-9 Civic Clubs & Fraternal Organizations ..... 221~~200~~
16-4-10 Congregate Care Facilities ..... 221~~200~~
16-4-11 Cultural Arts Buildings ..... 221~~200~~
16-4-12 Day Center ..... 222~~201~~
16-4-13 Food Pantries ..... 222~~201~~
16-4-14 Golf Driving Ranges ..... 222~~201~~
16-4-15 Microbreweries ..... 222~~201~~
16-4-16 Mini-Warehouses ..... 223~~202~~
16-4-17 Mobile Food Vendor ..... 223~~202~~
16-4-18 Nursing Homes ..... 224~~203~~
16-4-19 Pet-Sitting ..... 224~~203~~
16-4-20 Private Clubs ..... 225~~204~~
16-4-21 Progressive Care Facilities ..... 225~~204~~
16-4-22 Public Utility Facilities ..... 226~~205~~
16-4-23 Residential Care Facilities ..... 226~~205~~
16-4-24 Residential Dwellings, Multi-Family ..... 227~~206~~
16-4-25 Rest Homes ..... 227~~206~~
16-4-26 Restaurants ..... 227~~206~~
16-4-27 Schools, primary & secondary ..... 227~~206~~
16-4-28 Shelter Facilities ..... 228~~207~~
16-4-29 Telecommunications Towers and Antennas ..... 228~~207~~

ARTICLE XVII NATURAL RESOURCE PROTECTION STANDARDS ..... 236~~215~~
Section 17-1 Purpose ..... 236~~215~~
Section 17-2 Floodplain Protection Standards ..... 236~~215~~
Section 17-3 Stream Buffer Protection Standards ..... 239~~218~~
Section 17-4 Exemption When Existing Uses Are Present and Ongoing ..... 243~~222~~

Section 17-5 Other Laws and Regulations 2
Section 17-6 Varying Requirements When There Is an Increase in Functionality ..... 243~~222~~
Section 17-7 Remedies for Violations of the Natural Resources Protection Ordinance ..... 244~~223~~

ARTICLE XVIII MIXED USE ZONING ..... 246~~225~~
Section 18-1 Legislative Intent ..... 246~~225~~
Section 18-2 Mixed Use Design Requirements ..... 246~~225~~
Section 18-3 Processing of Applications for Development Authorization within the Mixed Use Zoning District Classifications ..... 246~~225~~
Section 18-4 Appeals ..... 248~~227~~
Section 18-5 Alternative Design ..... 248~~227~~
Section 18-6 General Design Considerations ..... 249~~228~~

ARTICLE I
AUTHORITY AND ENACTMENT

The City Council of the City of Hendersonville, State of North Carolina (NC), in pursuance of the authority granted by the North Carolina General Statutes (NCGS) ~~, Article 19,~~ Chapters ~~160A-381~~ 160D-107 through ~~160A-393~~ 160D-1405, hereby ordain and enact into law the following Articles and Sections.

Conflict of Laws. Except as expressly provided or clearly implied, these Articles and Sections are not intended to modify, supersede or repeal any other ordinance, rule, regulation or other provisions of law. The requirements of these Articles and Sections are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of these Articles and Sections imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for health, safety and welfare shall control. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

ARTICLE II
TITLE

This Ordinance shall be known as the "Zoning Ordinance of the City of Hendersonville, North Carolina."

ARTICLE III
JURISDICTION

Section 3-1 Zoning Jurisdiction. The provisions of this Ordinance shall be applicable to all land within the corporate limits of the City of Hendersonville, North Carolina, and within the "Extraterritorial Jurisdiction of the City of Hendersonville~~.~~" per NCGS Section 160D-202.

ARTICLE IV
ESTABLISHMENT OF DISTRICTS

Section 4-1 Use Districts Named. For the purpose of this Ordinance, the City of Hendersonville, NC, and the area comprising its extraterritorial zoning jurisdiction are divided into use districts. Following is a list of the use districts authorized by this ordinance~~:~~ per NCGS Section 160D-703.

R-40	Estate Residential District
R-40CZD	Estate Residential Conditional Zoning District
R-20	Low-Density Residential
R-20CZD	Low-Density Residential Conditional Zoning District
R-15	Medium-Density Residential
R-15CZD	Medium-Density Residential Conditional Zoning District
R-10	Medium-Density Residential
R-10CZD	Medium-Density Residential Conditional Zoning District
R-6	High-Density Residential
R-6CZD	High-Density Residential Conditional Zoning District
C-1	Central Business District
C-1CZD	Central Business Conditional Zoning District
C-2	Secondary Business District
C-2CZD	Secondary Business Conditional Zoning District
C-3	Highway Business District
C-3CZD	Highway Business Conditional Zoning District
C-4	Neighborhood Commercial
C-4CZD	Neighborhood Commercial Conditional Zoning District
MIC	Medical, Institutional and Cultural District
MICCZD	Medical, Institutional and Cultural Conditional Zoning District
I-1	Industrial District
I-1CZD	Industrial Conditional Zoning District
PMDCZD	Planned Manufacturing Development Conditional Zoning District
RCT	Residential Commercial Transition District
RCTCZD	Residential Commercial Transition Conditional Zoning District
PRDCZD	Planned Residential Conditional Zoning District
PCDCZD	Planned Commercial Conditional Zoning District
PMHCZD	Planned Manufactured Housing Conditional Zoning District
HHH	Hyman Heights Historic Overlay District
EC	Entry Corridor Overlay Districts
CMU	Central Mixed Use District
CMUCZD	Central Mixed Use Conditional Zoning District
DHH	Druid Hills Historic Overlay District
PICZD	Planned Institutional Conditional Zoning District
GHMU	Greenville Highway Mixed Use District
GHMUCZD	Greenville Highway Mixed Use Conditional Zoning District
HMU	Highway Mixed Use District
HMSCZD	Highway Mixed Use Conditional Zoning District
UVCZD	Urban Village Conditional Zoning District
URCZD	Urban Residential Conditional Zoning District
MSH	Main Street Historic Overlay District
CHMU	Commercial Highway Mixed Use District
CHMUCZD	Commercial Highway Mixed Use Conditional Zoning District

Section 4-2 District Boundaries. The boundaries of these districts have been previously established as sh on a map "Official Zoning Map, City of Hendersonville." This map has been rendered digitally and this digitally rendered map replaces the above-mentioned "Official Zoning Map, City of Hendersonville." It shall be the duty of the Planning Director to maintain the digitally-rendered zoning map and to faithfully modify in accordance with map amendments which may be adopted by City Council in the future. In maintaining the digitally-rendered zoning map, the Planning Director is authorized to make minor adjustments to the map where to do so would cause zoning boundaries to match property lines, streets, streams, or other zoning boundaries, or where circumstances otherwise make it clear that such adjustment fulfills the intent of previous zoning map amendments. per NCGS Section 160D-105.

Section 4-3 Rules Governing Boundaries. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

4-3-1 Boundaries indicated as approximately following the center lines of streets, highways, alleys, streams, rivers or other such bodies of water, shall be construed to follow such center lines.

4-3-2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

4-3-3 Boundaries indicated as approximately following city limit lines shall be construed as following such city limit lines.

4-3-4 Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel there to and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.

4-3-5 Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by Subsections 4-3-1 through 4-3-4 above, the Board of Adjustment shall interpret the district boundaries.

Section 4-4 Conditional Zoning Districts. It is recognized that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this Zoning Ordinance and the Comprehensive Plan. Conditional zoning districts are created for the purpose of providing an optional rezoning choice where the owner of the property proposes to rezone property, and in order to, among other reasons, carry out the purposes of the Comprehensive Plan, proposes to impose special limitations and conditions on the use of the property proposed for rezoning. per NCGS Section 160D-703 (2). In light of this purpose, applicants for rezoning to conditional zoning districts are strongly encouraged to meet with neighboring residents and property owners and to attempt to address their concerns, if any, in their application.

4-4-1 Purpose. The conditional zoning district approval process is established to address those situations when a particular use may be acceptable but the general zoning district which would allow that use would not be acceptable. It requires a legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment per NCGS Section 160D-102 (7). It allows City Council (Legislative Decision) to approve a proposal for a specific use with reasonable conditions to assure the compatibility of the use with surrounding properties. Any use permitted under this process must also conform to the development

regulations for the corresponding general zoning district. A ~~conditional use zoning~~ Conditional Zoning District classification will be considered only upon request of the owner(s) of all property to be included in the proposed district.

4-4-2 Conditional Zoning Districts. For the R-40, R-20, R-15, R-10, R-6, C-1, C-2, C-3, C-4, I-1, MIC, CMU, RCT, GHMU, HMU and CHMU zoning district classifications, there are hereby established parallel conditional zoning district classifications designated R-40CZD, R-20CZD, R-15CZUD R-6CZD, C-1CZD, C-2CZD, C-3CZD, C-4CZD, I-1CZD, MICCZD, CMUCZD, RCTCZD, GHMUCZD, HMUCZD and CHMUCZD pursuant to NCGS Section ~~160A-382~~ 160D-703.

4-4-3 Uses permitted. Within a Conditional Zoning District only those uses authorized by Article V as permitted in the parallel zoning district with which the Conditional Zoning District corresponds shall be permitted, and all other requirements of such parallel zoning district classifications shall be met. Specific conditions may be proposed by the petitioner or the city or its agencies but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements.

4-4-4 Processing of Applications. All applications for rezoning to a conditional zoning district shall be submitted and processed under a rezoning to a conditional zoning district in accordance with the provisions of Section 7-4, below.

Section 4-5 Classification of Uses. The range of uses allowed in each district established in this ordinance is summarized in Table 4-5 *Table of Permitted Uses*, which is a part of this section. In the event of a conflict between Table 4-5 and the text of this ordinance, the text shall control.

The Table of Uses orders uses into the following four classifications. All uses must comply with regulations of general application in the Zoning Ordinance, including, without limitation, those in Articles VI, VII, and XV. In addition, uses must comply with specific development standards as noted below:

a) **Permitted by Right (P).** A use which is permitted by right must comply with the development standards for the relevant zoning district. This process requires Administrative (i.e. professional City staff) review leading to an Administrative Decision.

b) **Permitted By Right Subject to ~~Special Requirements (SR)~~ Supplementary Standards.** Same as above except that the use must comply with one or more additional standards not required of other permitted uses in the district. These additional standards are either incorporated into the description of the use or, when they are too lengthy, a reference is given to their location in the Ordinance. This process requires Administrative (i.e. professional City staff) review leading to an Administrative Decision.

c) ~~**Conditional Use (C).**~~ **Special Use (SU)** A use which may be authorized only by means of a c~~onditional use permit~~ **Special Use Permit (SUP)** issued by the ~~Zoning~~ Board of Adjustment pursuant to Article X, below. This process requires initial Administrative review (i.e. professional City staff) and a final Quasi-Judicial Decision by the Board of Adjustment (quasi-judicial process).

d) **Limited (L)**

e) **Uses Permitted Only Pursuant to a Rezoning to a Conditional ~~Use~~Zoning District.**

1) Any building or structure that exceeds the maximum square footage as stated in a conventional zoning district shall require a rezoning to a conditional zoning district which allows the proposed square footage for the building or structure in order to be permitted.

2) Any building or structure that is more than 50,000 square feet of gross floor area shall be required a rezoning to a conditional zoning district which allows the proposed gross square footage for the building or

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Accessory dwelling units	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	P	-	~~SR~~ SS	P	-	P	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS
Accessory uses and/or structures	P	P	P	P	P	P	P	P	P	-	P	P	P	P	P	P	P	P	P	P	P	L	P
Adaptive reuse						-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Adult care centers	-	-	-	-	-	P	P	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	P	-	-	P	~~C~~ SU	~~SR~~ SS	~~SR~~ SS	L	P
Adult care homes	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	P	P	~~SR~~ SS	~~SR~~ SS	-	-	-	-	P	-	-	-	-	~~C~~ SU	P	P	-	P
Adult establishments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	P	-	-	-	-	-	-
Agriculture	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P
Agricultural supplies, bulk	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Amphitheaters, outdoor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-
Animal hospitals & clinics	-	-	-	-	-	-	-	~~SR~~ SS	-	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	P	~~SR~~ SS	P	-	-	~~SR~~ SS	~~SR~~ SS	-	P
Animal boarding facilities	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	-	-	P	~~C~~ SU	P	-	-	-	-	-	-
Automobile car washes	-	-	-	-	-	-	-	~~SR~~ SS	-	-	P	P	~~SR~~ SS	P	P	P	P	-	-	P	-	-	P
Automobile sales & service	-	-	-	-	-	-	-	-	-	-	P	P	-	-	P	P	P	-	-	-	-	-	P
Automotive paint & body work	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	P	-	-	P	P	P	-	-	-	-	-	-
Banks & other financial institutions	-	-	-	-	-	-	-	~~SR~~ SS	P	P	P	P	P	P	P	-	-	-	P	P	P	L	P
Bed & breakfast facilities	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	-	-	~~C~~ SU	~~C~~ SU	P	P	P	~~C~~ SU	P	~~SR~~ SS	-	-	-	P	P	P	P	-
Bottling plants	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Breweries	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Bus stations	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	-	P	-	P	P	-	-	~~C~~ SU	-	-	~~C~~ SU

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Business services	-	-	-	-	-	-	-	~~SR~~ SS	-	P	P	P	P	P	P	P	P	-	P	P	P	L	P
Camps	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P
Cemetaries, mausoleums, columbariums, memorial gardens, crematoriums	-	~~C~~ SU	~~C~~ SU	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Child care centers	-	-	-	-	-	P	P	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	-	-	P	~~C~~ SU	~~SR~~ SS	~~SR~~ SS	L	~~SR~~ SS
Child care home	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	P	P	~~SR~~ SS	~~SR~~ SS	-	-	-	-	P	-	-	-	-	~~C~~ SU	P	P	-	P
Cideries	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Cideries, hard	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Civic centers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Civic clubs & fraternal organizations	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	~~C~~ SU	P	P	-	~~SR~~ SS	~~C~~ SU	L	~~SR~~ SS
Concrete plants	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Congregate care facilities	-	-	-	-	-	-	-	-	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	P	~~SR~~ SS	P	P	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS
Construction trades facilities	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	-	P	P	P	P	-	-	~~SR~~ SS	-	-	P
Convenience stores with or without gasoline sales	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	P
Convenience stores without gasoline sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	P
Copy centers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-
Cultural arts buildings	-	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	P	P	-	P	-	-	-	P	P	P	P	L	P
Day care facilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	P
Day centers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Dance & fitness facilities	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-	-	-	P	P	P	L	P
Distilleries	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Dry cleaning & laundry (≤2,000SF)	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-	-	-	P	P	P	-	-
Dry cleaning & laundry (≤6,000SF)	-	-	-	-	-	-	-	-	-	P	P	P	-	-	P	-	-	-	-	P	P	-	P
Dry cleaning & laundry	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-
Dry cleaning & laundry (pickup & drop off only)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-
Electronic gaming operations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	-	-	-	-	-	-	-
Equipment rental & sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P
Exhibition buildings	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Exterminators	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Fairgrounds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Farm equipment sales & service	-	-	-	-	-	-	-	-	-	-	P	P	-	-	P	P	P	-	-	-	-	-	-
Feed & grain stores	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Freight terminals (SIC groups 40, 41, 42)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Food pantries	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	-	-	-	-	-	-	-	-	-	-	-
Food processing establishments	-	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	-	-	P	~~SR~~ SS	P	-	-	-	-	-	-
Funeral homes	-	-	-	-	-	-	-	-	-	-	P	P	-	P	P	P	P	-	P	P	P	-	P
Garage apartments	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-	-
Golf courses	-	-	-	-	-	P	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-
Golf driving ranges, par 3 golf	~~C~~ SU	-	-	-	-	P	-	-	-	-	P	P	-	-	P	P	P	-	-	-	-	-	-
Government facilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Greenhouses & nurseries, commercial	-	-	-	-	-	-	-	~~SR~~ SS	-	-	P	P	-	-	-	P	P	-	-	P	-	-	P
Health clubs & athletic facilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	P

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Heavy equipment, sales, rentals, leases & service	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Heavy equipment storage	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Home occupations	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-	P	P	P	L	P
Hospitals	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	P	P	P	-	-	-	-	-
Hotels	-	-	-	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	P	P	P	P	-
Hotels & motels	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P
Laboratories, with or without outdoor storage or operations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Laundries, coin-operated	-	-	-	-	-	-	-	~~SR~~ SS	P	P	P	P	P	P	P	-	-	-	P	P	P	-	P
Laundries, coin-operated, for the sole use of the occupants of the building within they are located	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-
Lawn & garden centers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	P	P	-	P
Manufactured homes	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Manufacturing (select industries)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Manufacturing, light	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	-	-	-	-	P	P	-	-	-	-	-	-
Merchandise gaming operation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-
Microbreweries	-	-	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	P	P	P	-	~~SR~~ SS	~~SR~~ SS	-	-	-
Mini-warehouses	-	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	-	-	P	P	P	-	-	-	-	-	-
Mobile food vendors	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	-	~~SR~~ SS	-	-	-	~~SR~~ SS	-	-	-
Mobile homes	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Mobile home sales	-	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	-	-	-	-	-	-	-	-	-	-	-
Motels	-	-	-	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	P	P	P	P	-
Motor freight terminals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Movie theaters, indoor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-
Music & art studios	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	-	-	P	P	P	L	P
Neighborhood community centers	-	-	-	-	P	-	-	P	P	-	P	-	-	-	-	-	-	P	P	P	P	-	P
Newspaper office & printing establishments	-	-	-	-	-	-	-	-	-	P	P	P	-	P	P	-	-	-	P	P	P	-	P
Nursing homes	-	-	-	-	-	P	-	-	SR ~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	P	~~SR~~ SS	P	P	-	~~SR~~ SS	-	-	~~SR~~ SS
Offices	-	-	-	-	-	~~SR~~ SS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Offices, business, professional & public	-	-	-	-	-	-	-	~~SR~~ SS	P	P	P	P	P	P	P	P	-	-	P	P	P	P	P
Parking lots & parking garages	-	-	-	-	-	-	-	-	P	P	P	P	-	P	P	P	-	P	-	P	P	-	P
Parks	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Passenger transportation terminals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Personal services	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	P	P	P	P	P	P	P	-	-	P	P	P	L	P
Pet-sitting	-	-	-	-	-	-	-	~~C~~ SU	-	-	-	-	~~C~~ SU	-	-	-	-	-	-	-	-	-	-
Planned residential development (minor)	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	-	-	~~SR~~ SS	-	-
Planned residential development (major)	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Private clubs	-	-	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	~~C~~ SU	-	~~C~~ SU	-	~~C~~ SU	P	-	-	-	-	L	-

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Progressive care facilities	-	-	-	-	-	~~SR~~ SS	-	-	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	-	-	~~SR~~ SS
Public & private recreational facilities, indoor & outdoor, including uses accessory to the recreational facility such as snack bars, cabanas, etc.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	CV
Public & semi-public buildings	-	-	-	-	-	-	-	-	P	P	P	P	-	P	P	P	P	P	P	P	P	P	P
Public utility facilities	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	P	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	~~C~~ SU	P	-	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	~~C~~ SU
Publishing & printing establishments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Radio & television broadcasting studios	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Recreational facilities, indoors	-	-	-	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	-	P	P	-	P
Recreational facilities, outdoors, commercial	-	-	-	-	-	-	-	-	-	-	P	P	-	-	P	P	P	-	-	P	-	-	P
Recycling centers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Religious institutions	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	P	P	P	P	P	P	P	P	P	P	P	-	P	P	P	P	L	P
Repair services, miscellaneous	-	-	-	-	-	-	-	-	-	~~SR~~ SS	P	P	-	P	P	P	P	-	-	P	P	-	P
Repair services, (non-automotive) miscellaneous, so long as the use is contained within an enclosed building	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	L	-

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Research & development with or without outdoor storage and operations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	P
Residential care facilities	-	-	-	-	~~C~~ SU	-	-	~~C~~ SU	~~SR~~ SS	-	P	P	-	-	-	-	-	-	-	P	P	-	P
Residential dwellings, single-family	P	P	P	P	P	P	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P
Residential dwellings, multi-family	-	-	-	-	-	P	-	-	-	~~SR~~ SS	~~SR~~ SS	-	P	~~SR~~ SS	P	-	-	P	P	P	P	P	P
Residential dwellings, two-family	-	P	P	P	P	P	-	P	P	P	P	P	-	P	P	-	-	P	P	P	P	-	P
Rest homes	-	-	-	-	-	P	-	-	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	P	~~SR~~ SS	P	P	-	-	-	-	-
Restaurants	-	-	-	-	-	-	-	~~C~~ SU	~~C~~ SU	P	P	P	~~C~~ SU	P	P	P	P	-	P	P	P	L	P
Restaurants, drive-in	-	-	-	-	-	-	-	-	-	-	-	P	-	-	P	P	P	-	-	P	-	-	P
Retail stores	-	-	-	-	-	-	-	~~SR~~ SS	~~SR~~ SS	P	P	P	~~SR~~ SS	P	P	P	P	-	~~SR~~ SS	P	~~SR~~ SS	L	P
School, post secondary, business, technical & vocational	-	-	-	-	-	-	-	-	P	P	P	P	-	P	-	-	-	P	~~C~~ SU	P	P	L	P
Schools, primary & secondary	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	~~C~~ SU	P	-	-	-	-	P	P	-	P	-	-	-	P	~~C~~ SU	P	P	P	P
Service stations	-	-	-	-	-	-	-	-	-	P	P	P	P	-	P	P	P	-	-	P	-	-	P
Shelter facilities	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-	P	-	-	-	-	-	-	-
Signs	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS
Storage yards	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Telecommunications antennas	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS
Telecommunications towers	-	-	-	-	-	~~SR~~ SS	-	-	-	-	-	~~SR~~ SS	-	-	~~SR~~ SS	~~SR~~ SS	~~SR~~ SS	-	-	-	-	-	-

USE	R-40	R-20	R-15	R-10	R-6	PRDCZD	PMHCZD	RCT	MIC	C-1	C-2	C-3	C-4	CMU	PCDCZD	I-1	PMDCZD	PIDCZD	GHMU	HMU	UVCZD	RCZD	CHMU
Theaters, indoor	-	-	-	-	-	-	-	-	-	P	P	P	-	P	P	-	-	-	P	P	P	L	P
Theaters, outdoor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	~~SR~~ SS	P	-
Travel trailer sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Treatment plants, water & sewer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Vehicle repair shops with or without outdoor operations & storage	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Vehicle repair & service, without outdoor operations	-	-	-	-	-	-	-	-	-	-	-	-	-	~~C~~ SU	-	-	-	-	-	-	-	-	-
Vehicle storage areas, not to include junk yards and wrecking yards	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Veterinary clinics	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-
Warehouses	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Wineries	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-
Wholesale businesses	-	-	-	-	-	-	-	-	-	-	P	P	-	-	P	P	P	-	-	-	-	-	-

This page intentionally left blank.

ARTICLE V
ZONING DISTRICT CLASSIFICATIONS

Section 5-1 R-40 Estate Residential Zoning District Classification. This zoning district classification is designed to accommodate single-family dwellings in an area characterized by extremely low-density.

5-1-1 Permitted Uses: The following uses are permitted by right in the R-40 Estate Residential Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory structures
Adult care homes, so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Agriculture
Camps
Child care homes, so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Parks
Planned residential developments (minor), subject to the requirements of Article VII, below
Religious institutions containing no more than 50,000 ~~ft2~~ square feet of gross floor area
Residential dwellings, single-family
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-1-2 ~~Conditional Uses~~ Special Uses: The following uses shall be permitted in the R-40 Estate Residential Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed and breakfast facilities
Golf driving ranges
Public utility facilities
Schools, primary & secondary, containing no more than 50,000 ~~ft2~~ square feet of gross floor area

5-1-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	40,000
Lot Area per Dwelling Unit in Square Feet:	40,000
Minimum Lot Width at Building Line in Feet:	150
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 40
	Side: 25
	Rear: 35
Accessory Structures	Front: 40
	Side: 10
	Rear: 10
Maximum Height in Feet:	35

Section 5-1-4 R-40 CZD Estate Residential Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the R-40 Estate Residential Zoning District Classification except that rezoning to R-40 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-40 Estate Residential Conditional Zoning District Classification only upon rezoning to R-40CZD.

Adaptive reuses
Telecommunications towers
Permitted uses for the R-40, Estate Residential Zoning District Classification as specified in Section 5-1-1, above.
~~Conditional uses~~ Special Uses for the R-40, Estate Residential Zoning District Classification as specified in Section 5-1-2, above.

Section 5-2 R-20 Low-Density Residential Zoning District Classification. This zoning district classification is intended for areas in which the principal use of the land is for low-density residential or agricultural purposes.

5-2-1 Permitted Uses: The following uses are permitted by right in the R-20 Low Density Residential Zoning District Classification provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory structures
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Camps
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Parks
Planned residential developments (minor), subject to the requirements of Article VII, below
Religious institutions containing no more than 50,000 ~~ft2~~ square feet of gross floor area
Residential dwellings, single-family
Residential dwellings, two-family
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.

5-2-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the R-20 Low Density Residential Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed and breakfast facilities
Cemeteries
Public utility facilities
Schools, primary & secondary, containing no more than 50,000 ~~ft2~~ square feet of gross floor area

5-2-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	20,000
Lot Area per Dwelling Unit in Square Feet:	20,000 for the first; 10,000 for the second unit for a two family dwelling.
Minimum Lot Width at Building Line in Feet:	100
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 35 Side: 15 Rear: 20
Accessory Structures	Front: 35 Side: 10 Rear: 10
Maximum Height in Feet:	35

Section 5-2-4 R-20CZD Low-Density Residential Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the R-20 Low-Density Residential Zoning District Classification except that rezoning to R-20 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-20 Low-Density Residential Conditional Zoning District Classification only upon rezoning to R-20CZD.

Adaptive reuses
Telecommunications towers
Permitted uses for the R-20, Low-Density Residential Zoning District Classification as specified in Section 5-2-1, above.
~~Conditional uses~~ Special Uses for the R-20, Low Density Residential Zoning District Classification as specified in Section 5-2-2 above.

Section 5-3 R-15 Medium-Density Residential Zoning District Classification. This zoning district classification is for areas in which the principal use of land is for medium-density single-family residences. It is expected that all dwellings in such district will have access to public water supplies or public sewage disposal facilities or a reasonable expectation of such service in the future.

5-3-1 Permitted Uses: The following uses are permitted by right in the R-15 Medium Density Residential Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory structures
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Camps
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Parks
Planned residential developments (minor), subject to the requirements of Article VII, below
Religious institutions containing no more than 50,000 ft2 of gross floor area
Residential dwellings, single-family
Residential dwellings, two-family

Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special use~~ Special Use requirements contained in Section 16-4, below.

5-3-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the R-15 Medium Density Residential Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed and breakfast facilities
Cemeteries
Public utility facilities
Schools, primary & secondary, containing no more than 50,000 ~~ft2~~ square feet of gross floor area

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet:	15,000 for the first; 7,500 ~~ft2~~ for one additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 30 Side: 10 Rear: 15
Accessory Structures	Front: 30 Side: 5 Rear: 5
Maximum Height in Feet:	35

Section 5-3-4 R-15CZD Medium-Density Residential Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the R-15 Medium-Density Residential Zoning District Classification except that rezoning to R-15 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-15 Medium-Density Residential Conditional Zoning District Classification only upon rezoning to R-15CZD.

Adaptive reuses
Telecommunications towers
Permitted uses for the R-15 Medium-Density Residential Zoning District Classification as specified in Section 5-3-1, above.
~~Conditional uses~~ Special Uses for the R-15 Medium-Density Residential Zoning District Classification as specified in Section 5-3-2, above.

Section 5-4 R-10 Medium-Density Residential Zoning District Classification. This zoning district classification is intended for areas in which the principal use of the land is for single-family residences.

5-4-1 Permitted Uses: The following uses are permitted by right in the R-10 Medium Density Residential Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units, subject to ~~special requirements~~ Supplementary Standards contained in Secti 4, below
Accessory structures
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Camps
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Parks
Planned residential developments (minor), subject to the requirements of Article VII, below
Religious institutions containing no more than 50,000 ~~ft2~~ square feet of gross floor area
Residential dwellings, single-family
Residential dwellings, two-family
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-4-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the R-10 Medium Density Residential Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed and breakfast facilities
Public utility facilities
Schools, primary & secondary, containing no more than 50,000 ~~ft2~~ square feet of gross floor area

5-4-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	10,000
Lot Area per Dwelling Unit in Square Feet:	10,000 for the first; 5,000 ~~ft2~~ or one additional dwelling unit in any one building.
Minimum Lot Width at Building Line in Feet:	75
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 25
Side: 10	
Rear: 10	
Accessory Structures	Front: 25
Side: 5	
Rear: 5	
Maximum Height in Feet:	35

Section 5-4-4 R-10 CZD Medium-Density Residential Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the R-10 Medium-Density Residential Zoning District Classification except that rezoning to R-10 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-10 Medium-Density Residential Conditional Zoning District Classification only upon rezoning to R-10CZD.

Adaptive reuses

Telecommunications towers
Permitted uses for the R-10 Medium-Density Residential Zoning District Classification as specified in Section 5-4-1, above.
~~Conditional uses~~ Special Uses for the R-10 Medium-Density Residential Zoning District Classification as specified in Section 5-4-2, above.

Section 5-5 R-6 High-Density Residential Zoning District Classification. This zoning district classification is intended for areas in which the principal use of land is to permit high-density residential development.

5-5-1 Permitted Uses: The following uses are permitted by right in the R-6 High Density Residential Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory structures
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Camps
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Neighborhood community centers
Parks
Planned residential developments (minor), subject to the requirements of Article VII, below
Religious institutions containing no more than 50,000 ~~ft2~~ square feet of gross floor area
Residential dwellings, single-family
Residential dwellings, two-family
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-5-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the R-6 High Density Residential Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed and breakfast facilities
Public utility facilities
Residential care facilities
Schools, primary & secondary, containing no more than 50,000 ~~ft2~~ square feet of gross floor area

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	6,000
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first; 4,000 ~~ft2~~ for one additional dwelling unit in any one building.
Minimum Lot Width at Building Line in Feet:	50
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 20 Side: 8

	Rear: 10
Accessory Structures	Front: 20 Side: 5 Rear: 5
Maximum Height in Feet:	35

Section 5-5-4 R-6 CZD High-Density Residential Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the R-6 High-Density Residential Zoning District Classification except that rezoning to R-6 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-6 High-Density Residential Conditional Zoning District Classification only upon rezoning to R-6CZD.

Adaptive reuses
Telecommunications towers
Permitted uses for the R-6 High-Density Residential Zoning District Classification as specified in Section 5-5-1, above.
~~Conditional uses~~ Special Uses for the R-6 High-Density Residential Zoning District Classification as specified in Section 5-5-2, above.

Section 5-6 C-1 Central Business Zoning District Classification. This zoning district classification is designed to provide a) a concentrated central core of retailing and services, b) areas accommodating central administrative business, financial, general, and professional offices and related services and c) residential uses. The district regulations are designed to promote convenient, pedestrian shopping and the stability of retail development by encouraging continuous retail frontage in a concentrated area.

5-6-1 Permitted Uses: The following uses are permitted by right in the C-1 Central Business Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Banks and other financial institutions
Bed & breakfast facilities
Business services
Convenience stores (not including gasoline sales)
Dance and fitness facilities
Dry cleaning and laundry establishment containing less than 6,000 ~~ft2~~ square feet of floor area
Home occupations
Hotels and motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Music and art studios
Newspaper offices and printing establishments
Offices, business, professional and public
Parking lots and parking garages
Parks
Personal services
Public & semi-public buildings

Recreational facilities, indoors
Religious institutions
Repair services, miscellaneous, so long as the use is contained within an enclosed building
Residential dwellings, single-family
Residential dwellings, two-family
Residential dwellings, multi-family, subject to ~~special requirements~~ Supplementary Standards contained in this Section
Restaurants
Retail stores
Schools, post-secondary, business, technical and vocational
Service stations
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoor

5-6-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the C-1 Central Business Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Child care centers
Civic clubs & fraternal organizations
Cultural arts buildings
Private clubs
Public utility facilities

5-6-3 Development Standards. The following standards shall apply to development within the C-1 Central Business Zoning District Classification and Central Business Conditional Zoning District Classification in addition to all other applicable standards contained in this Ordinance.

5-6-3.1 Parking & Loading. For non-residential developments and residential developments containing fewer than five dwelling units, no off-street parking is required. For residential developments containing five or more dwelling units, off-street parking of one and one-half spaces (1.5) per dwelling unit shall be provided.

As far as practicable, off-street parking, when provided, shall be accessed by means of east-west streets or alley ways and shall be designed so that it is screened, as far as practicable, to minimize motor vehicles and parking areas from view from Main, Church and King Streets. This provision is not intended to require that buildings be screened from view.

5-6-3.2 Dimensional Requirements.

Minimum Lot Area in Square Feet:	None
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	Front: None
	Side: None
	Rear: None
Maximum Height in Feet:	64 feet

5-6-3.3 Streetscape Design. The relationship between a building and areas for pedestrian or vehicular circulation shall be carefully planned in order to avoid negative impacts of one upon the other. All buildings and uses developed in this zoning district classification shall meet the following minimum standards; provided, however, buildings undergoing renovation and rehabilitation, in which the footprint of existing structures is not being increased or altered, may be exempted from regulations regarding street walls and urban open spaces if site conditions make compliance therewith impractical.

a) **Street Walls.** The first floors of all buildings, including structured parking, shall be designed to encourage and complement pedestrian-scale interest and activity.

To the extent practicable, in consideration of the nature of the uses proposed, this is to be accomplished in part by the use of transparent windows and doors arranged so that the uses are visible from and/or accessible to the street on the first floor street frontage.

In addition, a combination of design elements shall be used on the building facade and/or in relationship to the building at street level to animate and enliven the streetscape. These design elements may include, but are not limited to, the following: ornamentation, molding, changes in material or color, architectural lighting, works of art, fountains and pools, street furniture, landscaping and garden areas, and display areas.

Any design elements which extend into the public right-of-way on city or state maintained streets require an encroachment agreement with the City of Hendersonville Department of Public Works or the NC Department of Transportation (NCDOT), as appropriate.

Where expanses of blank wall are necessary, they may not exceed 20 feet in length. A blank wall is a facade which does not add to the character of the streetscape and does not contain transparent windows or doors or sufficient ornamentation, decoration or articulation as listed in the above paragraph.

The first floor and street level shall be designed with attention to adjacent public or private open spaces and existing streetscape improvements. The provision of multiple entrances from the public sidewalk or open spaces is encouraged.

b) **Structured Parking Facilities.** In addition to the above requirements, in the event that any openings for ventilation, service, or emergency access are located at the first floor level in the building facade, then they shall be an integral part of the overall building design. These openings as well as pedestrian and vehicular entrances shall be designed to minimize visibility of parked cars. The remainder of the street level frontage shall be either commercial space or an architecturally articulated facade designed to minimize the visibility of parked cars.

All levels of a structured parking facility shall be designed and screened in such a way as to minimize visibility of parked cars. In no instance will rails or cabling alone be sufficient to meet this screening requirement.

The design requirements of paragraph (b) apply to all building facades which are visible from any public right-of-way.

c) **Screening.** All structures and facilities for trash, loading, outdoor equipment, and storage, including the storage of inventory, shall be screened so as not to be visible from the street and pedestrian circulation areas. Solar technology components including solar panels and solar thermal collectors used for on-site private purposes are exempt from this provision provided that no other functional location exists for

optimized performance that is not visible from the street and pedestrian circulation areas. This determination may be made either by the Community Development ~~Assistance~~ Director or a designee.

Solid walls shall be faced with brick, stone or other decorative finish with the decorative side adjacent to the public right-of-way. Fences shall be opaque and either painted or stained with the decorative side adjacent to the public right-of-way. In no instance will a chain link or barbed wire fence be acceptable.

Trees used to fulfill this requirement shall be located on private property in planters, a planting strip, berm or tree lawn, any of which shall be at least 8 feet wide and at least 2 feet deep. The trees shall be of a small maturing evergreen variety and be at least 10 feet tall at the time of planting. All shrubs shall be between 24 inches and 36 inches tall at time of planting. All plant material shall conform to the American Standard for Nursery Stock published by the American Association of Nurserymen. Trees employed to meet the screening requirement may not be counted toward the street tree planting or urban open space tree requirements.

Any lot which becomes vacant through the removal of a structure for any reason shall be screened from all abutting public street rights-of-way in accordance with the provisions of this section or cleared of rubbish and debris and seeded with grass. However, if the lot is to be used for parking either as a transitional or permanent use, it shall meet all the minimum requirements for that use as established by this ordinance.

Maintenance of screening required under these provisions shall conform to the requirements of Article XV of this Ordinance, including the requirement to promptly replace dead vegetation with healthy, living plantings.

d) **Street Trees.** In addition to all other requirements of this Section, at least one tree of 3 - 3½- inches caliper minimum, measured 6 inches above ground, shall be planted for each 25 feet for small maturing trees and for each 35 feet for large maturing trees of the entire building lot which abuts any public street right-of-way with a minimum of one tree required for any distance up to 35 feet. Trees shall not be planted closer than 2 feet, nor more than 10 feet, from the back of the curb. Street trees shall not be required within the boundaries of the Downtown Municipal Services District.

For the purposes of this paragraph, all specifications for measurement and quality of trees shall be in accordance with the American Standard for Nursery Stock published by the American Association of Nurserymen. All trees planted to meet this requirement shall be well-matched specimen grade and shall be limbed up 6 feet. Trees used to fulfill this requirement may be located on public or private property. Maintenance of street trees required under these provisions shall conform to the requirements of Section 15-5 of this Ordinance, including the requirement to promptly replace dead vegetation with healthy, living plantings.

e) **Reflective Surfaces.** No development subject to these provisions may have exterior walls with a reflectivity value in excess of 36%, as measured under the applicable provisions of ASTM-C-1036. No reflective surfaces may be used on street level exterior facades.

f) **Urban Open Spaces.** Open spaces for public congregation and recreational opportunities are required for non-residential developments and shall be equipped or designed to allow pedestrian seating and to be easily observed from the street or pedestrian circulation areas. All urban open spaces shall comply with the minimum required design standards of this ordinance. In light of the requirement for urban open space, development in the C-1 Central Business Zoning District Classification is excused from complying with the requirements for common open space contained in Section 6-16 of this ordinance.

1) **Urban open space size.** Buildings shall be provided with public open space behind the required setback and on private property on the basis of five ~~ft2~~ square feet of urban open space per 100 ~~ft2~~ square feet of gross floor area (5/100). A maximum of 30% of this required urban open space may be provided on an enclosed ground floor level provided the enclosed space meets all other requirements of these provisions.

2) **Accessibility to the street.** Urban open space shall be designed so that it is accessible to and visible from the street.

3) **Trees.** Within the open space area(s), 1 tree shall be planted for each 500 ~~ft2~~ square feet. Trees shall have a minimum caliper of 3-3½ inches measured 6 inches above ground at the time of planting.

4) **Amenities.** The following amenities are permitted within an urban open space area: ornamental fountains, stairways, seating, waterfalls, sculptures, arbors, trellises, planted beds, drinking fountains, clock pedestals, public telephones, awnings, canopies, and similar structures.

5) **Maintenance.** The building owner, lessee, management entity or authorized agent are jointly and severally responsible for the maintenance of the urban open space area including litter control and care and the replacement of trees and shrubs, as required by Section 15-4.

6) **Utilities.** All utilities service lines and connections shall be underground.

g) **Exceptions for Single-Family and Two-Family Residences.** Single-family and two-family residential dwellings shall not be required to comply with the Streetscape Design regulations contained in Section 5-6-4.3.

5-6-4 Residential Development. There shall be no density cap for developments within the C-1 Central Business Zoning District Classification.

Section 5-6-5 C-1 CZD Central Business Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the C-1 Central Business Zoning District Classification except that rezoning to C-1Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-1 Central Business Conditional Zoning District Classification only upon rezoning to C-1CZD.

a) Any development or redevelopment involving more than 50,000 ~~ft2~~ square feet of gross floor area;
b) Shelter facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
c) Permitted uses for the C-1 Central Business Zoning District Classification as specified in Section 5-6-1, above.
d) ~~Conditional uses~~ Special Uses for the C-1 Central Business Zoning District Classification as specified in Section 5-6-2, above.

Section 5-7 C-2 Secondary Business Zoning District Classification. This zoning district classification is designed primarily to accommodate a) existing developments of mixed commercial and light industrial uses, and b) certain commercial and light industrial uses compatible with one another but inappropriate in certain other zoning district classifications.

5-7-1 Permitted Uses: The following uses are permitted by right in the C-2 Secondary Business Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Animal hospitals & clinics so long as the use contains no outdoor kennels
Automobile car washes
Automobile sales & service establishments
Banks and other financial institutions
Bed & breakfast facilities
Business services
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities so long as the storage of equipment and materials is screened from view from public rights-of-way
Convenience stores with or without gasoline sales
Cultural arts buildings
Dance and fitness facilities
Dry cleaning and laundry establishments containing less than 6,000 ~~ft2~~ square feet of floor area
Farm equipment sales & service
Food pantries, subject to the ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Funeral homes
Golf driving ranges & par three golf courses
Greenhouses & nurseries, commercial
Home occupations
Hotels and motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mobile food vendors, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Music and art studios
Neighborhood community centers
Newspaper offices and printing establishments
Nursing homes subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots and parking garages
Parks
Personal services
Planned residential developments (minor), subject to the requirements of Article VII, below
Progressive care facilities subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Recreational facilities, indoors
Recreational facilities, outdoors, commercial
Religious institutions
Repair services, miscellaneous
Residential care facilities
Residential dwellings, single-family
Residential dwellings, two-family

Residential dwellings, multi-family, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Rest Homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Restaurants
Retail stores
Schools, post-secondary, business, technical and vocational
Schools, primary & secondary
Service stations
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoor
Wholesale businesses

5-7-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the C-2 Secondary Business Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Animal kennels
Automotive paint and body work
Bus stations
Child care centers
Civic clubs & fraternal organizations
Light manufacturing
Private clubs
Public utility facilities

5-7-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	8,000 (6,000 for residential use)
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first dwelling unit; 4,000 ~~ft2~~ square feet for one additional dwelling unit in any one building
Minimum Lot Width at Building Line in Feet:	None except for structures containing dwelling units which shall have a minimum lot width at building line of 50 feet.
Minimum Yard Requirements in Feet:	Front: 15 except for structures containing dwelling units which shall have a minimum front yard of 20 feet. Side: 5 (Side yards are not required, but when provided must be a minimum of five feet. Common wall construction is permitted in the C-2 Zoning District Classification. On all corner lots, a ten foot side yard setback is required.) Rear: None except for structures containing dwelling units which shall have a minimum setback of ten feet. Otherwise, rear yards are not required unless the C-2 Zoning District Classification abuts an established residential district. In this case, the rear yard setback requirement shall be a minimum of ten feet.
Maximum Height in Feet:	48

Section 5-7-4 C-2 CZD Secondary Business Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the C-2 Secondary Business Zoning District

Classification except that rezoning to C-2 Conditional Zoning District as provided for in Article VII herein required as a prerequisite to any use or development. The following uses shall be permitted in the C-2 Secondary Business Conditional Zoning District Classification only upon rezoning to C-2CZD.

Day center
Shelter facilities
Telecommunications towers
Development or redevelopment involving more than 50,000ft2 of floor area
Permitted uses for the C-2 Secondary Business Zoning District Classification as specified in Section 5-7-1, above.
~~Conditional uses~~ Special Uses for the C-2 Secondary Business Zoning District Classification as specified in Section 5-7-2, above.

Section 5-8 C-3 Highway Business Zoning District Classification. This zoning district classification is designed primarily to encourage the development of recognizable, attractive groupings of facilities to serve persons traveling by automobile and local residents. Since these areas are generally located on the major highways, they are subject to the public view. They should provide an appropriate appearance, ample parking, and be designed to minimize traffic congestion.

5-8-1 Permitted Uses: The following uses are permitted by right in the C-3 Highway Business Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Animal hospitals & clinics as long as they contain no outdoor kennels
Automobile car washes
Automobile sales & service establishments
Automotive paint & body work
Banks and other financial institutions
Bed & breakfast facilities
Business services
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities so long as the storage of equipment and materials is screened from view from any public rights-of-way
Convenience stores with or without gasoline sales
Cultural arts buildings
Dance and fitness facilities
Dry cleaning and laundry establishment containing less than 6,000 ~~ft2~~ square feet of floor area
Farm equipment sales & service
Food pantries, subject to the ~~special requirements~~ Supplementary Standards contained in Section, 16-4 below)
Food processing establishments containing less than 10,000 ~~ft2~~ square feet of gross floor area
Funeral homes
Golf driving ranges & par three golf courses
Greenhouses & commercial nurseries
Home occupations

Hotels and motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mobile food vendors, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mobile homes sales establishments so long as they are situated on a major thoroughfare containing four or more traffic lanes
Music and art studios
Newspaper offices and printing establishments
Nursing homes subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots and parking garages
Parks
Personal services
Planned residential developments (minor), subject to the requirements of Article VII, below
Progressive care facilities subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Recreational facilities, indoors
Recreational facilities, outdoors, commercial
Religious institutions
Repair services, miscellaneous
Residential care facilities
Residential dwellings, single-family
Residential dwellings, two-family
Rest homes subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Restaurants
Restaurants, drive-in
Retail stores
Schools, post-secondary, business, technical and vocational
Schools, primary & secondary
Service stations
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Theaters, indoor
Wholesale businesses

5-8-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the C-3 Highway Business Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Animal boarding facilities
Bus stations
Child care centers
Civic clubs & fraternal organizations
Mini-warehouses
Private clubs
Public utility facilities

5-8-3 Dimensional Requirements:

For Lots Containing Only Residential Uses	
Minimum Lot Area in Square Feet:	6,000
Lot Area per Dwelling Unit in Square Feet:	6,000 for the first; 4,000 ~~ft2~~ square feet for one additional dwelling unit in any one building.
Minimum Lot Width at Building Line in Feet:	50
Minimum Yard Requirements in Feet: Front:	20
	Side: 8
	Rear: 10
Maximum Height in Feet:	35
For Lots Containing Other Uses	
Minimum Lot Area in Square Feet:	10,000
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	80
Minimum Yard Requirements in Feet: Front:	35 (Front yard requirements may be reduced to ten feet for an accessory canopy structure for a commercial building or use, provided the primary structure or use con- forms to the established setback requirements.)
	Side: 15
	Rear: 20
Maximum Height in Feet:	48

Section 5-8-4 C-3CZD Highway Business Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the C-3 Highway Business Zoning District Classification except that rezoning to C-3 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-3 Highway Business Conditional Zoning District Classification only upon rezoning to C-3CZD.

Day centers
Shelter facilities
Development or redevelopment involving more than 50,000 ~~ft2~~ square feet of floor area
Permitted uses for the C-3, Highway Business Zoning District Classification as specified in Section 5-8-1, below)
~~Conditional uses~~ Special Uses for the C-3, Highway Business Zoning District Classification as specified in Section 5-8-2, below

Section 5-9 C-4 Neighborhood Commercial Zoning District Classification. The purpose of this zoning district classification is to provide for the most frequent daily needs of residents of an immediate neighborhood. Because these shops and stores will be most closely associated with residential uses, more restrictive requirements for light, air, open space, etc., are necessary.

5-9-1 Permitted Uses: The following uses are permitted by right in the C-4 Neighborhood Commercial Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units
Accessory uses & structures

Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health Human Services (DHSS)
Automobile car washes so long as no attendants are employed on the premises
Banks and other financial institutions
Business services
Convenience stores with or without gasoline sales
Dance and fitness facilities
Dry cleaning and laundry establishment containing less than 2,000 ~~ft2~~ square feet of floor area
Garage apartments
Home occupations
Laundries, coin-operated
Music and art studios
Offices, business, professional and public
Parks
Personal services
Religious institutions
Residential dwellings, single-family
Retail stores customarily serving neighborhoods and designed to serve a neighborhood
Service stations
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-9-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the C-4 Neighborhood Commercial Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed & breakfast facilities
Child care centers
Civic clubs & fraternal organizations
Pet-sitting
Public utility facilities
Restaurants

5-9-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	40,000
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	None
Minimum Yard Requirements in Feet: Front:	40 (Front yard requirements may be reduced to 15 feet for an accessory canopy structure for a commercial building or use, provided the primary structure or use conforms to the established setback requirements.) Side: 15 Rear: 20
Maximum Height in Feet:	35

5-9-4 Building Coverage. The total ground area covered by the principal building and all accessory buildings shall not exceed 40% of the total lot area.

Section 5-9-5 C-4CZD Neighborhood Commercial Conditional Zoning District Classification. The pu and requirements of this district are identical to the C-4 Neighborhood Commercial Zoning District Classification except that a rezoning to C-4 Conditional Zoning District, as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-4 Neighborhood Commercial Conditional Zoning District Classification only upon rezoning to C-4CZD.

Permitted uses for the C-4 Neighborhood Commercial Zoning District classification as specified in Section 5-9-1, above.
~~Conditional uses~~ Special Uses for the C-4 Neighborhood Commercial Zoning District classification as specified in Section 5-9-2, above.
Development or redevelopment involving more than 10,000 ~~ft2~~ square feet of floor area.

Section 5-10 Medical, Institutional and Cultural Zoning District Classification (MIC). This zoning district classification is established primarily for medical, institutional and cultural uses.

5-10-1 Permitted Uses: The following uses are permitted by right in the MIC Medical Institutional Cultural Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4 below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Banks and other financial institutions
Child care centers subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Congregate care facilities subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Home occupations
Hospitals
Laundries, coin-operated
Music and art studios
Neighborhood community centers
Nursing homes subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots & parking garages
Parks
Personal services consistent with the purposes of this classification, such as barber and beauty shops, medical & dental labs and clinics, opticians & optical services and prosthetics & orthopedics
Planned residential developments (minor)
Progressive care facilities subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Religious institutions
Residential care facilities subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

Residential dwellings, single-family
Residential dwellings, two-family
Rest homes subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Retail stores consistent within the purposes of this classification, such as gift shops, florist shops and pharmacies
Schools, post-secondary, business, technical & vocational
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-10-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the MIC Medical Institutional Cultural Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed & breakfast facilities
Civic clubs & fraternal organizations
Cultural arts buildings
Public utility facilities
Restaurants

5-10-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	8,000
Lot Area per Dwelling Unit in Square Feet:	10,000 for the first; 5,000 ~~ft2~~ square feet for each additional dwelling unit in one building.
Minimum Lot Width at Building Line in Feet:	70
Minimum Yard Requirements in Feet:	Front: 30 Side: 10 Rear: 20
Maximum Height in Feet:	50 (No building shall exceed 50 feet in height unless the depth of the front and total width of the side yards required herein shall be increased by one foot for each two feet, or fraction thereof, of building height in excess of 50 feet.)

Section 5-10-4 MICCZD Medical, Institutional, Cultural Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the MIC Medical, Institutional and Cultural Zoning District Classification except that rezoning to MIC Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the MIC Medical, Institutional and Cultural Zoning District Classification only upon rezoning to MICCZD.

Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4 below
Any development or redevelopment involving more than 50,000 ~~ft2~~ square feet of gross floor area.
Permitted uses for the MIC, Medical, Institutional, Cultural Zoning District Classification as specified in Section 5-10-1, above
~~Conditional uses~~ Special Uses for the MIC, Medical, Institutional, Cultural Zoning District Classification as specified in Section 5-10-2, above

Section 5-11 PMD Planned Manufacturing Development Conditional Zoning District Classification. zoning district classification is designed to accommodate planned manufactured developments with a rezoning to a Planned Manufacturing Development Conditional Zoning District. The rezoning shall insure that the proposed use or development is consistent with the requirements of this section and may further specify the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting the rezoning for a planned manufacturing district, City Council may impose such additional reasonable and appropriate safeguards upon such approval as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done.

5-11-1 Application. The reclassification of property to PMD Planned Manufacturing Development Conditional Zoning District shall constitute an amendment of the Official Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, or any person(s) having an interest in the property by reason of a written contract with the owner(s).~~. Such amendment shall be initiated by means of an application for rezoning to a PMD Planned Manufacturing Development Conditional Zoning District. No permit shall be issued for any development within a PMD Planned Manufacturing Development Conditional Zoning District except in accordance with an approved rezoning.

5-11-2 Permissible Uses. A building or land shall be used only for those purposes specified in the rezoning for the project which may include one or more of the following:

Any development or redevelopment involving more than 50,000 ~~ft2~~ square feet of gross floor area.
Permitted uses for the I-1 Industrial Zoning District Classification as specified in Section 5-12-1, below
~~Conditional uses~~ Special Uses for the I-1 Industrial Zoning District Classification as specified in Section 5-12-2, below

5-11-3 Development Standards:

Minimum Lot Area:	No Requirement
Lot Area per Dwelling Unit:	(Not Applicable)
Minimum Lot Width at Building Line:	No Requirement
Minimum Yard Requirements:	100 feet. Within the minimum required yard areas, there shall be no structures, uses or vehicular parking provided; however, drives and emergency access lanes may be located in the minimum required yards.
Maximum Height:	50 feet

5-11-4 Circulation and Access. Streets, drives and parking areas shall provide safe and convenient access to appropriate project facilities. Sidewalks shall be installed along all public streets and roads and shall provide a logical, safe and convenient system for pedestrian access to appropriate project facilities. Greenways or pedestrian/bicycle pathways may be substituted for sidewalks, if appropriate.

5-11-5 Open Space and Footprint Requirements. There is no maximum footprint requirement for development in a PMD Planned Manufacturing Development Conditional Zoning District Classification. The district shall have a minimum of 30% of the site reserved as open space. The development shall also meet the common open space requirements contained in Section 6-16, below.

5-11-6 Abandoned Vehicles. No abandoned vehicles, including all machines intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle shall be permitted within this district.

5-11-7 Site Lighting. Exterior site lighting shall be designed so as to prevent the shedding of any direct upon any adjoining residential property.

5-11-8 Transportation Facilities. All Planned Manufacturing Developments shall have access to a boulevard or major or minor thoroughfare as designated in the City's Comprehensive Transportation Plan. The access shall be designed so as to prevent increased traffic on minor streets in nearby residential areas.

5-11-9 Vehicular Access. Primary vehicular access to the planned manufacturing development shall be by means of a thoroughfare (major or minor) designated as such in the current Comprehensive Transportation Plan. Alternatively, access may be provided by means of streets other than a boulevard or major or minor thoroughfares when it is clearly demonstrated that the development will not result in a significant increase in traffic on any such street.

5-11-10 Storage Areas. The purpose of this subsection is to insure that all stored material will be screened from adjacent properties, parking areas, and public and private streets. Storage requirements are as follows:

a) Exterior storage will only be permitted at the side or rear of a building and only in totally enclosed screened areas.

b) The exterior storage of materials, supplies or equipment will not be permitted to the front of any buildings.

5-11-11 Buffers. The applicant shall propose, plant, construct and make satisfactory arrangements for the preservation of a buffer and/or setbacks adequate to protect adjoining properties from the impacts of the proposed development. Such buffers shall, at a minimum, meet the requirements of Article XV, below.

Section 5-12 I-1 Industrial Zoning District Classification. This zoning district classification is established for those areas of the City where the principal use of the land is for industrial activities that by their nature may create some nuisance and which are not properly associated with residential, commercial and/or service establishments. This district is also established to preserve areas exhibiting industrial potential. Selected business uses of a convenience character are also permitted in this district.

5-12-1 Permitted Uses: The following uses are permitted by right in the I-1 Industrial Zoning District Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance. SIC references are to the 1987 edition of the Standard Industrial Classification Manual published by the Office of Management and Budget.

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Agricultural supplies, bulk
Animal hospitals & clinics subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Automobile car washes
Automobile sales & service
Automobile paint & body work
Bottling plants
Breweries
Bus stations
Business services
Cemeteries, mausoleums, columbariums, memorial gardens, and crematoriums

Cideries
Cideries, hard
Civic centers
Concrete plants
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities
Convenience stores with or without gasoline sales
Day care facilities
Distilleries
Dry cleaning & laundry
Exhibition buildings
Exterminators
Fairgrounds
Farm equipment sales & service
Feed and grain storage
Freight terminals (SIC Groups 40, 41, 42)
Food processing establishments, limited to dairy products, bakery products, canneries, and beverage products (SIC codes 202, 203, 205 and 208), not to include slaughtering plants
Funeral homes
Golf courses and related activities Government facilities
Greenhouses & commercial nurseries
Health clubs and athletic facilities
Heavy equipment, sales, rentals, leases, and service
Heavy equipment storage
Hospitals
Hotels
Laboratories with or without outdoor storage or operations
Manufacturing (selected industries) – Those manufacturing industries defined by the following SIC Codes are permitted:

Standard Industrial Classification	Industries Excluded	Short Title
202		Food processing: dairy products
203		Food processing: canned, frozen & preserved fruits, vegetable & food specialties
2043		Food processing: cereal breakfast foods
2045		Food processing: prepared flour mixes & doughs
205		Food processing; bakery products
206		Food processing: sugar & confectionery products
207	2077	Food processing: fats & oils
208		Food processing: beverages
2095		Roasted coffee
2096		Potato chips, corn ships & similar snacks
2097		Manufactured ice
2098		Macaroni, spaghetti, vermicelli & noodles

Standard Industrial Classification	Industries Excluded	Short Title
2099		Food preparations, not elsewhere classified
22	226	Textile Mill Products
23		Apparel and other textile products
24	241, 242, 2435, 2436, 2491, 2492	Lumber and wood products
25		Furniture and fixtures
265		Paperboard containers & boxes
267		Converted paper and paperboard products, except containers and boxes
27		Printing, publishing & allied industries
283		Drugs
2844		Perfumes, cosmetics & other toilet preparations
30	301	Rubber & plastic products
323		Glass products, made of purchased glass
326		Pottery & related products
3271		Concrete block & brick
3272		Concrete products, except block & brick
3273		Ready-mixed concrete
3297		Non-clay refractories
34	3443, 3449, 345, 346, 347, 348	Fabricated metal products
35		Industrial equipment
36		Electronic & electric equipment
3714		Motor vehicle parts & accessories
3715		Truck trailers
3732		Boat building & repairing
38		Instruments & related products
39		Miscellaneous manufacturing

Merchandise gaming operations
Microbreweries
Mini-warehouses
Mobile food vendors, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Motels
Motor freight terminals
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Parking lots and parking garages
Parks
Passenger transportation terminals
Personal Services
Planned residential developments (minor), subject to the requirements of Article VII, below

Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public and semi-public structures
Publishing and printing establishments
Radio and television broadcasting studios
Recreational facilities, commercial, indoor
Recreational facilities, commercial, outdoor
Recycling centers
Religious institutions
Repair services, miscellaneous
Research and development with or without outdoor storage and operations
Residential dwellings
Rest homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Restaurants
Restaurants, drive-in
Retail stores
Service stations
Signs, subject to the provisions of Article XIII
Storage yards
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Travel trailer sales
Treatment plants, water and sewer
Vehicle repair shops with or without outdoor operations and storage
Vehicle storage areas, not to include junk yards and wrecking yards as defined by NCGS 136-143
Warehouses
Wineries
Wholesaling establishments

5-12-2 ~~Conditional uses~~ Special Uses. The following uses shall be permitted in the I-1 Industrial Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special requirements~~ Special Use requirements contained in Section 16-4, below:

Adult establishments
Animal boarding facilities
Civic clubs & fraternal organizations
Electronic Gaming Operations
Public utility facilities
Private clubs

5-12-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	40,000
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	100
Minimum Yard Requirements in Feet:	Front: 35
	Side: 20
	Rear: 20

Maximum Height in Feet:	35 No building shall exceed 35 feet in height u the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.

Section 5-12-4 I-1CZD Industrial Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the I-1 Industrial Zoning District Classification except that rezoning to I-1 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the I-1 Industrial Conditional Zoning District Classification only upon rezoning to I-1CZD.

Day centers
Shelter facilities
Permitted uses for the I-1 Industrial Zoning District Classification as specified in Section 5-12-1, above
~~Conditional uses~~ Special Uses for the I-1 Industrial Zoning District Classification as specified in Section 5-12-2, above
Development or redevelopment involving more than 50,000 ~~ft2~~ square feet of floor area

Section 5-13 RCT Residential Commercial Transition Zoning District Classification. This classification is intended to provide for a more orderly transition of older residential and transitional areas to commercial redevelopment. Prior to assigning this classification, City Council shall find as a fact that the area is in transition from residential to commercial development, and that the area is best suited for commercial development in the future. By way of illustration of what is meant by "in transition", properties located in the general vicinity of the rezoning request could include home occupations or existing nonconforming businesses. Road improvements, the provision or upgrade of water and sewer facilities and other infrastructure improvements may be needed in order to make a viable commercial district. While it is recognized that the long-term plan for this district is for commercial redevelopment, there is also a need to provide for the health and safety of the existing residential development in the district.

In order for property to be considered for rezoning from residential or commercial to RCT, it shall meet the following conditions:

a) The property or properties initially requesting rezoning to RCT shall total at least one acre in area. Subsequent requests for rezoning adjacent to property already zoned RCT may be smaller than one acre.

b) A portion of the property or properties requesting rezoning to RCT shall be located adjacent to property zoned C-1, C-2, C-3 or I-1. For the purpose of this Ordinance, "adjacent" shall include property located across a street right-of-way.

Regardless of the fact that property may meet the above conditions, it is understood that the actual change of zoning to RCT shall be within the sole discretion of the City Council.

5-13-1 Permitted Uses: The following uses are permitted by right in the Residential Commercial Transition Classification, provided that they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures

Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health Human Services (DHSS)
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Animal hospitals & clinics, subject to dimensional requirement for commercial uses and so long as they contain no outdoor kennels
Automobile car washes so long as no attendants are employed on the premises
Banks and other financial institutions subject to dimensional requirements for commercial uses
Business services subject to dimensional requirements for commercial uses
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Greenhouses & nurseries, commercial, subject to dimensional requirements for commercial uses
Home occupations
Laundries, coin-operated, subject to dimensional requirements for commercial uses
Music and art studios
Neighborhood community centers
Offices, business, professional and public, subject to dimensional requirements for commercial uses
Parks
Personal services, subject to dimensional requirements for commercial uses
Planned residential developments (minor), subject to procedures and regulations contained in Article VII
Religious institutions
Residential dwellings, single-family
Residential dwellings, two-family
Retail stores, subject to dimensional requirements for commercial uses
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-13-2 ~~Conditional uses~~ Special Uses: The following uses shall be permitted in the RCT Residential Commercial Transition Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bed & breakfast facilities
Child care centers
Civic clubs & fraternal organizations
Public utility facilities
Pet-sitting
Residential care facilities
Restaurants

5-13-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	8,000
Minimum Lot Width at Building Line in Feet:	75
Minimum Yard Requirements in Feet:	Front: 20 Side: 15 Rear: 15
Maximum Height in Feet:	35
Maximum Building Size for Commercial Uses Only:	5,000 ~~ft2~~ square feet of gross floor area

5-13-4 Access. To provide adequate room for increased vehicular traffic, at the time the use of the property changes to a commercial use, the street or streets on which the property fronts shall be widened to a minimum pavement width of 12 feet as measured from the center line of the street, from property line to property line. The widened streets shall meet the design and construction specifications of NCDOT.

Section 5-13-5 RCTCZD Residential Commercial Transition Conditional Zoning District Classification. The purpose and requirements of this classification are identical to the RCT Residential Commercial Transition Zoning District Classification except that rezoning to RCT Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the RCTCZD Residential Commercial Transition Conditional Zoning District Classification only upon rezoning to RCTCZD.

Permitted uses for the RCT, Residential Commercial Transition Zoning District Classification as specified in Section 5-13-1, below)
Conditional uses for the RCT, Residential, Commercial Transition Zoning District Classification as specified in Section 5-13-2, below

Section 5-14 PRD Planned Residential Development Conditional Zoning District Classification. This zoning district classification is designed to accommodate planned residential developments with a rezoning to a Planned Residential Development Conditional Zoning District in accordance with Article VII herein. Such rezoning to a Planned Residential Conditional Zoning District is required as a prerequisite to any use or development in the PRD Zoning District Classification, and no use shall be permitted except pursuant to such permit. The rezoning shall insure that the proposed use or development is consistent with the requirements of this section and may further specify the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting the rezoning for a planned residential district, City Council may impose such additional reasonable and appropriate safeguards upon such approval as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done.

5-14-1 Application. The reclassification of property to PRD Planned Residential Development Conditional Zoning District shall constitute an amendment of the Official Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, or any person(s) having an interest in the property by reason of a written contract with the owner(s).~~. Such amendment shall be initiated by means of an application for rezoning to a PRD Planned Residential Development Conditional Zoning District. No permit shall be issued for any development within a PRD Planned Residential Development Conditional Zoning District except in accordance with an approved rezoning.

5-14-2 Permissible Uses Subject to Rezoning to a Planned Residential Development Conditional Zoning District. A building or land shall be used only for those purposes specified in the rezoning for the project which may include one or more of the following:

Accessory structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes
Camps
Child care centers subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

Customary accessory uses
Golf courses
Golf driving ranges & par three golf courses
Home Occupations
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which they are to be located
Parks
Planned residential developments (major)
Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public utility facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Religious institutions
Residential dwellings, multi-family
Residential dwellings, single-family
Residential dwellings, two-family
Rest homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Schools, primary, elementary & secondary
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-14-3 Site Requirements. Planned residential development conditional zoning districts shall have the following site requirements:

a) The total land area of the district shall be at least three acres; and

b) Access to the planned residential development shall be by means of a boulevard or thoroughfare (major or minor) designated as such in the Comprehensive Transportation Plan. Alternatively, access may be provided by means of streets other than major or minor thoroughfares when it is clearly demonstrated that the planned residential development will not result in a significant increase in traffic on any such street.

5-14-4 Density. The density for a planned residential development shall be established by City Council in consideration of the Comprehensive Plan, surrounding land uses and the existence of adequate private and public facilities, including without limitation, water, wastewater, solid waste, stormwater, roads and parks to serve the development. Unless a planned residential development qualifies for a density bonus as provided in Section 5-14-6, below, the density authorized for the district shall not exceed ten units per acre.

5-14-5 Density Bonus. A density bonus over and above the maximum density specified in Section 5-14-4, above, may be approved by City Council only upon determining that the proposed planned residential development complies with the general considerations listed in Section 5-14-5 as well as the following additional considerations:

a) The property on which the development is proposed to be situated shall be located in close proximity to a thoroughfare designated as such in the Comprehensive Transportation Plan;

b) Vehicular access for such development shall be limited to one or more boulevards or thoroughfares designated as such in the Comprehensive Transportation Plan;

c) The carrying capacity of the roadway shall be adequate to handle increased traffic associated with th development without reducing the level of service of such roadway;

d) The development is proposed to be located within reasonable walking distance of places of employment and/or shopping facilities and shall provide pedestrian amenities in order to foster pedestrian access to such facilities;

e) The development shall provide common open space sufficient for the needs of its residents, which shall not be less than the greater of the common open space required by Section 6-16-2, below, or 1% of the land area of the development for each dwelling unit per acre proposed.

Any density authorized by City Council pursuant to this section shall not exceed 18 dwelling units per acre.

5-14-6 Development Standards. Unless noted otherwise, the following development standards shall apply to all planned residential developments, whether major or minor. In addition, planned residential developments shall meet all applicable standards contained in Article VI, below

5-14-6.1 Open Space and Footprint Requirements. Planned residential developments shall have a maximum footprint of 20% of the site and shall have, as a minimum, 60% of the site as open space. In addition, planned residential developments shall meet the common open space requirements of Section 6-16.

5-14-6.2 Setbacks. All dwellings and their accessory structures shall be set back not less than 40 feet from the nearest right-of-way line for any street or railroad adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 30 feet from any exterior property line which is not a right-of-way.

The Planning Board or City Council, as the case may be, shall require reservations of rights-of-way, as well as increased setbacks, for roads identified in the Comprehensive Transportation Plan, including existing roads to be widened as well as corridors of new roads.

All dwellings and their accessory structures shall be located at least ten feet from the edge of the paving for any street or drive and at least five feet from the edge of the paving for any area devoted principally to parking. Carports shall be situated at least ten feet from the edge of the paving for any street or drive and may be physically connected to the principal structure which they serve. In addition, dwellings and accessory structures abutting a street intended to serve more than 32 dwelling units or intended to be dedicated as a public street must be set back a minimum of 35 feet from the center line of such street. The approved setback lines shall be shown on the plan of development and on any recorded subdivision plat.

In addition to the foregoing setback requirements, minimum spacing between buildings shall be provided as per the NC State Building Code Volume V-Fire Prevention.

5-14-6.3 Subdivision of Planned Residential Developments. Planned residential development projects may be subdivided provided that arrangements for such subdivision are made at the time of the planned residential development application.
Zero lot lines may be permitted on one or more lot lines of each lot in accordance with these standards:

a) Any wall constructed on the lot line shall be a solid, windowless wall. If there is an offset of the wall from the lot line, the offset must be at least six feet.

b) A five foot maintenance easement and a maximum eave encroachment of 32 inches within the maintenance easement shall be established in the deed restrictions and covenants of the adjoining lot. This will provide ready access to the lot line wall at reasonable periods of the day for normal maintenance.

5-14-6.4 Circulation and Access. Internal streets, drives and parking areas shall provide safe and convenient access to dwelling units and recreation facilities, and for service and emergency vehicles. Streets shall not be designed to encourage outside traffic to traverse the planned residential development on local streets.

Sidewalks shall be required along streets adjacent to the planned residential development. Sidewalks shall form a logical, safe, and convenient system for pedestrian access to all dwelling units and appropriate project facilities and shall be required along such streets, drives and parking areas within the planned residential development as is necessary to accomplish this. Pedestrian/bicycle pathways may be substituted for sidewalks, if appropriate.

Streets intended to serve more than 32 dwelling units as well as those intended to be dedicated as public streets shall meet the design and construction standards of the NCDOT. All other streets and drives need not comply with NCDOT's pavement width and road right-of-way standards, but they shall comply with its pavement structure requirements. All dead-end streets and drives shall terminate in a cul-de-sac or other adequate means of reversing vehicular direction. It shall be the responsibility of the developer to submit to the Director of Public Works core samples taken by a licensed testing firm demonstrating that completed streets or drives meet such pavement structure requirements.

Internal streets with minimum setbacks measuring less than 35 feet from center line shall be private streets and are not acceptable for dedication to, or maintenance by, the City. Developments containing such private internal streets with setbacks measuring less than 35 feet from center line shall have the following disclaimer in large type placed in a prominent position on the following applicable documents for the development including the site plan, the plat, the restrictive covenants, the condominium documents, and any contracts used in the sale of properties.

"Some or all of the streets and/or drives in this development do not meet minimum right-of-way requirements for the City of Hendersonville. You are notified that these are proposed as private streets and that the City of Hendersonville will not accept them for maintenance."

5-14-6.5 Building Height. A building may exceed 35 feet in height only upon the granting of a height limitation exemption by the City Council. Upon application, the Council may grant a height limitation exemption upon finding that:

a) Such building will not block sunlight from adjacent property between the hours of 10:00 a.m. and 2:00 p.m. from the months of October 1st to May 1st.

b) Such building is adequately designed and served from the standpoint of safety, and the City Fire Chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to the fire stations and equipment so as to offer adequate protection to life and property. In no case shall the building exceed 50 feet in height.

c) The side and rear yards for any structure in excess of 35 feet in height shall be increased by one foot for each one foot in height in excess of 35 feet.

5-14-6.6 Buffering, Screening and Landscaping. The applicant shall propose and plant, construct and make satisfactory arrangements for the preservation of a buffer and/or setbacks adequate to protect adjoining properties from the impacts of the proposed development. Parking and service areas and dumpsters shall be screened from view by adjacent single-family residences. Existing vegetation shall be preserved whenever possible. In addition, the developer shall provide an appropriate landscaping plan within the project.

5-14-6.7 Off-Street Parking. Off-Street parking requirements for planned residential developments shall be as follows:

A minimum of one-and-one-half spaces per residential unit containing one or two bedrooms. A minimum of two spaces per residential unit containing three or more bedrooms. Enclosed garages and carports count towards meeting the parking requirement. All parking spaces shall be located within 75 feet of the residential unit they serve.

5-14-6.8 Maintenance of Common Facilities. The developer, project owner, or a properly established homeowners association shall provide for the continuing maintenance of common open space, recreational facilities, sidewalks, parking, private streets and other privately owned but com- mon facilities serving the project.

5-14-7 Minor Planned Residential Developments. An applicant may elect to have a development processed as a minor planned residential development so long as the proposed development, including all phases, does not exceed 50 dwelling units and so long as no accessory commercial development is requested for the project. A minor planned residential development may be located in one or more of the following zoning district classifications: R-40, R-20, R-15, R-10, R-6, MIC, RCT, C-2, C-3, I-1.

5-14-7.1 Density. The maximum number of dwelling units which may be constructed in a minor planned residential development shall be 50 or a number computed on the basis of the following table, whichever is less:

Use District	Dwelling Units Per Acre
R-40	1.0
R-20	2.5
R-15	3.75
R-10	5.5
R-6	8.5
MIC	5.5
RCT	5.5
C-2	8.5
C-3	8.5
I-1	8.5

5-14-7.2 Development Standards for Minor Planned Residential Developments. Except as otherwise noted herein, minor planned residential developments shall be governed by the development standards for planned residential developments contained in Section 5-14-6, above.

Unlike major planned residential developments, there is no minimum site requirement for a minor planned residential development, nor is there a requirement that access be by means of a designated thoroughfare.

5-14-7.3 Procedures for Reviewing. Unlike other planned developments which undergo rezoning to a conditional zoning district, minor planned residential developments undergo site plan review pursuant to Section 7-3.

5-14-8 Procedures for Reviewing Rest Homes, Nursing Homes, Congregate Care Facilities and Progressive Care Facilities. Rest homes, nursing homes, congregate care facilities and progressive care facilities are permitted uses, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below, in the following use districts: C-3, C-2, I-1 and MIC. When it is proposed to locate one of these uses in one of the foregoing districts, it shall undergo site plan review pursuant to the provisions of Section 7-3, below. These uses are permitted uses in a PRD Planned Residential Development Conditional Zoning District, in which case it shall undergo rezoning in accordance with Section 7-4, below.

Section 5-15 PCD Planned Commercial Development Conditional Zoning District Classification. This classification is designed to accommodate the development of shopping centers and retail establishments larger than 50,000 ~~ft2~~ square feet of floor area or which contain commercial uses which are proposed to be developed in conjunction with residential uses. A rezoning of the property to a Planned Commercial Development Conditional Zoning District is required. Such rezoning shall insure that the proposed use or development is consistent with the requirements of this section and may further specify the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting the rezoning for a planned commercial development conditional zoning district, City Council may impose such additional reasonable and appropriate safeguards upon such approval as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done.

5-15-1 Application. The reclassification of property to PCD Planned Commercial Development Conditional Zoning District shall constitute an amendment of the Official Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, any person(s) having an interest in the property by reason of a written contract with the owner(s), or an agent authorized in writing to act on behalf of the owner(s).~~. Such amendment shall be initiated by means of an application for rezoning to a PCD Planned Commercial Development District Conditional Zoning District. . No permit shall be issued for any development within a PCD Planned Commercial Development Conditional Zoning District except in accordance with an approved rezoning.

5-15-2 Permissible Uses, Subject to Rezoning to a Planned Commercial Development Conditional Zoning District. A building or land shall be used only for those purposes specified in the rezoning for the project which may include one or more of the following:

Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Animal hospitals & clinics
Animal boarding facilities
Automobile car washes
Automobile sales & service establishments
Automotive paint & body work
Banks and other financial institutions
Bed & breakfast facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Business services
Child care center, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

Civic clubs & fraternal organizations
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities
Convenience stores with or without gasoline sales
Dance and fitness facilities
Dry cleaning and laundry establishments
Farm equipment sales & service
Food processing establishments
Funeral homes
Golf courses
Golf driving ranges
Hotels & motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mini-warehouses
Music and art studios
Newspaper offices and printing establishments
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots and parking garages
Parks
Personal services
Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Public utility facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Recreational facilities, indoors
Recreational facilities, outdoors, commercial
Religious institutions
Repair services, miscellaneous
Residential dwellings, single-family
Residential dwellings, two-family
Residential dwellings, multi-family
Rest homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Restaurants
Restaurants, drive-in
Retail stores
Service stations
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoor
Wholesale businesses

5-15-3 District Requirements. Primary vehicular access for a PCD Planned Commercial Development Conditional Zoning district shall be by means of a boulevard or major or minor thoroughfare designated as such in the Comprehensive Transportation Plan. Alternatively, access may be provided by means of streets

other than a boulevard, major or minor thoroughfares when it is clearly demonstrated that the development will not result in a significant increase in traffic on any such street.

5-15-4 Development Standards. Except as modified herein, all uses and structures in the PCD Conditional Zoning District Classification shall meet all applicable standards contained in Article VI, below. Such uses and structures shall also meet the following development standards:

5-15-4.1 Setbacks. All buildings and structures shall be set back not less than 40 feet from the nearest right-of-way line for any street adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 25 feet from any exterior property line, which is not contiguous with a street or other right-of-way.

5-15-4.2 Parking, driveways, and loading areas. Off-street parking, driveways and loading areas shall be provided as required in Article VI, below, and shall be paved according to the specifications of the NCDOT.

5-15-4.3 Buffering and Landscaping. The applicant shall propose, plant, construct and make satisfactory arrangements for the preservation of a buffer and/or setbacks adequate to protect adjoining properties from the impacts of the proposed development. Such buffers shall, at a minimum, meet the requirements of Article XV, below. Any part of the project area not used for buildings or other structures, loading and access ways shall be left in a natural state or landscaped with grass, trees and shrubs.

5-15-4.4 Building Height. The maximum height of any building in the district shall be 48 feet.

5-15-4.5 Circulation and Access. Streets, drives and parking areas in a planned commercial development shall provide safe and convenient access to appropriate project facilities. Sidewalks shall be included to provide a logical, safe and convenient system for pedestrian access to appropriate project facilities. Greenways or pedestrian/bicycle pathways may be substituted for sidewalks, if appropriate. Sidewalks meeting the City sidewalk standards shall be provided along all public streets and roads in accordance with Section 6-12 of the Zoning Ordinance.

5-15-4.6 Density. The density for a residential development planned as part of a PCD Planned Commercial Development Conditional Zoning district shall be established by City Council in consideration of the Comprehensive Plan, surrounding land uses and the existence of adequate private and public facilities, including, without limitation, water, wastewater, solid waste, stormwater, roads and parks, to serve the development. A planned commercial development may qualify for a density bonus in the manner specified in Section 5-14-5, above. Otherwise, the density authorized for the district shall not exceed ten units per acre.

5-15-5 Subdivision of Planned Commercial Developments. The following standards shall apply to all subdivisions in planned commercial development conditional zoning district projects which are intended to function as a unified whole with common access, design and parking. Certain exceptions, as listed below, may be made to the standards and requirements set forth in the Subdivision Ordinance.

5-15-5.1 Setbacks. The setback for the perimeter of the entire planned commercial development shall be maintained as per subsection 5-15-4.1, above. All buildings and structures within each individual parcel shall be set back not less than 10 feet from the property line running parallel with the nearest right-of-way and not less than 10 feet from the property line of adjoining parcels that are located within the planned commercial development.

5-15-5.2 Circulation and Access. Each individual parcel shall be assured safe and reasonable vehicular and pedestrian access to and from an approved street.

a) All individual parcels created within a planned commercial development shall abut on a public street, private street or vehicular parking area.

b) If the planned commercial development as a whole meets the total off-street vehicular parking requirement, each individual parcel is not required to provide all the required vehicular parking on that parcel.

c) Individual parcels shall have shared rights of access to common vehicular parking, private streets, private drives, private driveways and sidewalks leading to a publicly maintained street. Shared rights of access shall be established by a binding legal agreement such as a cross access easement. Said document shall be recorded in the Office of the Register of Deeds for Henderson County.

d) All newly created parcels shall have established by a binding legal agreement a maintenance agreement which identifies the responsibilities for the maintenance of stormwater facilities, landscaping, common vehicular parking areas, private streets, private drives, private driveways and sidewalks. Maintenance of all stormwater facilities, landscaping, common vehicular parking areas, private streets, private drives, private driveways and sidewalks shall be a mandatory responsibility, running with the land, exercised by a single entity which shall be composed of one dominant landowner, an Owners' Association, or all owners acting collectively pursuant to a binding agreement. Said document shall be recorded in the Office of the Register of Deeds for Henderson County.

5-15-5.3 Common Open Space. All individual interior parcels created within a planned commercial development shall meet the common open space requirement in section 6-16, below.

Section 5-16 PMH Planned Manufactured Housing Development Conditional Zoning District Classification. This zoning district classification is designed to accommodate planned manufactured housing developments with a rezoning to a Planned Manufactured Housing Development Conditional Zoning District in accordance with Article VII herein. Such rezoning is required as a prerequisite to any use or development in the PMHCZD Zoning District Classification, and no use shall be permitted except pursuant to such approval. Such rezoning shall insure that the proposed use or development is consistent with the requirements of this section and may further specify the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting the rezoning for a planned manufacturing district, City Council may impose such additional reasonable and appropriate safeguards upon such approval as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done.

5-16-1 Application. The reclassification of property to PMH Planned Manufactured Housing Conditional Zoning District shall constitute an amendment of the Official Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, any person(s) having an interest in the property by reason of a written contract with the owner(s), or an agent authorized in writing to act on behalf of the owner(s).~~ Such amendment shall be initiated by means of an application for rezoning to a PMH Planned Manufactured Housing Conditional Zoning district. No permit shall be issued for any development within a PMH Planned Manufactured Housing Conditional Zoning district except in accordance with an approved rezoning.

In addition to the requirements for a planned development application contained in Article VII, the application for a rezoning for a planned manufactured housing conditional zoning district shall contain a site plan depicting the location and dimensions of all proposed manufactured home sites.

5-16-2 Permissible Uses, Subject to Rezoning. A building or land shall be used only for those purposes specified in the rezoning for the project which may include the following:

Accessory uses and structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Child care centers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling
Home occupations
Manufactured homes
Mobile homes
Religious institutions
Parks
Signs, subject to the provisions of Article XIII
Public utility structures

5-16-3 District Requirements. A planned manufactured housing conditional zoning district shall be at least three acres in area and shall not exceed 15 acres in area. Primary vehicular access for a planned manufactured housing development shall be by means of a boulevard or thoroughfare (major or minor) designated as such on the current Comprehensive Transportation Plan. Alternatively, access may be provided by means of streets other than a boulevard or major or minor thoroughfares when it is clearly demonstrated that the development will not result in a significant increase in traffic on any such street.

5-16-4 Development Standards. All uses and structures in a PMHCZD district shall meet the following development standards:

5-16-4.1 Lot Size. Each manufactured home shall occupy a designated space having at least 4,000 ~~ft2~~ square feet, with a width of at least 40 feet, exclusive of common driveways. No more than one home may be erected or installed on one space.

5-16-4.2 Streets. Each manufactured home space shall abut a street within the park. Said streets shall be graded and surfaced with not less than four inches of crushed stone or other suitable material on a well compacted sub-base to a continuous width of 25 feet, exclusive of required parking spaces. Internal streets and circulation patterns shall be adequate to handle the traffic to be generated by the development.

5-16-4.3 Parking. One off-street parking space with not less than four inches of crushed stone or other suitable material, on a well compacted sub-base, shall be provided for each manufactured home space. The required parking space may be included within the 4,000 ~~ft2~~ square feet minimum lot size for a manufactured home.

5-16-4.4 Recreation Space. At least 8% of the total area of a planned manufactured housing district shall be devoted and developed to recreational use by the residents of the district. Such use may include space for community buildings, gardens, outdoor play areas, swimming pools, ball courts, etc.

5-16-4.5 Interior Setbacks. Any structure shall be located at least 20 feet from any internal street and at least 10 feet from any adjacent space within the district; provided, however, that these interior setbacks shall not apply to storage or other auxiliary structures for the exclusive use of a manufactured home.

5-16-4.6 Exterior Setbacks. No manufactured home shall be located closer than 30 feet to the exterior boundary of the district or abutting street right-of-way. Buildings used for laundry or recreation purposes shall be located no closer than 40 feet to the exterior boundary or the right-of-way of an abutting street.

5-16-4.7 Density. The overall density of homes within the district shall not exceed 8 units per acre.

5-16-4.8 Utilities. Each lot or space shall be equipped with electricity, drinking water, and wastewater disposal facilities.

5-16-4.9 Foundations, Patios and Walkways

a) Each home shall be placed on a permanent stand in accordance with standards set by the NC Department of Insurance.

b) Each home shall have an area on site for provision of a permanent patio or deck adjacent or attached to the permanent stand of at least 180 ~~ft2~~ square feet.

c) A walkway shall be constructed for each lot or space to connect parking spaces to the manufactured home entrance.

d) An attached structure such as an awning, cabana, storage building, carport, windbreak, or porch, which has a floor area larger than 25 ~~ft2~~ square feet and is roofed shall be considered part of the stand for purposes of all setback requirements.

e) The area beneath a home must be fully enclosed with durable skirting within 60 days of placement in the district. As a minimum, such skirting must be a product designed and sold for use as skirting or as approved by the Community Development ~~Assistance~~ Director or a designee.

5-16-4.10 Buffers. The applicant shall propose, plant, construct and make satisfactory arrangements for the preservation of a buffer and/or setbacks adequate to protect adjoining properties from the impacts of the proposed development. Such buffers shall, at a minimum, meet the requirements of Article XV, below.

5-16-4.11 Structure Height. No structure in a PMH Planned Manufactured Housing district shall exceed 35 feet in height.

Section 5-17 HHH Hyman Heights Historic Overlay District. This district is designed to establish the Hyman Heights Historic District, a local historic district created pursuant to Chapter 28 of the City Code. It is an overlay zone, affecting the underlying zoning district only as stated herein.

5-17-1 Permitted Uses: Same as for underlying zoning district.

5-17-2 ~~Conditional Uses~~ Special Uses: Same as for underlying zoning district.

5-17-3 Development Requirements shall be the same as for underlying zoning district with the added requirement that no exterior portion of any building or other structure, nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished without a ~~certificate of appropriateness~~ Certificate of Appropriateness issued by the Hendersonville Historic Preservation Commission pursuant to Chapter 28, City Code.

Section 5-18 EC Entry Corridor Overlay Districts. These districts are established to provide developme standards for particular roadway corridor areas which are in addition to those provided by the other zoning districts established by the Zoning Ordinance. The purpose for establishing these entry corridor overlay districts is first, to recognize the importance that different roadway corridors play in defining the city's character as city entryways and, second, to protect and preserve both the aesthetics of these important roadways and their traffic-handling capabilities, thereby contributing to the general welfare of the City of Hendersonville.

It is the intent of this ordinance that development existing as of the date of its enactment shall not be required to comply with the regulations contained herein unless such development is expanded or substantially altered.

5-18-1 Permitted Uses. Same as for underlying zoning district(s).

5-18-2 ~~Conditional Uses~~ Special Uses. Same as for underlying zoning district(s).

5-18-3 Prohibited Uses. Same as for underlying zoning district(s).

5-18-4 Development Standards. Dimensional requirements and all other development standards shall be the same as for underlying zoning district(s) except as modified herein.

5-18-4.1 Thoroughfare Protection. No improvements other than driveways, sidewalks, parking and landscaping shall be permitted within the limits of projected rights-of-way as specified in the Comprehensive Transportation Plan.

5-18-4.2 Setbacks. Setbacks shall be the same as for the underlying zoning district provided, however, one or more principal structures may be authorized within the setback under the following circumstances:

a) Such principal structure(s) is not situated within 10 feet of the projected right-of-way line of an entry corridor roadway;

b) Parking for the site is placed to the side or rear of such structure(s) so that it is screened from view from the entry corridor by means of such structure(s) and landscaping, as necessary;

c) When siting principal structures within the setback, the developer is encouraged to design the site, including any proposed structures, in such a way as to protect and preserve the aesthetics of the entry corridor, thereby furthering the purpose of this section.

5-18-4.3 Driveways. Driveways serving a development parcel shall be permitted in accordance with the standards of the NCDOT; provided, however, a development parcel shall be limited to no more than two driveways on any road and no more than three driveways total. Additional driveways may be permitted when they are necessary to improve traffic movement, increase sight distances or for other safety reasons. Developers are encouraged to share parking areas and driveways with adjoining developments.

No landscaping or structures of any kind shall be required or allowed to be placed near the intersections of driveways and streets that would impede safe vision of traffic.

5-18-4.4 Outdoor Storage. Outdoor storage shall be screened from view so that it is not visible from a roadway or adjacent properties.

5-18-4.5 Lighting. Lighting for the site shall be designed and installed so that it is directed away from the roadway and any adjacent properties and does not interfere with the safe use of public rights-of-way.

5-18-4.6 Signs. Signs shall be governed by the regulations contained in Article XIII except as modified below:

a) **Outdoor advertising signs.** Outdoor advertising signs, commonly known as billboards, are prohibited.

b) **Freestanding signs.** Each development parcel may include no more than one freestanding sign, which shall not exceed 70 ~~ft2~~ square feet in size and 18 feet in height, measured from street grade, for each thoroughfare on which the site has driveway access. For purposes of this paragraph, a development parcel does not include out parcels associated with shopping centers and other multiple-business development sites.

c) **Business identification signs.** Each business on a development parcel shall be entitled to install one or more business identification signs on the premises where the business is located so long as the total amount of such signage does not exceed one ~~ft2~~ square foot for each linear foot of the front facade for that business, or 250 ~~ft2~~ square feet, whichever is less. Such signs may be placed on the front wall of the business or on awnings, canopies or marquees attached to or closely associated with such facade. Any additional facade which has a door designed and used for public access may contain a business identification sign so long as the total amount of such signage does not exceed one ~~ft2~~ square foot for each three linear feet of such facade frontage for that business, or 250 ~~ft2~~ square feet, whichever is less.

Also, in shopping centers, one suspended sign may be incorporated per business, which sign shall not exceed three ~~ft2~~ square feet per face per sign.

5-18-4.7 Parking. In consideration of the goals of this section and the increased landscaping requirements contained herein, the off-street parking requirements contained in Section 6-5 above may be reduced, at the discretion of the developer, by up to 20%.

5-18-4.8 Street Trees. Street trees shall be required at the rate of one large-maturing tree (>35 in height) for every 50 linear feet of property abutting a street, or one small-maturing tree (<25 feet in height) for every 40 linear feet of property abutting a street if overhead utility lines are present. Trees do not need to be spaced evenly. They may be clustered with a minimum spacing of 15 feet and a maximum spacing of 75 feet.

Street trees shall be placed in a planting strip on private property and not within the street right-of-way. No street tree can be planted farther than 35 feet from the edge of the right-of-way to count as a street tree. The width of the planting strip may vary, but the minimum width cannot be less than seven feet and the average width shall be at least ten feet. The planting area must be covered with living material, including ground cover and/or shrubs, except for mulched areas directly around trees and shrubs, so that no soil is exposed. When a sidewalk is proposed to be constructed on a development site and right-of-way configuration requires that it be constructed on the developer's property, the width of the planting strip may be reduced to an average of seven feet.

During the development review process, the approving authority for the City may permit minor deviations in the placement of trees in order to avoid conflict with utility structures and utility lines.

Existing vegetation on a development parcel may count toward meeting the requirements of this section when such is in good condition and helps to further the purpose of the district.

5-18-4.9 Exceptions.

a) Single-family and two-family residential dwellings shall be required to comply with the provisions Sections 5-18-4.1 - 5-18-4.4, above, but they shall not be required to comply with the remaining regulations of the EC Entry Corridor Overlay Zoning Classification.

b) Small lots, defined as lots with less than 100 feet of frontage on an entry corridor roadway or with less than 100 feet of depth, may have site constraints which make strict compliance with the regulations contained in this section a hardship. In such cases, the approving authority for the City may approve deviations from such regulations so long as the plans of development are consistent with the goals and objectives stated herein.

5-18-4.10 Variances. Variances may be authorized from these regulations pursuant to the standards and procedures for ~~variances~~ Variances contained in Article X of the Zoning Ordinance.

5-18-4.11 Nonconformities. Uses, structures and lots rendered nonconforming by this ordinance shall be governed by the provisions of Section 6-2 of the Zoning Ordinance; provided, however, structures, other than signs, existing as of the effective date of this ordinance which are destroyed by fire or other act of God shall be entitled to be rebuilt in their preexisting location regardless of the degree of damage.

Section 5-19 CMU Central Mixed Use Zoning District Classification. The CMU Central Mixed Use Zoning District Classification is intended to strengthen the Central Business District and the perimeter surrounding that District by encouraging and permitting the coordinated development of dwellings, retail, professional and financial trades, institutional, governmental and other public facilities. This classification is designed to facilitate the coordination of future developments, stressing sensitivity to urban design, pedestrian environment, urban open spaces and streetscapes. It will permit higher density residential developments, provided adequate facilities are, or will be, in place to serve such developments.

5-19-1 Permitted Uses The following uses are permitted by right in the CMU Central Mixed Use Zoning District Classification provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units
Accessory uses & structures Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes
Animal hospitals so long as they are totally enclosed
Automobile car washes
Banks & other financial institutions
Bed & breakfast facilities
Bus stations
Business services
Child care homes
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities
Convenience stores with or without gasoline sales)
Cultural art buildings
Dance & fitness facilities
Dry cleaning & laundry establishments containing less than 2,000 ~~ft2~~ square feet of floor space
Funeral homes
Garage apartments
Home occupations

Hotels & motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mobile food vendors, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Music & art studios
Newspapers and printing companies
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots & parking garages
Parks
Personal services
Planned residential developments (minor), subject to the requirements of Article VII, below
Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4below
Public & semi-public buildings
Recreational facilities, indoors
Religious institutions
Repair services, miscellaneous
Residential dwellings, single family
Residential dwellings, multi-family
Residential dwellings, two-family
Rest homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Restaurants
Retail stores
Schools, post-secondary, business, technical and vocational
Schools, elementary & secondary
Signs, subject to the provisions of Article XIII, below
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoors

5-19-2 ~~Conditional Uses~~ Special Uses The following uses shall be permitted in the CMU Central Mixed Use Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Child care centers
Civic clubs & fraternal organizations
Private clubs
Public utility facilities
Vehicle repair & service, without outdoor operations

5-19-3 Development Standards. The following standards shall apply to development within the CMU Central Mixed Use Zoning District Classification in addition to all other applicable standards contained in this Ordinance.

5-19-3.1 Parking & Loading. For non-residential developments, the requirements of Section 6-5, below, shall apply. Residential developments shall be provided with a minimum of one off-street parking space per dwelling unit. As far as practicable, in consideration of site constraints and reasonable development requirements, parking for non-residential and multi-family residential developments shall be situated to the side or rear of principal structures.

All parking areas shall be separated from the back of the curb by a planting strip at least five feet in width and screened from view from public streets by principal structures or by shrubs and/or evergreen trees planted at the most appropriate spacing for the species used. The reviewing authority may authorize the use of walls and or fences not exceeding four feet in height in lieu of a vegetative screen where site constraints or design considerations justify such substitution.

5-19-3.2 Dimensional Requirements.

Minimum Lot Area in Square Feet:	8,000
Minimum Lot Width:	None
Minimum Yard Requirements in Feet:	12 feet measured from the back of the curb of any street. Rear and side yards are not required if yards do not border a street. However, if yards are provided, they must be a minimum of five feet measured from the property line.
Maximum Building Height in Feet:	36 feet; provided, however, structures containing at least three floors limited to residential uses may be constructed to a height not exceeding 64 feet.

5-19-3.3 Streetscape Design. The relationship between a building and areas for pedestrian or vehicular circulation shall be carefully planned in order to avoid negative impacts of one upon the other. All buildings and uses developed in this district shall meet the following minimum standards; provided, however, buildings undergoing renovation, rehabilitation and expansion may be exempted from individual streetscape design regulations if site conditions are such that strict compliance therewith would result in practical difficulty or unnecessary hardship.

a) **Street Walls.** The first floors of all buildings, including structured parking, shall be designed to encourage and complement pedestrian-scale interest and activity.

To the extent practicable, in consideration of the nature of the uses proposed, this is to be accomplished in part by the use of transparent windows and doors arranged so that the uses are visible from and/or accessible to the street on the first floor street frontage.

In addition, a combination of design elements shall be used on the building facade and/or in relationship to the building at street level to animate and enliven the streetscape. These design elements may include, but are not limited to, the following: ornamentation, molding, changes in material or color, architectural lighting, works of art, fountains and pools, street furniture, landscaping and garden areas, and display areas.

Any design elements which extend into the public right-of-way on city or state maintained streets require an encroachment agreement with the City of Hendersonville Department of Public Works or the NCDOT, as appropriate.

Where expanses of blank wall are necessary, they may not exceed 20 feet in length. A blank wall is a facade which does not add to the character of the streetscape and does not contain transparent windows or doors or sufficient ornamentation, decoration or articulation as listed in the above paragraph.

The first floor and street level shall be designed with attention to adjacent public or private open spaces and existing streetscape improvements. The provision of multiple entrances from the public sidewalk or open spaces is encouraged.

b) **Structured Parking Facilities.** In addition to the above requirements, in the event that any openings for ventilation, service, or emergency access are located at the first floor level in the building facade, then they shall be an integral part of the overall building design. These openings as well as pedestrian and vehicular entrances shall be designed to minimize visibility of parked cars. The remainder of the street level frontage shall be either commercial space or an architecturally articulated facade designed to minimize the visibility of parked cars.

All levels of a structured parking facility shall be designed and screened in such a way as to minimize visibility of parked cars. In no instance will rails or cabling alone be sufficient to meet this screening requirement.

The design requirements of paragraph (b) apply to all building facades which are visible from any public right-of-way.

c) **Screening.** All structures and facilities for trash, loading, outdoor equipment, and storage, including the storage of inventory, shall be screened so as not to be visible from the street and pedestrian circulation areas. Solar technology components including solar panels and solar thermal collectors used for on-site private purposes are exempt from this provision provided that no other functional location exists for optimized performance that is not visible from the street and pedestrian circulation areas. This determination may be made either by the Zoning Administrator or the Planning Director acting alone.

Solid walls shall be faced with brick, stone or other decorative finish with the decorative side adjacent to the public right-of-way. Fences shall be opaque and either painted or stained with the decorative side adjacent to the public right-of-way. In no instance will a chain link or barbed wire fence be acceptable.

Trees used to fulfill this requirement shall be located on private property in planters, a planting strip, berm or tree lawn, any of which shall be at least 8 feet wide and at least 2 feet deep. The trees shall be of a small maturing evergreen variety and be at least 10 feet tall at the time of planting. All shrubs shall be between 24 inches and 36 inches tall at time of planting. All plant material shall conform with the American Standard for Nursery Stock published by the American Association of Nurserymen. Trees employed to meet the screening requirement may not be counted toward the street tree planting or urban open space tree requirements.

Any lot which becomes vacant through the removal of a structure for any reason shall be screened from all abutting public street rights-of-way in accordance with the provisions of this section or cleared of rubbish and debris and seeded with grass. However, if the lot is to be used for parking either as a transitional or permanent use, it shall meet all the minimum requirements for that use as established by this ordinance.

Maintenance of screening required under these provisions shall conform to the requirements of Section 15-4 of this Ordinance, including the requirement to promptly replace dead vegetation with healthy, living plantings.

d) **Street Trees**. In addition to all other requirements of this Section, at least one tree of 3 - 3½ inches caliper minimum, measured 6 inches above ground, shall be planted for each 25 feet for small maturing trees and for each 35 feet for large maturing trees of the entire building lot which abuts any public street right-of-way with a minimum of one tree required for any distance up to 35 feet. Trees shall not be planted closer than 2 feet, nor more than 15 feet, from the back of the curb.

For the purposes of this paragraph, all specifications for measurement and quality of trees shall be in accordance with the *American Standard for Nursery Stock* published by the American Association of Nurserymen. All trees planted to meet this requirement shall be well-matched specimen grade and shall be limbed up 6 feet. Trees used to fulfill this requirement may be located on public or private property. Maintenance of street trees required under these provisions shall conform to the requirements of Section 15-4 of this Ordinance, including the requirement to promptly replace dead vegetation with healthy, living plantings

e) **Reflective Surfaces.** No development subject to these provisions may have exterior walls with a reflectivity value in excess of 36%, as measured under the applicable provisions of ASTM-C-1036. No reflective surfaces may be used on street level exterior facades.

f) **Urban Open Spaces.** Open spaces for congregation and/or recreational opportunities are required and shall be equipped or designed to allow pedestrian seating and to be easily observed from the street or pedestrian circulation areas. All urban open spaces shall comply with the minimum required design standards of this ordinance. In light of the requirement for urban open space, development in the CMU Central Mixed Use Zoning District Classification is excused from complying with the requirements for common open space contained in Section 6-16 of this ordinance.

1) **Urban open space size**. Buildings shall be provided with open space behind the required setback and on private property on the basis of five ~~ft2~~ square feet of urban open space per 100 ~~ft2~~ square feet of gross floor area (5/100). Provided, however, buildings containing less than 20,000 ~~ft2~~ square feet of gross floor area shall be excused from complying with the urban open space requirement. A maximum of 30% of this required urban open space may be provided on an enclosed ground floor level provided the enclosed space meets all other requirements of these provisions.

2) **Accessibility to the street.** Urban open space shall be designed so that it is accessible to and visible from the street.

3) **Trees**. Within the open space area(s), 1 tree shall be planted for each 500 ~~ft2~~ square feet. Trees shall have a minimum caliper of 3-3½ inches measured 6 inches above ground at the time of planting.

4) **Amenities**. The following amenities are permitted within an urban open space area: ornamental fountains, stairways, seating, waterfalls, sculptures, arbors, trellises, planted beds, drinking fountains, clock pedestals, public telephones, awnings, canopies, and similar structures.

5) **Maintenance.** The building owner, lessee, management entity or authorized agent are jointly and severally responsible for the maintenance of the urban open space area including litter control and care and the replacement of trees and shrubs, as required by Section 15-4, below.

6) **Utilities.** All utilities service lines and connections shall be underground.

g) **Exceptions for Single-Family and Two-Family Residences.** Single-family and two family residential dwellings shall not be required to comply with the Streetscape Design regulations contained in this section.

Section 5-19-4 CMUCZD Central Mixed Use Conditional Zoning District Classification. The purpose and requirements of this classification are identical to the CMU Central Mixed Use Zoning Classification except that a, rezoning as provided for in Article VII herein, is required as a prerequisite to any use or development.

Any development involving more than 50,000 ~~ft2~~ square feet of gross floor area and/or 50 residential dwelling units
Day centers, subject to the ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Shelter facilities, subject to the ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Permitted uses for the CMU Central Mixed Use Zoning District Classification as specified in Section 5-19-1, above.
Conditional uses for the CMU Central Mixed Use Zoning District Classification as specified in Section 5-19-2, above.

Section 5-20 DHH Druid Hills Historic Overlay District This district is designed to establish the Druid Hills Historic District, a local historic district created pursuant to Chapter 28 of the City Code. It is an overlay zone, affecting the underlying zoning district only as stated herein.

5-20-1 Permitted Uses: Same as for underlying zoning district.

5-20-2 ~~Conditional Uses~~ Special Uses: Same as for underlying zoning district.

5-20-3 Development Requirements shall be the same as for underlying zoning district with the added requirement that no exterior portion of any building or other structure, nor above-ground utility structure, nor any type of outdoor advertising sign, nor significant site characteristics, shall be erected, altered, restored, moved, or demolished without a ~~certificate of appropriateness~~ Certificate of Appropriateness issued by the Hendersonville Historic Preservation Commission.

Section 5-21 PID Planned Institutional Development Conditional Zoning District Classification. This classification is designed to accommodate the development of public or quasi-public uses or institutions such as churches, libraries, schools, hospitals, municipally-owned or operated buildings, or other structures or land used for public purposes in which the floor area of all associated structures exceeds 50,000 ~~ft2~~ square feet. A rezoning issued in accordance with Article VII, below, is required as a prerequisite to any use or development in a PID conditional zoning district, and no use shall be permitted except pursuant to such approval. Such approval shall insure that the proposed use or development is consistent with the requirements of this section and may further specify the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request, In granting the rezoning to a planned institutional development conditional zoning district, City Council may impose such additional reasonable and appropriate safeguards upon such approval as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done.

5-21-1 Application. The reclassification of property to PID Planned Institutional Development Conditional Zoning District shall constitute an amendment of the Official Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, any person(s) having an interest in the property by reason of a written contract with the owner(s), or an agent authorized in writing to act on behalf of the owner(s).~~. Such amendment shall be initiated by means of an application for rezoning to PID Planned Institutional Development Conditional Zoning District.

5-21-2 Permissible Uses, Subject to Rezoning to a Planned Institutional Development Conditional Zoning District. A building or land shall be used only for those purposes specified in the rezoning for the project which may include the following:

Accessory uses & structures

Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health Human Services (DHSS)
Child care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Civic clubs & fraternal organizations
Congregate care facilities
Cultural arts buildings
Hospitals
Neighborhood community centers
Nursing homes
Parking lots & parking garages
Parks
Progressive care facilities
Public & quasi-public buildings
Religious institutions
Residential dwellings, multi-family
Residential dwellings, single-family
Residential dwellings, two-family
Rest homes
Schools, post-secondary, business, technical and vocational
Schools, elementary and secondary
Signs, subject to the provisions of Article XIII
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-21-3 Site Requirements. Primary vehicular access to a planned institutional development shall be by means of a boulevard or major or minor thoroughfare designated as such in the current Comprehensive Transportation Plan. Alternatively, access may be provided by means of streets other than a boulevard or major or minor thoroughfares when it is clearly demonstrated that the planned institutional development will not result in a significant increase in traffic on any such street.

5-21-4 Development Standards. Except as modified herein, all uses and structures in a planned institutional development district shall meet all applicable standards contained in Article VI, below. Such uses and structures shall also meet the following development standards:

5-21-4.1 Setbacks. All buildings and structures shall be set back not less than 40 feet from the nearest right-of-way line for any street adjoining the site; provided, however, such setback may be reduced to ten feet when parking is situated to the rear or side of the lot and screened from view from public rights-of-way. Buildings and structures shall be set back not less than 25 feet from any exterior property line.

5-21-4.2 Parking, driveways, and loading areas. Off-street parking, driveways and loading areas shall be provided as required in Article VI, below, and shall be paved according to the specifications of the NCDOT.

5-21-4.3 Buffering and landscaping. Where a planned institutional development district abuts a residential district or a residential use, there shall be provided and maintained a buffer adequate to protect neighboring properties, which shall, at a minimum, meet the requirements of Article XV of the Zoning Ordinance. Any part of the project area not used for buildings or other structures, loading and access ways shall be landscaped with grass, trees and shrubs.

5-21-4.4 Building Height. The maximum height of any building in the district shall be 50 feet.

Section 5-22 GHMU Greenville Highway Mixed Use Zoning District Classification. The Greenville Highway Mixed Use Zoning District Classification is intended to encourage a mix of medium density residential development in conjunction with appropriately scaled and compatible commercial development, consisting of retail sales and services, professional offices, accommodations services and similar uses. Development design becomes a critical consideration when uses which previously have been deemed incompatible are authorized to be placed in close proximity to each other. In addition to the general dimensional and use provisions, the regulations contained herein, along with those in Article XVIII which apply to mixed use zoning district classifications generally, address the design of buildings and development sites.

5-22-1 Permitted Uses. The following uses are permitted by right in the GHMU Greenville Highway Mixed Use Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units
Accessory uses & structures
Banks & other financial institutions
Bed & breakfast facilities
Business services
Convenience stores, not including gasoline sales
Cultural arts buildings
Dance, health & fitness facilities
Dry cleaning and laundry establishments containing less than 2,000 ft2 of floor area
Funeral homes
Home occupations
Hotels & motels
Laundries, coin-operated
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Music & art studios
Neighborhood community centers
Newspaper offices & printing establishments
Offices, business, professional and public
Parks
Personal services
Public & semi-public buildings
Religious institutions
Residential dwellings, single family
Residential dwellings, multi-family
Residential dwellings, two-family
Restaurants
Retail stores (not including automotive, boat & heavy equipment, and/or gasoline sales)
Signs, subject to the provisions of Article XIII, below
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoors
Veterinarian clinics

5-22-2 ~~Conditional Uses~~ Special Uses. The following uses shall be permitted in the GHMU Greenville Highway Mixed Use Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Adult care centers
Adult care homes
Child care centers
Child care homes
Lawn & garden centers
Public utility facilities
Schools

5-22-3 Development Standards. The following standards shall apply to development within the GHMU Greenville Highway Mixed Use Zoning District Classification.

5-22-3.1 Parking & Loading. For non-residential developments, the requirements of Section 6-5, below, shall apply. Residential developments shall be provided with a minimum of one off-street parking space per dwelling unit.

5-22-3.2 Dimensional Requirements.

Minimum Lot Area in Square Feet:	None
Minimum Lot Width:	None
Open Space Ratio:	~~≥~~ Greater than or equal to .40
Maximum Footprint for any Structure:	12,000 ~~ft2~~ square feet. For structures with a footprint greater than 12,000 ~~ft2~~ square feet see Section 5-22-3 Special Uses above.
Nonresidential Floor Area Allowance:	.25 x area. Floor area devoted to residential use shall not count against this allowance.
Yard Requirements:	Varies with building type. See Design Standards.
Principal Building Separation:	Principle buildings on a lot shall be separated a ~~mini-mum~~ minimum of 15 feet.
Building Height:	Varies with building type. See Design Standards.

5-22-3.3 Residential Density. There shall be no limit on the number of residential dwellings on any development tract.

5-22-4 Design Standards. These standards are intended to apply to all development and redevelopment within the Greenville Highway Mixed Use Zoning District Classification. Applicants for authorization to undertake development or redevelopment within such zoning district must demonstrate compliance with these standards or must undergo alternative design review. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)

5-22-4.1 Standards of General Applicability. The following standards shall apply to all development in the Greenville Highway Mixed Use Zoning District Classification regardless of use or building type.

5-22-4.1.1 General Site Development. Site development shall not result in the removal of lateral support for adjoining properties. Furthermore, development shall not create hazardous or dangerous conditions or result in the creation of a nuisance as specified in Section 6-13, below.

5-22-4.1.2 Physical Integration of Uses. Residential and commercial uses may be located within the same or adjoining structures provided appropriate health and safety regulations are followed.

5-22-4.1.3 Building Orientation. Primary façades, which may or may not contain an entrance to the building, shall face the adjacent street or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street.

5-22-4.1.4 Common Space.
Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects.

Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces. Unless interior common space is approved by the reviewing authority, common space shall be out-of-doors. Common space design shall comply with the following:

a) **Size.** At least 10% of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.

b) **Trees.** One tree shall be planted for each 500 ~~ft2~~ square feet of common space. Trees shall have a minimum caliper of 3-3½ inches measured six inches above ground at the time of planting.

c) **Utilities.** All utilities service lines and connections shall be underground.

d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.

e) **Amenities.** Common space for a development shall include two or more of the following amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, awnings, canopies, informational kiosks, and similar amenities.

5-22-4.1.5 Architectural Details. NOTE: Section 5-22-4.1.5 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The appearance of all exposed façades (not just the streetside façade) is important and shall be addressed in development design. Architectural elements like openings, sill details, bulkheads, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant shall provide distinctive architectural elements at the corner of buildings facing the intersection. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned.

All buildings other than One and Two-Family Dwellings shall provide detailed design along all elevations. Detailed design shall be provided by using at least three of the following architectural features on all elevations. Features may be varied on rear/side/front elevations.

Dormers
Gables
Recessed entries
Covered porch, entries
Cupolas or towers
Pillars or posts

Eaves (minimum 6-inch projection)
Off-sets in building face or roof
Window trim (minimum nominal four inches wide)
Bay windows
Balconies
Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation)
Decorative cornices and roof lines (for flat roofs)

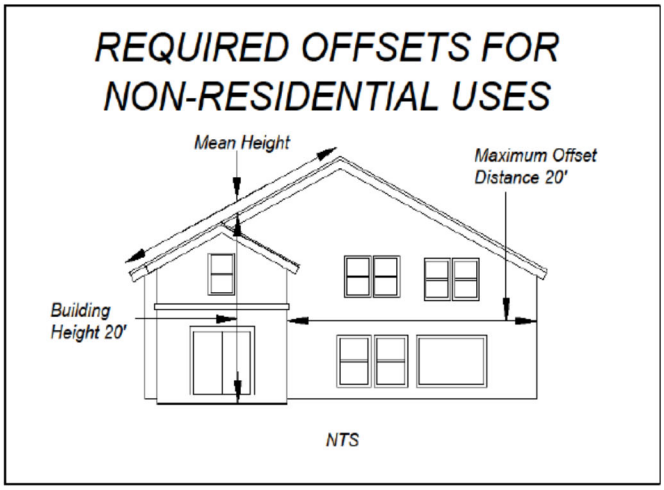
5-22-4.1.6 Building Façades. NOTE: Section 5-22-4.1.6 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Façades of buildings shall contain at least two building materials which shall contrast in color and texture. At least 15% of the façade, exclusive of windows, doors and trim, shall consist of stone, brick or decorative block.

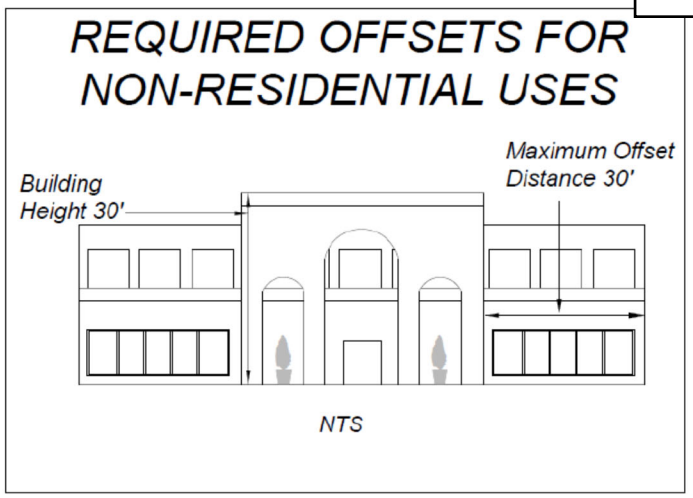
5-22-4.1.7 Windows. NOTE: Section 5-22-4.1.7 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Windows shall either be (1) recessed a minimum of three inches from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.

5-22-4.1.8 Building Scale. NOTE: Section 5-22-4.1. is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings. These design standards regulate scale by means of offsets that is protrusions or breaks in the plane of façades.

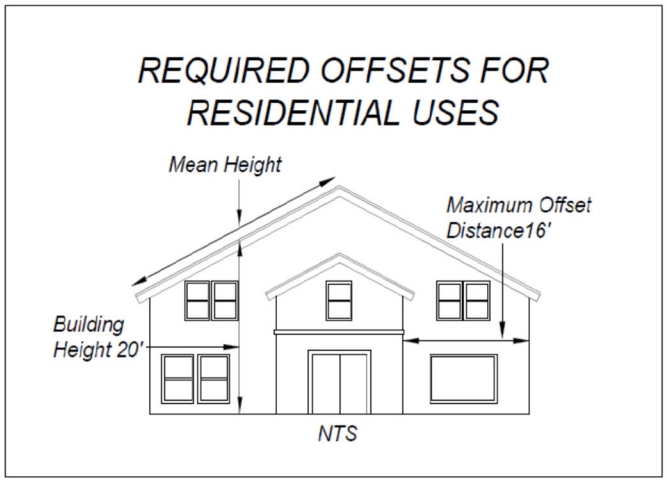
a) **Scale, Buildings Containing Nonresidential Uses.** The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:

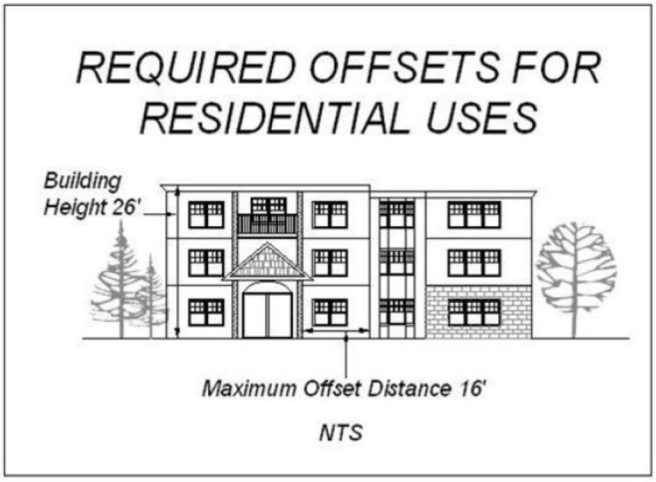
1) The distance between required offsets is related to the height of the building wall on a one-to-one basis. A building façade which is less than or equal to the height of the building shall not require an offset.





2) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel shall have a two-foot offset adjacent to such wall panel.





3) Each façade of a building shall comply with the offset requirements contained herein.

b) **Scale, Buildings Containing Only Residential Uses.**
The following requirements apply to any building containing only residential uses:

1) The distance between required offsets shall be related to the height of the building on a one-to-one basis; provided, however, no wall shall exceed 16 feet in length without an offset. A building façade which is less than 16 feet in length shall not require an offset.

2) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.

3) Each façade of a building shall comply with the offset requirements contained herein.

5-22-4.1.9 Streets and Sidewalks. Streets and sidewalks shall comply with the circulation and access requirements contained in Section 18-6-4.6, below.

5-22-4.1.10 Building Materials. NOTE: Section 5-22-4.1.10 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Building materials shall be used consistently on the exterior of the building and shall comply with the lists of prohibited and restricted materials contained herein.

a) **Prohibited Building Materials.** Unless authorized through alternative design compliance, the following building materials shall be prohibited within the Greenville Highway Mixed Use Zoning District Classification: "Jumbo brick"; plain concrete block (with or without paint); corrugated metal; reflective glass; more than 50% glass on any façade; roll roofing; roll siding; plain unfinished concrete (painting does not constitute a finish); aluminum; unpainted metal; exposed pipe columns; logs, log siding, wain-edged siding; and any other materials not customarily used in conventional construction.

b) **Restricted Building Materials.** Unless authorized through alternative design compliance, the following building materials shall be restricted as noted within the Greenville Highway Mixed Use Zoning District Classification: vinyl siding, aluminum siding and grooved plywood siding (T1-11) are permitted only behind the roadway corridor; chain link fencing is permitted so long as it is not readily visible from a street or public right-of- way.

~~**5-22-4.1.11 Certain Exemptions for Single-Family and Two-Family Detached Homes.** Detached single family and two-family homes shall be exempt from the requirements contained in Sections 5-22-5.1.4 (common space) and 5-22-5.1.8 (building scale).~~

5-22-4.2 General Standards for Residential Developments. NOTE: Section 5-22-4.2 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
The following standards shall apply to developments containing only residential uses with the exception that multi-family buildings must comply with the general standards contained in Section 5-22-5.3, below.

5-22-4.2.1 General Appearance. Residential development shall contain a variation of façades and materials so that there shall not be a row or strip housing appearance. Means to accomplish this goal may include the use of dormers, gables, recessed entries, covered porch entries, bay windows, cupolas or towers, and a variation in the depth and height of walls, among others.

5-22-4.2.2 Architectural.

a) Useable porches and/or stoops, at least eight feet in width, shall be located on the front and/or side of the home.

b) Front-loading garages and carports (if permitted) shall be recessed from the front façade of the house and visually designed to form a secondary building volume. Developers are encouraged to turn garages and carports so the openings or doors are not visible from the street. At no time shall the width of an attached garage exceed 50% of the total front building façade.

c) Accessory buildings with a floor area greater than 150 ~~ft2~~ square feet shall be clad in materials similar in appearance to the principal structure.

d) Walls and fences located in the front yard shall be decorative and limited in height to no more tha feet above grade. Front-yard walls shall be of brick, stone or stucco. Front yard fences shall be wood, wrought iron, vinyl or materials similar in appearance and durability. Side and rear yard fences may be chain link, wood, wrought iron, vinyl or similar material.

5-22-4.2.3 Configurations.

a) Main roofs on residential buildings shall be gables, hips or clerestory with a pitch between 5:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to the wall of the main building.

b) Foundation walls (except those under porches) shall be finished with split face concrete block, brick, stucco or stone. If crawlspaces of porches are enclosed, they shall be enclosed with split face concrete block, brick, stucco, stone, lattice or any combination thereof.

5-22-4.3 General Standards for Nonresidential Buildings and Multi-Family Buildings. The following standards shall apply to all buildings containing nonresidential and multi-family uses.

5-22-4.3.1 Storage, Utility & Service Areas. Areas devoted to storage, garbage, recycling collection and utilities shall be enclosed and screened around their perimeter, and constructed of materials consistent with the principal building. Gas meters, electric meters, ground-mounted mechanical units, and any other similar structures shall be screened with approved construction materials or landscaping. Fences designed for screening shall be constructed of brick, stone, architectural stucco, concrete, vinyl, wood or iron. Commercial exhaust vents, mechanical units, utility equipment and telecommunication receiving devices located on the roof shall be screened from view. Solar technology components including solar panels and solar thermal collectors used for on-site private purposes are exempt from this provision.

5-22-4.3.2 Parking & Vehicular Access. All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of principal public roadways and shall be screened from view from such roadways, in accordance with Article XV, above.

5-22-4.3.3 Encroachments. Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

5-22-4.3.4 Building Façades. No wall facing a principal roadway shall remain unpierced by a window or functional general access doorway for more than 20 feet. For buildings within 20 feet of the sidewalk, at least 20% of the ground floor frontage shall be in windows and doorways.

5-22-4.3.5 Pedestrian access shall be provided from street sidewalks to principal entrances by means of a sidewalk or other all-weather walkway.

5-22-4.3.6 Roofs. Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

5-22-4.3.7 Canopies & Awnings. If a building canopy, awning, or similar weather protection is provided, it shall project between three to five feet from the façade.

5-22-4.3.8 Architectural Styles. Pseudo-historical and pseudo-cultural themes shall not be allowed. New building projects that are not part of a renovation or addition shall not be designed to replicate non-regional historical styles. Buildings that are stylized in an attempt to use the building itself as advertising shall not be allowed, particularly where the proposed architecture is the result of a “corporate” or franchise style. Buildings that are obviously a nationally or regionally prototypical design shall not be allowed.

5-22-4.4 Specific Standards for Detached Houses.

Type A: Street Lot. The street lot is a medium or large sized lot (50 feet or greater in width) that provides primary vehicular access from the street.

Minimum Setbacks:	Front: 15 feet Sides: 20% of the lot width. The entire setback may be allocated to one side. Rear: 10 feet
Accessory Structures:	Side: 3 feet Rear: 3 feet
Minimum Lot Width:	50 feet
Maximum Height:	35 feet
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.

Type B: Alley Lot. The alley lot is a lot for which primary vehicular access is provided using a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except on previously platted lots.

Minimum Setbacks:	Front Build-to Line: 10-25 feet Side: 3 feet each side; however, the total of both side yards may be allocated to one side. Rear: 8 feet from edge of alley pavement
Accessory Structures:	Side: 3 feet Rear: 3 feet
Minimum Lot Width:	25 feet
Maximum Height:	35 feet
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front or rear setback a maximum of five feet.
Vehicular Access to Lot:	For lots less than 50 feet wide, alley access is required. For all others the use of an alley is permitted.

5-22-4.5 Specific Standards for Townhouses. The townhouse is a building with two or more residential units that are located side-by-side. When an entrance is provided at-grade, the townhouse may be used as a live-work unit.

Minimum Setbacks:	Front: 8 feet Sides: 0 feet (Corner 8 feet) Buildings within a development must be separated by a minimum of 15 feet. Rear: 15 feet Measured from the centerline of alley, if applicable
Minimum Lot Width:	16 feet
Maximum Height:	42 feet

Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the City.
Accessory Structures:	Side: 0 feet Rear: 0 feet
Maximum Footprint:	650 ~~ft2~~ square feet
Maximum Number of Structures:	1 per townhouse

5-22-4.6 Specific Standards for Multi-Family Buildings. A multi-family building is a multiple-unit building with residential units vertically arranged. Units may be for rental or for sale in condominium ownership or may be designed as continuing care facilities. For buildings containing both residential and commercial uses see Section 5-22-5.7.

Minimum Setbacks:	Front: 0 Sides: 15 feet plus 5 feet for each floor above 2 Rear: 15 feet plus 5 feet for each Floor above 2
Parking:	Off-street parking shall be located in the rear or side yard only and shall be screened from view from public roadways. On-street parking is encouraged for private streets and drives.
Vehicular Access:	Primary vehicular access from public roads shall be accomplished by means of a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except for vehicular access to rear parking. These limitations shall not apply to parcels or buildings where primary vehicular access is by means of a private street or drive.
Maximum Height:	42 feet
Accessory Structures:	Side: 0 feet Rear: 0 feet
Maximum Footprint:	650 ~~ft2~~ square feet
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to five feet.
Others:	Garage doors are not permitted on the front elevation of any multi-family building facing Greenville Highway (NC 225).

5-22-4.7 Specific Standards for Commercial & Institutional Buildings. Commercial buildings are structures which can accommodate a variety of uses mixed either horizontally (shopping center) or vertically (apartment over a store). Office buildings, hotels and inns can be placed in commercial buildings. Buildings containing both commercial and residential uses shall be classified as commercial buildings for the purposes of this section. Institutional buildings are specialized public or semi-public buildings intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, hospitals, post offices, and nonprofit or charitable clubs and organizations. Note there are exceptions from the maximum height restrictions for steeples, cupolas and similar structures. These are contained in Section 8-2, below.

Minimum Height:	14 feet to the top of the parapet for buildings with flat roofs. There is no minimum height requirement for buildings without flat roofs.
Maximum Height:	42 feet
Minimum Setbacks:	Front: 10 feet Sides: 15 feet plus 5 feet for each story above 2 stories Rear: 15 feet plus 5 feet for each story above 2 stories
Parking and Vehicular Access:	All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of principal public roadways and shall be screened from view from such roadways.
Minimum Lot Width:	None
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to five feet.
Accessory Structures:	Side: 3 feet Rear: 3 feet

Section 5-22-5 GHMUCZD Greenville Highway Mixed Use Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the Greenville Highway Mixed Use Zoning District Classification except that rezoning to GHMU Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the GHMU Greenville Highway Mixed Use Conditional Zoning District Classification only upon rezoning to GHMUCZD.

Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 17-4 below.
Structures with a footprint greater than the maximum allowed under Section 5-22-3.2 Dimensional Requirements, above.
Permitted uses for the GHMU Zoning District Classification as specified in 5-22-1, above.
~~Conditional uses~~ Special Uses for GHMU Zoning District Classification as specified in 5-22-2, above.

Section 5-23 HMU Highway Mixed Use Zoning District Classification. The Highway Mixed Use Zoning District Classification is intended to encourage a mix of medium density residential development in conjunction with appropriately scaled and compatible commercial development, consisting of retail sales and services, professional offices, accommodations services and similar uses. Development design becomes a critical consideration when uses which previously have been deemed incompatible are authorized to be placed in close proximity to each other. In addition to the general dimensional and use provisions, the regulations contained herein, along with those in Article XVIII which apply to mixed use zoning district classifications generally, address the design of buildings and development sites.

5-23-1 Permitted Uses. The following uses are permitted by right in the HMU Highway Mixed Use Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)

Adult care homes
Animal hospitals & clinics so long as they contain no outdoor kennels
Automobile car washes
Banks & other financial institutions
Bed & breakfast facilities
Business services
Child care centers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes
Civic clubs & fraternal organizations, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4 below
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities, so long as the storage of equipment and materials is screened from view from any public rights-of-way
Convenience stores with or without gasoline sales
Cultural arts buildings
Dance, health & fitness facilities
Dry cleaning and laundry establishments containing less than 6,000 ~~ft2~~ square feet of floor area
Funeral homes
Greenhouses & commercial nurseries
Home occupations
Hotels & motels
Laundries, coin-operated
Lawn & garden centers
Microbreweries, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Mobile food vendors, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Music & art studios
Neighborhood community centers
Newspaper offices & printing establishments
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots & parking garages
Parks
Personal services
Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Recreational facilities, indoors
Recreational facilities, outdoors, commercial
Religious institutions
Repair services, miscellaneous
Residential care facilities
Residential dwellings, single family
Residential dwellings, multi-family
Residential dwellings, two-family
Restaurants
Restaurants, drive-in
Retail stores (not including automobile, manufactured housing, and boat & heavy equipment sales)
Schools, post-secondary, business, technical and vocational

Schools, primary & secondary
Service stations
Signs, subject to the provisions of Article XIII, below
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoors

5-23-2 ~~Conditional Uses~~ Special Uses. The following uses shall be permitted in the HMU Highway Mixed Use Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special use~~ Special Use requirements contained in Section 16-4, below:

Bus stations
Public utility facilities

5-23-3 Development Standards. The following standards shall apply to development within the HMU Highway Mixed Use Zoning District Classification.

5-23-3.1 Parking & Loading. For non-residential developments, the requirements of Section 6-5, below, shall apply. Residential developments shall be provided with a minimum of one off-street parking space per dwelling unit.

5-23-3.2 Dimensional Requirements.

Minimum Lot Area in Square Feet:	None
Minimum Lot Width:	None
Open Space Ratio:	~~≥ Gr~~.40
Common Space Ratio:	≥.10
Maximum Footprint for any Structure:	40,000 ft2
Roadway Corridor:	All land lying within 400 feet of the right-of- way of the principal roadway but not lying within the right-of-way.
Nonresidential Floor Area Allowance:	.25 x area within roadway corridor + .050 x area outside roadway corridor. Floor area de- voted to residential use shall not count against this allowance.
Yard Requirements:	Varies with building type. See Design Standards. Provided, however, all structures shall be set back a minimum of 30 feet from the right-of-way line of U. S. Highway 64.
Building Separation:	If buildings are separated, they must be separated by at least 15 feet. Buildings must be separated once the footprint for any building or connected buildings equals 40,000 ft^2. This provision shall not be construed to qualify any setback provisions contained elsewhere in this ordinance.
Building Height:	Varies with building type. See Design Standards.

5-23-3.3 Residential Density. The number of residential dwellings permitted on any development tract varies with regard to the open space ratio provided as noted on the following table.

OPEN SPACE RATIO	MAXIMUM DWELLING UNITS/ACRE
.40	8
.50	10

.60	12

5-23-4 Design Standards. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
These standards are intended to apply to all development and redevelopment (excluding One and Two-Family Dwellings) within the HMU Highway Mixed Use Zoning District Classification. Applicants for authorization to undertake development or redevelopment within such zoning district must demonstrate compliance with these standards or must undergo alternative design review.

5-23-4.1 Standards of General Applicability. The following standards shall apply to all development in the HMU Highway Mixed Use Zoning District Classification regardless of use or building type.

5-23-4.1.1 General Site Development. Site development shall not result in the removal of lateral support for adjoining properties. Furthermore, development shall not create hazardous or dangerous conditions or result in the creation of a nuisance as specified in Section 6-13, below.

5-23-4.1.2 Physical Integration of Uses. Residential and commercial uses may be located within the same or adjoining structures provided appropriate health and safety regulations are followed.

5-23-4.1.3 Building Orientation. NOTE: Section 5-23-4.1.3 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
Primary façades, which may or may not contain an entrance to the building, shall face primary vehicular access or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street.

5-23-4.1.4 Common Space. Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects.

Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces. Unless interior common space is approved by the reviewing authority, common space out-of-doors. Common space design shall comply with the following:

a) **Size.** At least 10% of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.

b) **Trees.** One tree shall be planted for each 500 ft2 of common space. Trees shall have a minimum caliper of 3-3½ inches measured six inches above ground at the time of planting.

c) **Utilities.** All utilities service lines and connections shall be underground.

d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.

e) **Amenities.** Common space for a development shall contain adequate amenities to animate and enliven the environment and to make it conducive for social interaction. Following is a list of such amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, awnings, canopies, informational kiosks, and similar structures. This list is not intended to be exhaustive.

5-23-4.1.5 Architectural Details. NOTE: Section 5-23-4.1.5 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The appearance of all exposed façades (not just the streetside façade) is important and shall be addressed in development design. Architectural elements like openings, sill details, bulkheads, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant shall provide distinctive architectural elements at the corner of buildings facing the intersection. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned.

All buildings shall provide detailed design along all elevations. Detailed design shall be provided by using at least three of the following architectural features on all elevations. Features may be varied on rear / side / front elevations.

Dormers
Gables
Recessed entries
Covered porch, entries
Cupolas or towers
Pillars or posts
Eaves (minimum 6-inch projection)
Off-sets in building face or roof
Window trim (minimum nominal four inches wide)
Bay windows
Balconies
Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation)
Decorative cornices and roof lines (for flat roofs)

5-23-4.1.6 Building Façades. NOTE: Section 5-23-4.1.6 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Façades of buildings shall contain at least two building materials which shall contrast in color and texture. At least 15% of the façade, exclusive of windows, doors and trim, shall consist of stone, brick, decorative concrete or decorative block.

5-23-4.1.7 Windows. NOTE: Section 5-23-4.1.7 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Windows shall either be (1) recessed a minimum of three inches from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.

5-23-4.1.8 Building Scale. NOTE: Section 5-23-4.1.8 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).

(added a block paragraph space between regulatory NOTE and original text below)
The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings. These design standards regulate scale by means of offsets, that is, protrusions or breaks in the plane of façades.

a) **Scale, Buildings Containing Nonresidential Uses.** The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:

1) The distance between required offsets is related to the height of the building wall on a two-to-one basis. Thus, a building which is 20-feet tall may have no more than 40 feet of façade wall between offsets. A building façade which is less than or equal to the height of the building shall not require an offset.

2) The height of any particular façade shall be measured from the average ground level to the soffit, or, if there is no soffit, to the parapet.

3) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel shall have a two-foot offset adjacent to such wall panel.

4) Each façade of a building shall comply with the offset requirements contained herein.

b) **Scale, Buildings Containing Only Residential Uses.** The following requirements apply to any building containing only residential uses:

1) The distance between required offsets shall be related to the height of the building on a basis of .75 / 1; provided, however, no wall shall exceed 16 feet in length without an offset. By way of illustration, a façade wall which is 20 feet tall may have no more than 15 feet of wall between offsets; however, a façade wall which is 30 feet tall, owing to the proviso, may have no more than 16 feet of wall between offsets. A building façade which is less than 16 feet in length shall not require an offset. Provided, however, the provisions of this paragraph shall not be construed to require an offset for that portion of a façade containing a two-car garage.

2) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.

3) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.

5-23-4.1.9 Streets and Sidewalks. Streets and sidewalks shall comply with the circulation and access requirements contained in Section 18-6-4.6, below.

5-23-4.1.10 Building Materials. NOTE: Section 5-23-4.1.10 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
Building materials shall be used consistently on the exterior of the building and shall comply with the lists of prohibited and restricted materials contained herein.

a) **Prohibited Building Materials.** Unless authorized through alternative design compliance, the following building materials shall be prohibited within the HMU Highway Mixed Use Zoning District Classification: plain concrete block (with or without paint); corrugated or ribbed metal siding; reflective glass; more than 50% glass on any façade; roll roofing; roll siding; plain unfinished concrete (painting does not constitute a finish); aluminum; unpainted metal; exposed plain pipe columns; logs, log siding, wain-edged siding; metal wall siding; and any other materials not customarily used in conventional construction.

b) **Restricted Building Materials.** Unless authorized through alternative design compliance, the following building materials shall be restricted as noted within the HMU Highway Mixed Use Zoning District Classification: vinyl siding, aluminum siding and grooved plywood siding (T1-11) are permitted only behind the roadway corridor; chain link fencing is permitted so long as it is not readily visible from a street, or public right-of-way, or common space.

5-23-4.1.11 Certain Exemptions for Single-Family Detached Homes. Detached single-family homes shall be exempt from the requirements contained in Sections 5-23-5.1.4 (common space) and 5-23-5.1.8 (building scale).

5-23-4.2 General Standards for Residential Developments. NOTE: Sections 5-23-4.2 are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
The following standards shall apply to developments containing only residential uses with the exception that apartment buildings must comply with the general standards contained in Section 5-23-5.3, below.

5-23-4.2.1 General Appearance. NOTE: Section 5-23-4.2.1 – 5-23-4.2.3 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
Residential development shall contain a variation of façades and materials so that there shall not be a row or strip housing appearance. Means to accomplish this goal may include the use of dormers, gables, recessed entries, covered porch entries, bay windows, cupolas or towers, and a variation in the depth and height of walls, among others.

5-23-4.2.2 Architectural.

a) Useable porches and/or stoops, at least eight feet in ~~width~~ depth, shall be located on the front and/or side of the home.

b) Front-loading garages and carports (if permitted) shall be offset from the front façade of the house and visually designed to form a secondary building volume. Developers are encouraged to turn garages and carports so the openings or doors are not visible from the street. At no time shall the width of an attached garage exceed 50% of the total building façade.

c) Accessory buildings with a floor area greater than 150 ft2 shall be clad in materials similar in appearance to the principal structure.

d) Walls and fences located in the front yard shall be decorative and limited in height to no more than four feet above grade. Front-yard walls shall be of brick, stone or stucco. Front yard fences shall be wood,

wrought iron or materials similar in appearance and durability. Side and rear yard fences may be c
link, wood, wrought iron, or similar material.

5-23-4.2.3 Configurations.

a) Main roofs on residential buildings shall be gables, hips or clerestory with a pitch between 5:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to a wall of the main building.

b) Foundation walls (except those under porches) shall be finished with brick, stucco or stone. If crawlspaces of porches are enclosed, they shall be enclosed with brick, stone, lattice or any combination thereof.

5-23-4.3 General Standards for Nonresidential Buildings and Apartments. The following standards shall apply to all buildings containing nonresidential uses and to apartment buildings.

5-23-4.3.1 Storage, Utility & Service Areas. Areas devoted to storage, garbage, recycling collection and utilities shall be enclosed and screened around their perimeter, and constructed of materials consistent with the principal building. Gas meters, electric meters, ground-mounted mechanical units, and any other similar structures should be hidden from public view or screened with approved construction materials. Fences designed for screening shall be constructed of brick, stone, architectural stucco, concrete, wood or iron. Roof vents, mechanical units, utility equipment and telecommunication receiving devices located on the roof shall be screened from view.
Solar technology components including solar panels and solar thermal collectors used for on-site private purposes are exempt from this provision.

5-23-4.3.2 Parking & Vehicular Access. All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of any primary arterial roadway and shall be screened from view from such roadways in accordance with Article XV, below.

5-23-4.3.3 Encroachments. Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

5-23-4.3.3 Pedestrian access shall be provided from street sidewalks to principal entrances by means of a sidewalk or other all-weather walkway.

5-23-4.3.4 Roofs. Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

5-23-4.4 Specific Standards for Detached Houses.

Type A: Street Lot. The street lot is a medium or large sized lot (50 feet or greater in width) that provides primary vehicular access from the street.

Minimum Setbacks:	Front: 15 feet Sides: 20% of lot width. The entire setback may be allocated to one side. Rear: 10 feet
Accessory Structures:	Side: 3 feet Rear: 3 feet
Minimum Lot Width:	50 feet

Maximum Height:	2 ½ stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.

Type B: Alley Lot. The alley lot is a lot for which primary vehicular access is provided using a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except on previously platted lots.

Minimum Setbacks:	Front Build-To Line: 10-25 feet Sides: 3 feet each side; however, the total of both side yards may be allocated to one side. Rear: 8 feet from edge of pavement.
Accessory Structures:	Side: 3 feet Rear: 3 feet
Minimum Lot Width:	25 feet
Maximum Height:	2 ½ stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.
Vehicular Access to Lot:	For lots less than 50 feet wide alley, access is required. For all others the use of an alley is permitted.

5-23-4.5 Specific Standards for Townhouses. The townhouse is a building with two or more residential units that are located side-by-side. When an entrance is provided at-grade, the townhouse may be used as a live-work unit.

Minimum Setbacks:	Front Build-To Line: 8 feet Sides: 0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet Rear: 5 feet from centerline of alley, if applicable.
Minimum Lot Width:	16 feet
Maximum Height:	3 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the City.
Accessory Structures:	Side: 3 feet Rear: 3 feet
Maximum Footprint:	650 ft2
Maximum No. of Structures:	1

5-23-4.6 Specific Standards for Apartment Buildings. An apartment is a multiple-unit building with apartments vertically arranged. Units may be for rental or for sale in condominium ownership or may be designed as continuing care facilities. The ground floor may be available for commercial uses.

Minimum Setbacks:	Front: 10 feet

	Sides: 15 feet plus 5 feet for each floor above 2. Rear: 15 feet plus 5 feet for each floor above 2.
Parking:	Off-street parking shall be located in the rear or side yard only and shall be screened from view from public road ways. On-street parking is encouraged for private streets and drives.
Vehicular Access:	Primary vehicular access from public roads shall be accomplished by means of a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except for vehicular access to rear parking. These limitations shall not apply to parcels or buildings where primary vehicular access is by means of a private street or drive.
Maximum Height:	4 stories.
Accessory Structures:	Side: 0 feet Rear: 0 feet
Maximum Footprint:	650 ft2
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the City.

5-23-4.7 Specific Standards for Commercial & Institutional Buildings. Commercial buildings are structures which can accommodate a variety of uses mixed either horizontally (shopping center) or vertically (apartment over a store). Office buildings, hotels and inns can be placed in commercial buildings. Buildings containing both commercial and residential uses shall be classified as commercial buildings for the purposes of this section. Institutional buildings are specialized public or semi-public buildings intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, hospitals, post offices, and nonprofit or charitable clubs and organizations. Note there are exceptions from the maximum height restrictions for steeples, cupolas and similar structures. These are contained in Section 8-2, below.

Minimum Height:	14 feet to the top of the parapet for buildings with flat roofs. There is no minimum height requirement for other buildings.
Maximum Height:	4 stories
Minimum Setbacks:	Front: 10 feet Sides: 15 feet plus 5 feet for each floor above 2. Rear: 15 feet plus 5 feet for each floor above 2.
Parking & Vehicular Access:	All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of U. S. Highway 64 and shall be screened from view from such roadway.
Minimum Lot Width:	None.
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to 5 feet.
Accessory Structures:	Side: 3 feet Rear: 3 feet

5-23-5 Transportation. The section is intended to put in place regulations which will provide for a multi-modal transportation environment conducive to a pedestrian-friendly mixed-use community.

5-23-5.1 Corridor Circulation Plan. If a corridor circulation plan has been adopted for the HMU zoning district, all new development and redevelopment must demonstrate consistency with that plan.

5-23-5.2 Transportation Plan Submittals. In addition to other submittal requirements for development review, applicants for development authorization within the HMU zoning district shall submit the following documents:

a) Pedestrian circulation plan to include type of infrastructure (for example, sidewalk, multi-use path), and connections to adjacent pedestrian facilities.

b) Vehicular circulation plan to include parking, loading, stubs to adjacent properties, and any cross-access easements.

c) When required, a traffic impact study (TIS) performed by a registered engineer in accordance with NCDOT standards for all developments that generate 100 peak hour trips or 1,000 daily trips in accordance with the Institute of Traffic Engineers current Trip Generation Manual. The Community Development ~~Assistance~~ Director may also require a TIS without regard to the expected trip generation of the development due to the existence of special circumstances including, without limitation, existing level-of-service deficiencies in the area of the proposed development or when available accident data and/or operational and geometric factors indicate safety concerns.

5-23-5.3 Street Connectivity. In an effort to improve and promote overall street connectivity, public streets constructed within an HMU zoning district shall provide connections to existing adjacent public streets. When no off-site street stubs are present, the following connections shall be provided to undeveloped properties at the appropriate rate indicated below.

a) All new development with fewer than 100 dwelling units are required to provide at least one stub-out street to extend and connect with future streets. In the event that adjacent land is already developed with stub-outs present, the developer shall build streets to connect to the existing stub-out(s).

b) Residential developments containing 100 or more dwelling units shall include street connections or stubs at a ratio of one stub/connection per 100 dwelling units. In the event adjacent land is already developed with streets, the developer shall connect to the existing stub-out(s). Required collector street connections are included in this calculation.

c) Non-residential developments shall provide one stub to each adjoining parcel where, considering topography, land use compatibility and future development or redevelopment potential, it is deemed feasible and appropriate.

5-23-5.4 Pedestrian Accommodations. Pedestrian accommodations, which may be sidewalks, multi-purpose paths, or other approved alternatives, shall be provided as a part of a development on both sides of all public roadways and of all private roadways unless site constraints or proposed uses make it impractical or unnecessary. Pedestrian access and circulation shall be consistent with any and all adopted corridor circulation plans.

5-23-5.5 Vehicular Access. It is the intent of these regulations to encourage interconnectivity between development parcels in order to provide alternative transportation routes to existing thoroughfares. Accordingly, when development parcels have potential to provide access to adjoining parcels, developers are encouraged to utilize public streets, rather than private streets or driveways, for access to major arterial roadways. The regulations contained in this section shall apply to all new development and redevelopment within the district.

5-23-5.5.1 Driveways. Where permitted, driveways shall comply with the requirements of this section and, if applicable, the regulations of the North Carolina Department of Transportation.

a) The number of driveways permitted for new development shall relate to the amount of linear frontage for the proposed development as depicted below:

LINEAR FRONTAGE	NUMBER OF PERMITTED
Less than 350 feet	1
Greater than 350 feet	2
Greater than 1000 feet	3[1]

b) All driveway approaches for both mid-block and corner lots along major thoroughfares shall have both minimum corner and side clearances as below:

CLEARANCE TYPE	ALONG MAJOR THOROUGHFARE	ALONG SIDE STREET
Corner Clearance[2]	250 feet	100 feet
Side Clearance[3]	30 feet	10 feet

c) No driveways shall be allowed along a major thoroughfare within 250 feet of any intersection, as measured from the intersection of the projected right-of-way lines, except for properties which cannot meet this restriction due to limited frontage within the desired corner clearance.

d) One-way driveways are not considered full-movement driveways therefore, two, one-way driveways may be considered as a single driveway provided that:

1) The minimum spacing between the two driveway segments is 60 feet.

2) The driveway segments are clearly signed and marked as one-way driveways, using pavement arrows and directional signs.

3) The maximum combined pavement width of both driveway segments at the right-of-way line is 40 feet and the minimum width of a single segment is 14 feet.

5-23-5.5.2 Outparcels. Access to development outparcels shall be oriented to the interior of the development site, not to the roadway.

---

[1] With approval of the City after demonstration of need in the required TIS.

[2] Corner clearance shall be measured from the point of tangency of the radius curvature of the intersection streets.

[3] Side clearance shall represent the distance from the driveway to the side property line.

5-23-5.5.3 Cross-Access Easements. Cross-access easements between parking areas on adjacent developments are an effective way to improve corridor circulation and to reduce vehicle trips. For each adjoining property with accessible parking areas, applicants for development authorization shall provide either (1) a cross-access easement or (2) confirmation that the applicant has attempted to negotiate a cross-access easement with that property owner and has not been able to reach agreement thereon.

Section 5-23-6 HMUCZD Highway Mixed Use Conditional Zoning District Classification. The purpose and requirements of this zoning district classification are identical to the Highway Mixed Use Zoning District Classification except that rezoning to HMU Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the HMU Highway Mixed Use Conditional Zoning District Classification only upon rezoning to HMUCZD.

Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.

Section 5-24 UV Urban Village Conditional Zoning District Classification. The Urban Village Conditional Zoning District Classification is intended to create mixed use development that is economically vital, pedestrian-oriented and contributes to the place-making character of the built environment. This classification offers the unique opportunity to provide quality and long-lasting retail, office and residential uses in an organized layout that encourages the full range of access by patrons and users, and offers innovative high-quality design of structures, public amenities and pedestrian facilities. The development and design standards set forth in this section are intended to accomplish the following purposes:

a) Provide safe and convenient access to shopping and other essential services to pedestrians, bicyclists, transit riders, motorists, and persons with disabilities.

b) Provide effective traffic flow through access management and improved internal and external connectivity.

c) Create a built environment that serves to enhance gateway corridors, preserve historic heritage, promote economic development and an improved tax base for the city, and celebrate Hendersonville's distinction from other cities.

d) Promote sustainable use of limited land and investment resources through the following means:

1) Encouraging higher building densities;

2) Allowing efficient shared parking areas, making cost effective use of existing infrastructure;

3) Showcasing innovative high-quality development;

4) Providing adaptive reuse of under-performing retail properties;

5) Ensuring multi-modal transportation access;

6) Ensuring internal and external connectedness;

7) Developing a durable framework of infrastructure and built structures that can accommodate future renovations; and

8) Reestablishing the public realm, civic pride, and sense of community ownership in new developments.

5-24-1 Procedure. The reclassification of property to UVCZD Urban Village Conditional Zoning District shall constitute an amendment of the Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, any person(s) having an interest in the property by reason of a contract with the owner(s), or an agent authorized in writing to act on behalf of the owner(s).~~. UVCZD Urban Village Conditional Zoning Districts shall be created only in locales designated in the Comprehensive Plan as Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center, and Business Center. Notwithstanding the foregoing, an Urban Village District may be located on a lot(s) all or part of which fall within locales designated as Medium Intensity Neighborhood in the Comprehensive Plan only if any part of the boundary of the Urban Village Conditional Zoning District is located no more 100 feet from the boundary of a zoning district having a non-residential zoning designation.

5-24-1.1 Pre-Application Conference. Every person proposing to apply for creation of a UVCZD Urban Village Conditional Zoning District is required to meet with the Community Development ~~Assistance~~ Department Staff prior to the submittal of such application. This conference is intended to provide the applicant with an opportunity to discuss requirements, standards and procedures and to identify and solve potential problems for the proposed application. The applicant shall bring a sketch plan for the project showing, at a minimum, the location, the existing and proposed transportation network, phasing, general development plans and a written synopsis of the development proposal. The pre-application conference shall take place at least one week prior to submitting of an application to create an Urban Village District Conditional Zoning District.

5-24-1.2 Application. Creation of an urban village district shall be initiated by means of an application for rezoning to a UV Urban Village Conditional Zoning District. No permit shall be issued for any development within a UV Urban Village Conditional Zoning District except in accordance with an approved rezoning.

5-24-1.3 Master Plan. Applicants for creation of an urban village conditional zoning district project are required to submit a master plan for the entire development that indicates the following: (1) the general street network; (2) the proposed land use configuration within that network; (3) phasing boundaries if phasing is proposed; (4) the ultimate proposed development intensity (including the number of residential units and gross square footage of all nonresidential uses) for the entire development and for each phase; (5) a conceptual landscape plan; (6) proposed setback, height, signage, architectural and other design standards for the overall project and for proposed uses; (7) building elevations or perspective drawings to demonstrate proposed building character; and (8) a conceptual stormwater plan for the development. For initiation of this zoning classification, properties may fall under more than one ownership so long as there exist covenants or other legally binding agreements that address cross-access, cross-parking and other similar issues affecting joint operation of the projects.

5-24-1.3.1 Traffic Impact Analysis. A traffic impact analysis is required for all urban village projects and shall be submitted with the application to create the urban village. The City may defer the traffic impact analysis until after a rezoning to a conditional zoning district is approved for the project only in those circumstances where City Council, in the absence of a traffic impact analysis, determines that the existing public road system has adequate capacity to handle projected traffic flow as required by Section 7-11, below.

5-24-1.3.2 Subsequent Review. After the establishment of the urban village district, individual development projects within the district shall be subject to final site plan review in accordance with Section 7-3-4, below. In addition to the site plan requirements contained in Section 7-3-4.3, applicants shall comply with the design submittal requirements of Section 18-3-3.

5-24-1.3.3 Modifications. Revisions to approved urban village district master plans may be approved by City Council or by the City Manager, or a designee appointed by the City Manager, depending on the type of revisions being requested. City Council shall review any revisions to a master plan that increase the overall development intensity, change the proposed mix of uses by increasing or reducing any use category by 10% or more, or increases maximum building heights from that shown on the approved master plan. Additionally, City Council shall review any revision to a master plan that results in a decrease in the amount of perimeter open space or perimeter parking lot buffering, or in a 25% or greater reduction in the number of proposed blocks from that shown on the approved master plan. For the purpose of determining overall development intensity, one residential unit shall be regarded as the equivalent of 500 ft2 of office floor area; one residential unit shall be regarded as the equivalent of 200 ft2 of commercial floor area; and 1,000 ft2 of office space shall be regarded as the equivalent of 350 ft2 commercial. For other uses, the Community Development ~~Assistance~~ Director shall determine the equivalency factor.

5-24-2 Permitted Uses. The following uses are permitted by right in the UV Urban Village Conditional Zoning District Classification, provided they meet all requirements of this Section and all other relevant requirements of this Zoning Ordinance.

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes
Animal hospitals & clinics so long as they contain no outdoor kennels
Banks & other financial institutions
Bed & breakfast facilities
Business services
Child care centers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes
Civic clubs and fraternal organizations
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Cultural arts buildings
Dance, health & fitness facilities
Dry cleaning and laundry establishments containing less than 6,000 ft2 of floor area
Funeral homes
Home occupations
Hotels & motels
Laundries, coin-operated
Lawn & garden centers
Music & art studios
Neighborhood community centers
Newspaper offices & printing establishments
Offices, business, professional and public
Parking lots & parking garages
Parks
Personal services
Planned residential developments (minor), subject to the requirements of Article VII, below
Public & semi-public buildings, including, without limitation, post offices, police stations and fire stations
Public Utility Facilities

Recreational facilities, indoors
Religious institutions
Repair services, miscellaneous
Residential care facilities
Residential dwellings, single family
Residential dwellings, multi-family
Residential dwellings, two-family
Restaurants
Retail stores (not including automobile, manufactured home, farm equipment, gasoline, and boat & heavy equipment sales)
Schools, post-secondary, business, technical and vocational
Schools, primary & secondary
Signs, subject to the provisions of Article XIII, below
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoors or outdoors but not including drive-in theaters

5-24-3 Development Standards. NOTE: Section 5-24-3 and sub-sections are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
Some development standards for the UV Urban Village Conditional Zoning District are specified in this ordinance. Where no standard is specified, it is incumbent upon the applicant to propose development standards which, if City Council concurs, will be incorporated into the project. The following standards shall apply to development within the UV Urban Village Conditional Zoning District Classification.

5-24-3.1 Density. Residential density for an urban village district shall be established by City Council in consideration of surrounding land uses and the existence of adequate public facilities. The maximum density which may be approved shall not be otherwise limited except by other standards such as building height, parking, landscaping and buffering, open space, and traffic impact.

5-24-3.2 Structure Size. The maximum size of any structure shall be established by City Council.

5-24-3.3 Area. The minimum area required to establish an urban village district is ten acres.

5-24-3.4 Lot Size. There is no minimum lot size required for an urban village district; although, the applicant may specify minimum standards in its development document.

5-24-3.5 Lot Width. There is no minimum lot width required.

5-24-3.6 Setbacks. There are no minimum setback requirements within the Urban Village Conditional Zoning District Classification; provided, however, setbacks shall be established around the perimeter of the district sufficient to protect adjoining properties from the impacts of proposed development within the district.

5-24-3.7 Height. There are no maximum height restrictions. The applicant shall propose minimum and maximum height restrictions for all building types and locations.

5-24-3.8 Design Considerations. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)

Design is critical to the creation of an Urban Village District and to achieving the goals of this classification, as set forth in Section 5-24, above. The design considerations set forth in this section are intended in some instances to guide project design and in others to provide specific design requirements, and the text is intended to make this distinction clear. In general, the use of the term "shall" indicates a specific design requirement, whereas the term "should" indicates design guidance. In order to obtain a rezoning to develop an Urban Village Conditional Zoning District, an applicant must demonstrate, among other things, that the design of the proposed development (1) meets the specific standards contained herein, (2) is generally in harmony with the design guidelines contained herein, and (3) will result in a development which is consistent with the purposes set forth in Section 5-24, above.

5-24-3.8.1 General Site Arrangement. Structures shall be placed and arranged so as not to adversely affect adjacent property. Adverse effects shall include, but are not limited to, the removal of lateral support on adjacent property, the creation of hazard, nuisance, danger, or inconvenience, or unreasonable loss of privacy. Development shall be arranged so as to be visually harmonious within the district. Insofar as is practicable, developments should be arranged so as to preserve or enhance vistas. Urban villages shall be oriented around one or more significant public spaces, such as parks or plazas.

5-24-3.8.2 Physical Integration of Uses. All urban villages shall be designed and developed to provide an appropriate interrelationship between the various uses and structures within the development. Residential and commercial uses may be located within the same or adjoining structures.

5-24-3.8.3 Preservation of Natural Features and Open Space. Permitted flexibility in lot sizes, setbacks, street alignments and widths, and landscaping shall be utilized to preserve natural features and drainage patterns and to provide open space.

5-24-3.8.4 Architectural Character. NOTE: Sec. 5-24-3.8.4 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The rich architectural vocabulary of the City of Hendersonville presents a wide variety of development opportunities using traditional forms while avoiding any perception of monotony. Each building proposed for an urban village district shall have a well-proportioned form consistent with the building use, and its construction materials. Materials shall be durable, attractive and compatible with the architectural vernacular of the region. Massing of the building(s) shall create a building envelope that reflects simple, clearly articulated building volumes.

5-24-3.8.5 Building Orientation. It is preferred that primary façades face the adjacent street or significant public space. Apartment buildings and buildings containing commercial or institutional uses shall have a main entrance facing a connecting walkway with a direct, safe, pedestrian connection to the street. Where the main entrance does not face the adjacent street, buildings shall nonetheless be designed to provide an attractive streetside façade.

5-24-3.8.6 Building Placement. Buildings shall be situated with regard to pedestrian and vehicular connectivity. Apartment buildings and buildings containing commercial or institutional uses should be located close to the pedestrian street with off-street parking behind and/or beside the building. Important mountain vistas and/or views of significant historic sites should be protected and accentuated.

5-24-3.8.7 Privacy Considerations. Elements of the development plan should be arranged to maxim the opportunity for privacy by the residents of the project and minimize infringement on the privacy of adjoining land uses.

5-24-3.8.8 Architectural Details. NOTE: Sec. 5-24-3.8.8 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Architectural elements like openings, details, bulkheads, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant is encouraged to provide a building entry, additional building mass, and distinctive architectural elements at the corner of buildings. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned wherever practical. The appearance of all exposed façades (not just the streetside façade) is important and shall be addressed in development design.

5-24-3.8.9 Building Walls. NOTE: Sec. 5-24-3.8.9 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Buildings shall avoid long, monotonous, uninterrupted walls or roof planes on their visible façades. It is preferred that this design goal be achieved by means of building wall offsets, including projections, recesses, and changes in floor level, and roofline offsets. Such offsets add architectural interest and variety and can assist in creating human size proportions. Parapets shall be designed as integral to the mass of the building. When multiple wall materials are combined on one façade, the designer is encouraged to place the heavier material(s) below.

5-24-3.8.10 Building Entrances. All buildings should include well-defined entrances facing the street at regular intervals. An operable entrance on each primary façade should be provided to encourage access by pedestrians. For buildings on corner lots, an entrance may be placed at the corner, thereby eliminating the need for side entrances.

5-24-3.8.11 Internal Access and Connectivity. The site shall be traversed by a network of internal streets built according to City standards. Internal streets should seek to avoid cul-de-sacs and dead end roads and other features that hamper connectivity. However, roads may terminate at a monumental structure or green space. In such cases a sidewalk or other connection must be provided to ensure the goals of connectivity. In addition, internal streets are also required to have sidewalks and street trees. If a bus line serves, or is expected to serve, the district, a bus shelter is required. Larger projects may require more shelters as determined by traffic impact analysis. Connectivity is a goal of the internal street system and external connections to areas outside and adjacent to the urban village should be created where possible. Only one driveway per block face is allowed. Detached single-family housing and duplex housing are exempt from the driveway restriction. Parking access from alleyways, however, is encouraged.

5-24-3.8.12 Block Length. Block length may vary but shall not exceed 500 feet in length. For blocks on local streets that are 350 feet or longer, a mid-block pedestrian street crossing is required which may also include a parking lot driveway and/or pedestrian passageway between two or more buildings, and shall have curb extensions (bulb-outs) for ease and safety of pedestrian street crossing. Collector streets may also require mid-block pedestrian crossings as noted above.

5-24-3.8.13 Pedestrian Zone and Sidewalks. The pedestrian zone is the area between the street curb and the building edge or, for access roads, the street curb and the right-of-way area. The pedestrian zone includes sidewalks, street trees and other pedestrian amenities. The pedestrian zone will generally be 15 feet wide but may be wider depending on the setback pattern. Sidewalks in urban village districts shall be

required along one side of access streets and both sides of internal streets throughout the development. Where appropriate to the design of the village, greenway paths may be substituted for sidewalks in residential areas to provide connections. The sidewalk shall be a minimum of seven feet wide in the Urban Village Conditional Zoning District Classification. In solely residential areas containing less than eight units per acres, sidewalks are only required to be five feet wide. With institutional and public uses that have an increased setback, a sidewalk shall connect the building façade entrance with the street. The sidewalk may be as wide as the entire pedestrian area. Arcades, awnings, outdoor dining, shelters, seating areas, fountains, street trees, additional landscaped areas and other pedestrian amenities may be a part of this pedestrian area so long as seven feet of clear walking space is maintained. The pedestrian area may also be used to create an area for waiting, pick-up and drop-off. At locations such as intersections and other crosswalks, curb extensions (bulb-outs) are required to create safer pedestrian crossings.

5-24-3.8.14 Parking / Loading Standards. Parking and loading facilities shall be reviewed at the master plan level. The applicant shall demonstrate that the amount of parking proposed is adequate to serve the needs of the district and is located and designed in such a fashion that it does not detract from the overall appearance of the district or unreasonably interfere with pedestrian activity.

a) **Amount of Parking.** Owing to the possibilities for shared use of parking, the number of parking spaces in the urban village district should not exceed the minimum parking requirements for the district computed by means of the formulas contained in Section 6-5, below.

b) **On-Street Parking.** On-street parking is required for all local streets and for collector streets and shall count toward meeting parking needs for the district. On-street parking may take the form of parallel or angle parking and shall be built according to city standards.

c) **Off-Street Parking.** Applicants for rezoning to the UV Urban Village Conditional Zoning District Classification shall propose a master parking plan which shall provide sufficient parking for the entire project consistent with requirements of this section. Off-street parking lots are encouraged to be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures. No more than 20% of parking that is provided in an urban village district may be in the form of stand-alone surface lots not located to the side or rear of buildings. Off-street parking shall not be adjacent to street intersections. No parking is permitted in any setback area. Individual uses in the urban village district are not required to provide off-street parking or loading.

d) **Loading Standards.** Urban village districts may share off-street loading facilities and are therefore allowed to provide these facilities at half the rate listed for the applicable uses. On-street loading spaces may be counted towards the project loading requirements.

5-24-3.8.15 Street Trees. Street trees are required in the pedestrian zone and along access roads at an average of one tree every 30 feet for mid-story and understory trees, and one tree for every 40 feet for canopy trees. In selecting street trees, priority should be given to long lived species proven to function well in urban settings with a form and branching pattern compatible with the space and type of adjacent traffic. Trees may be planted in minimum six-foot by six-foot pits. Tree frames and grates are not required but are recommended especially near store entrances, other sidewalk constraints, points of ingress, egress or public gathering areas. If tree grates are not used, an organic surfacing material shall be used to level the surface of the tree pit with the sidewalk. This material shall receive regular maintenance. To offer flexibility in the tree planting requirement, trees may be planted in planting strips adjacent to the curb edge of the sidewalk. Planting strips shall be no narrower than six feet wide. Planting strips may include grass, flowers and other plant material where appropriate. Planting strips may not be appropriate in pedestrian gathering areas.

5-24-3.8.16 Landscape / Buffering Standards. Landscaping and buffering shall be in accordance with Article XV of this Ordinance except as noted herein. Parking lots shall include interior and perimeter tree plantings made up of deciduous trees at a rate of one tree for every 1,500 ft2 of vehicular use area. No parking space may be farther than 45 feet from a tree. No shrubs are required for interior plantings for parking lots that are behind, to the side or located at the interior of the block of buildings. Parking areas adjacent to roadways require buffering from the street as specified in Article XV with the exception that the planting area will be eight feet wide. Stand-alone parking lots shall comply with all applicable landscape and buffering standards except that trees shall be provided at a rate of one tree for every 1,500ft2 of parking and parking spaces shall be no further than 45 feet from a tree. Shrubs are also required as per the regular schedule. Landscaped islands within parking lots should be a minimum of 162 ft2 in area with a minimum width of eight feet if they are to include tree plantings. Residential structures within an urban village may have up to a 100% reduction in buffering requirements from the rest of the urban village. Buffering for urban village district projects is measured and reviewed from the parcel lot lines used to establish the district and not on an internal lot by lot basis.

5-24-3.8.17 Open Space Standards. Functional open space enhances circulation within a site and contributes to the site's aesthetic qualities. All open space should be designed to be accessible and usable for occupants and invitees of the development. An urban village district shall have an open space ratio of not less than .30. Open space includes any portion of the site not covered by a building or vehicular use area and any common space meeting the standards listed in the paragraph below.

5-24-3.8.18 Common Space Standards. Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects.
Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces. Unless interior common space is approved by the reviewing authority, common space shall be out-of-doors. Common space design shall comply with the following:

a) **Size.** At least 10% of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.

b) **Trees.** One tree shall be planted for each 500 ft2 of common space. Trees shall have a minimum caliper of 3-3½ inches measured six inches above ground at the time of planting.

c) **Utilities.** All utilities service lines and connections shall be underground.

d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.

e) **Amenities.** Common space for a development shall include two or more of the following amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, public telephones, awnings, canopies, informational kiosks, and similar structures.

Section 5-25 UR Urban Residential Conditional Zoning District Classification. Urban areas are recognized as unique areas with many assets and opportunities. In order to foster the urban characteristics of these areas, development within an urban area should promote an environment of diverse uses at higher than normal density

which focuses on pedestrian activities, needs and movement, while at the same time recognizing the limited supply of urban land. It is necessary and desirable to promote the residential nature of these areas through zoning classifications, which are intended to realize the growing opportunities for new infill development and redevelopment. Such residential development, properly located and developed, can enhance and support the overall mix of uses characteristic of urban areas.

a) The Urban Residential Conditional Zoning District is intended for use in special areas of the community where the prime considerations are the support and sustainability of existing commercial nodes and corridors, appropriate transitioning between commercial and residential areas, availability of appropriate infrastructure, and compatibility with existing topography, and thus may be considered for limited application. The Comprehensive Plan will be used to determine applicability. The official Zoning Map of the City of Hendersonville will designate Urban Residential Conditional Zoning District boundaries.

b) This District is designed to provide standards and incentives, which will promote the development or redevelopment of urbanizing areas that contain a mix of land uses with a predominantly residential character. Emphasis is given to provisions, which will provide opportunities for imaginative new urban development compatible with the development objectives of these areas. Accordingly, the development objectives are:

1) To maximize residential development potentials in urbanizing areas;

2) To maintain a predominantly residential character at higher residential densities;

3) To provide for sufficient local retail and office uses to support residential areas;

4) To protect all residential areas from inappropriate and intrusive uses;

5) To maximize open space and other amenities within residential areas;

6) To transition existing single family residential areas from nearby high intensity commercial developments.

7) To provide for the efficient utilization of scarce urbanizing land;

8) To provide coordination and support between zoning districts within the City of Hendersonville;

9) To provide sustainable growth and development patterns.

5-25-1 Minimum District Size. There shall be no minimum size requirement for the creation of an Urban Residential District. However, the applicant for an Urban Residential Conditional Zoning District shall be required to specify the proposed district size. In considering whether to approve the size of the proposed district, the City Council shall consider the surrounding land uses, the existence of adequate public facilities, proposed buffering, open space, and traffic impact.

5-25-2 Procedure. The reclassification of property to Urban Residential Conditional Zoning District shall constitute an amendment of the Zoning Map which may be initiated only by all of the owner(s) of a legal interest in the affected property~~, any person(s) having an interest in the property by reason of a contract with the owner(s) for the purchase of the property or lease of all or any substantial part thereof, or an agent authorized in writing to act on behalf of the owner(s).~~ Urban Residential Conditional Zoning Districts shall be created only in locales designated in the Comprehensive Plan as Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center and Business Center.

Notwithstanding the foregoing, an Urban Residential Conditional Zoning District may be located on a lo[illegible] all or part of which fall within locales designated as Medium Intensity Neighborhood in the Comprehensive Plan only if any part of the boundary of the Urban Residential Conditional Zoning District is located no more than 100 feet from the boundary of a zoning district having a non-residential zoning designation.

5-25-2.1 Pre-Application Conference. Every person proposing to apply for creation of a Urban Residential District is required to meet with the Community Development ~~Assistance~~ Department Staff prior to the submittal of such application. This conference is intended to provide the applicant with an opportunity to discuss requirements, standards and procedures and to identify and solve potential problems for the proposed application. The applicant shall bring a sketch plan for the project showing, at a minimum, the location, the existing and proposed transportation network, phasing, general development plans and a written synopsis of the development proposal. The pre-application conference shall take place at least twenty (20) days prior to submitting an application to create an Urban Residential Conditional Zoning District.

5-25-2.2 Application. Creation of an Urban Residential Conditional Zoning District shall be initiated by means of an application for rezoning to an Urban Residential District. No permit shall be issued for any development within an Urban Residential Conditional Zoning District except in accordance with an approved rezoning.

5-25-2.3 Master Plan. Applicants for creation of an Urban Residential Conditional Zoning District project shall submit a master plan for the entire District, including the Urban Residential development, that indicates the following: (1) the general street network; (2) the proposed land use configuration within that network; (3) phasing boundaries if phasing is proposed; (4) the ultimate proposed development intensity (including the number of residential units and gross square footage of all nonresidential uses) for the entire development and for each phase; (5) a conceptual landscape plan; (6) proposed setback, height, signage, architectural and other design standards for the overall project and for proposed uses; (7) building elevations or perspective drawings to demonstrate proposed building character; and (8) a conceptual storm-water plan for the development. For initiation of this zoning classification, properties may fall under more than one ownership so long as there exist covenants or other legally binding agreements that adequately address cross-access, cross-parking and other similar issues affecting joint operation of the projects.

5-25-2.3.1 Traffic Impact Analysis. A traffic impact analysis developed in compliance with Section 6-19 below is required for all Urban Residential developments and shall be submitted with the application for the Urban Residential development. The City may defer the traffic impact analysis until after a rezoning to a conditional zoning district is approved for the project only in those circumstances where City Council, in the absence of a traffic impact analysis, finds that the existing public road system has adequate capacity to handle projected traffic flow as required by Section 7-11, below.

5-25-2.3.2 Subsequent Review. After the establishment of the Urban Residential Conditional Zoning District, individual development projects within the District shall be subject to final site plan review in accordance with Section 7-3-4, below. In addition to the site plan requirements contained in Section 7-3-4.3, applicants shall comply with the design submittal requirements of Section 18-3-3.

5-25-2.3.3 Modifications. Revisions to approved Urban Residential Conditional Zoning District master plans may be approved by City Council or by the City Manager, or a designee appointed by the City Manager, depending on the type of revisions being requested. City Council shall review any revisions to a master plan that increases the overall development intensity, changes the proposed mix of uses by increasing any use category by 10% or more, or increases maximum building heights from that shown on the approved master plan. Additionally, City Council shall review any revision to a master plan that results in a decrease in the amount of perimeter open space or perimeter parking lot buffering, or in a 25%

or greater reduction in the number of proposed blocks from that shown on the approved master plan. the purpose of determining overall development intensity, one residential unit shall be regarded as the equivalent of 500 ft2 of office floor area; one residential unit shall be regarded as the equivalent of 200 ft2 of commercial floor area; and 1,000 ft2 of office space shall be regarded as the equivalent of 350 ft2 of commercial. For other uses, the Community Development ~~Assistance~~ Director or a designee shall determine the equivalency factor. Such determination shall be made in writing and shall be applied consistently to all Urban Residential Conditional Zoning Districts.

5-25-3 Permitted Uses. The following uses are permitted within the UR Urban Residential Zoning District Classification.

Residential dwellings, multi-family
Accessory Uses, Limited. The following uses shall be permitted as accessory uses. These uses must be located within a building that is predominantly residential. The total maximum gross floor area (within a building) of these accessory uses listed below is 50% of the footprint of the building in which they are located. Any single tenant or commercial use within a building shall be limited to a maximum of 3,000 ~~ft2~~ square feet within the building. There is no restriction as to where within the buildings these uses may be located; however, no drive-in windows are permitted:
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Banks and other financial institutions
Business services
Child care centers
Civic clubs & fraternal organizations
Copy centers
Cultural arts facilities
Dance and fitness facilities
Dry cleaning establishments, pickup and drop-off only
Home occupations
Laundries, coin-operated, for the sole use of the occupants of the building within which they are located
Movie-theaters, indoor
Music and art studios
Offices, business, professional and public
Personal services
Private clubs, provided the requirements of Article XVI are met.
Religious institutions
Repair services (non-automotive), miscellaneous, so long as the use is contained within an enclosed building
Restaurants, indoor and outdoor
Retail stores so long as the use contains no outdoor storage (in this regard the display of merchandise during operating hours only shall not be deemed outdoor storage)
Schools, post-secondary, business, technical and vocational
Theaters, indoor
Accessory Uses, Other. The following accessory uses are permitted.
Amphitheaters, outdoor
Bed & breakfast facilities
Hotels and motels
Parking lots and parking garages
Parks, public and private
Public and private recreational facilities, indoor and outdoor, including uses accessory to the recreational facility such as snack bars, cabanas, etc.

Public & semi-public buildings
Public utility facilities
Signs, subject to the provisions of Article XIII
Theaters, outdoor
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below

5-25-4 Dimensional Requirements. Dimensional requirements for each parcel within the UR Urban Residential Zoning District Classification are listed below:

Minimum Lot Width	20 feet
Minimum Front Yard	14 feet from back of existing or proposed curb, whichever is greater.
Minimum Side Yard	5 feet
Minimum Rear Yard	10 feet[4]
Maximum Height	64 Feet

Maximum Floor Area Ratio (gross floor space on entire parcel/parcel size) 1.5: 1

5-25-5 Design Considerations. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
Design is critical to the creation of an Urban Residential District and to achieving the goals of this classification, as set forth in Section 5-25, above. The design considerations set forth in this section are intended in some instances to guide project design and in others to provide specific design requirements, and the text is intended to make this distinction clear. The use of the term "shall" indicates a specific design requirement, whereas the term "should" indicates design guidance. In order to be granted a rezoning to develop an Urban Residential development, an applicant must demonstrate, among other things, that the design of the proposed development (1) meets the specific standards contained herein, (2) is generally in harmony with the design guidelines contained herein, and (3) will result in a development which is consistent with the purposes set forth in Section 5-25, above.

5-25-5.1 General Site Arrangement. Structures shall be placed and arranged so as not to adversely affect adjacent property. Adverse effects shall include, but are not limited to, the removal of lateral support on adjacent property, the creation of hazard, nuisance, danger, or unreasonable loss of privacy. Development shall be arranged so as to be visually harmonious within the District. Insofar as is practicable, developments should be arranged so as to preserve or enhance vistas. Urban Residential developments shall be oriented around one or more significant open spaces, such as parks or plazas.

5-25-5.2 Physical Integration of Uses. All Urban Residential Conditional Zoning developments shall be designed and developed to provide an appropriate interrelationship between the various uses and structures within the development. Residential and commercial uses shall be located within the same structures unless

[4] Minimum setback: 14 feet minimum from back of existing or proposed curb, whichever is greater. If the existing right-of- way is greater than the minimum setback from the back of existing or future curbs, the right-of-way line will become the minimum setback. However, if new construction incorporates an existing structure located within the required setback, the setback for the addition may be reduced to the established setback but in no event be less than 10 feet from the back of the existing or proposed curb. For the purposes of this section, the front yard applies to all street frontages, not just to the street toward which the structure is oriented.

otherwise indicated in Section 5-25-3. This limitation shall not apply to small commercial uses accesso a private or public recreational use.

5-25-5.3 Preservation of Natural Features and Open Space. Permitted flexibility in lot sizes, setbacks, street alignments and widths, and landscaping should be utilized to preserve natural features and drainage patterns and to provide open space.

5-25-5.4 Architectural Character. NOTE: Sec. 5-25-5.4 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The rich architectural vocabulary of the City of Hendersonville presents a wide variety of development opportunities using traditional forms while avoiding any perception of monotony. Each building proposed for an Urban Residential District shall have a well-proportioned form consistent with the building use, and its construction materials. Materials shall be durable, attractive and compatible with the architectural vernacular of the region. Massing of the building(s) shall create a building envelope that reflects simple, clearly articulated building volumes.

5-25-5.5 Building Orientation. It is preferred that primary façades face the adjacent street or significant open space. Residential buildings and buildings containing commercial or institutional uses shall have a main entrance facing a connecting walkway with a direct, safe, pedestrian connection to the street. Where the main entrance does not face the adjacent street, buildings shall nonetheless be designed to provide an attractive street-side façade.

5-25-5.6 Building Placement. Buildings shall be situated with regard to pedestrian and vehicular connectivity. Residential buildings and buildings containing commercial or institutional uses should be located close to the pedestrian street with off-street parking behind and/or beside the building. Important mountain vistas and views of significant historic sites should be protected and accentuated.

5-25-5.7 Privacy Considerations. Elements of the development plan should be arranged to maximize the opportunity for privacy by the residents of the project and minimize infringement on the privacy of adjoining land uses.

5-25-5.8 Architectural Details. NOTE: Sec. 5-25-5.8 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Architectural elements like openings, details, bulkheads, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant is encouraged to provide a building entry, additional building mass, and distinctive architectural elements at the corner of buildings. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned wherever practical. The appearance of all exposed façades (not just the street-side façade) is important and shall be addressed in development design. No development shall have exterior walls with a reflectivity value in excess of 35%, as measured under the applicable provisions of ASTM-C-1036. No reflective surfaces may be used on street level exterior facades.

5-25-5.9 Building Walls. NOTE: Sec. 5-25-5.9 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Buildings shall avoid long, monotonous, uninterrupted walls or roof planes on their visible façades. It is preferred that this design goal be achieved by means of building wall offsets, including projections, recesses, and changes in floor level, and roofline offsets. Such offsets add architectural interest and variety and can assist in creating human size proportions. Parapets shall be designed as integral to the mass of the

building. When multiple wall materials are combined on one façade, the designer is encouraged to pla heavier material(s) below.

5-25-5.10 Building Entrances. All buildings should include well-defined entrances facing the street at regular intervals. An operable entrance on each primary façade should be provided to encourage access by pedestrians. For buildings on corner lots, an entrance may be placed at the corner, thereby eliminating the need for side entrances.

5-25-5.11 Extensions into Building Setback. In addition to being permitted in urban open space areas, canopies, awnings, cornices and similar architectural accents are permitted on exterior building walls. Such features may be constructed of rigid or flexible material designed to complement the streetscape of the area. Any such facility may extend from the building up to one half of the width of the sidewalk area in front of the building or nine feet, whichever is less. Additionally, balconies and bay windows shall be allowed to extend from the building plane up to one-half of the width of the sidewalk area in front of the building or nine feet whichever is less provided they are located on the second floor or higher floor of the building on which they are located. Overhead walkways between buildings shall be allowed provided they are located on the third floor or higher floor of the buildings which they connect. If any extension allowed by this paragraph would reach into the public right-of-way, an encroachment agreement from the City or State is required. In no case shall any such facility extend beyond the curb line of any public street, nor should it interfere with the growth or maintenance of street trees. A minimum overhead clearance of ten feet from the sidewalk shall be maintained.

5-25-5.12 Building Scale. NOTE: Sec. 5-25-5.12 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings and the adjacent community. Thus the following standards shall apply within the Urban Residential Conditional Zoning District.

a) **Scale, Buildings Containing Nonresidential Uses.** The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:

1) The distance between required offsets is related to the height of the building wall on a one-to-one basis. Thus, a building which is 20 feet tall may have no more than 20 feet of façade wall between offsets. A building façade which is less than or equal to the height of the building shall not require an offset.

2) The height of any particular façade shall be measured from the average ground level to the soffit, or, if there is no soffit, to the parapet.

3) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel shall have a two-foot offset adjacent to such wall panel.

4) Each façade of a building shall comply with the offset requirements contained herein.

b) **Scale, Buildings Containing Only Residential Uses.** The following requirements apply to any building containing only residential uses:

1) The distance between required offsets shall be related to the height of the building on a basis of 1; provided, however, no wall shall exceed 16 feet in length without an offset. By way of illustration, a façade wall which is 20 feet tall may have no more than 15 feet of wall between offsets; however, a façade wall which is 30 feet tall, owing to the proviso, may have no more than 16 feet of wall between offsets. A building façade which is less than 16 feet in length shall not require an offset.

2) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.

3) Each façade of a building visible from a street shall comply with the offset requirements contained herein.

5-25-5.13 Internal Access and Connectivity. The site shall be traversed by a network of internal streets built according to City standards. Internal streets should seek to avoid cul-de-sacs and dead end roads and other features that hamper connectivity. However, roads may terminate at a monumental structure or green space. In such cases a sidewalk or other connection shall be provided to ensure the goals of connectivity. In addition, internal streets shall have sidewalks and street trees. If a bus line serves, or is expected to serve, the District, a bus shelter is required. Larger projects may require more shelters as determined by traffic impact analysis. Connectivity is a goal of the internal street system and external connections to areas outside and adjacent to the Urban Residential Conditional Zoning development should be created where possible. Only two driveways per block face are allowed.

5-25-5.14 Block Length. Block length may vary but shall not exceed 500 feet in length. For blocks on local streets that are 350 feet or longer, a mid-block pedestrian street crossing is required which may also include a parking lot driveway and/or pedestrian passageway between two or more buildings, and shall have curb extensions (bulb-outs) for ease and safety of pedestrian street crossing. Collector streets may also require mid-block pedestrian crossings as noted above.

5-25-5.15 Pedestrian Zone and Sidewalks. The pedestrian zone is the area between the street curb and the building edge or, for access roads, the street curb and the right-of-way area. The pedestrian zone includes sidewalks, street trees and other pedestrian amenities. The pedestrian zone will generally be fifteen feet wide but may be wider depending on the setback pattern. Sidewalks in Urban Residential Districts shall be required along one side of access streets and both sides of internal streets throughout the development. If appropriate to the design of the development, greenway paths may be substituted for sidewalks in residential areas to provide connections. The sidewalk shall be a minimum of seven feet wide in the Urban Residential Conditional Zoning District. All structures shall connect the building façade entrance with the street. The sidewalk may be as wide as the entire pedestrian area. Arcades, awnings, outdoor dining, shelters, seating areas, fountains, street trees, additional landscaped areas and other pedestrian amenities may be a part of this pedestrian area so long as seven feet of clear walking space is maintained. The pedestrian area may also be used to create an area for waiting, pick-up and drop-off. At locations such as intersections and other crosswalks, curb extensions (bulb-outs) are required to create safer pedestrian crossings.

5-25-5.16 Parking/Loading Standards. Parking and loading facilities shall be reviewed at the preliminary plan level. The applicant shall demonstrate that the amount of parking proposed is adequate to serve the needs of the development and is located and designed in such a fashion that it does not detract from the overall appearance of the development or unreasonably interfere with pedestrian activity.

a) **Amount of Parking.** Owing to the possibilities for shared use of parking, the number of parking spaces in the Urban Residential Conditional Zoning District should not exceed the minimum parking requirements for the District computed by means of the formulas contained in Section 6-5, below.

b) **On-Street Parking.** On-street parking is required for all local streets, and for collector streets wh determined by the Council, and shall count toward meeting the off-street parking requirements for the District. On-street parking may take the form of parallel or angle parking and shall be built according to city or state standards as applicable.

c) **Off-Street Parking.** Applicants for rezoning to the Urban Residential Conditional Zoning District Classification shall propose a master parking plan which shall provide sufficient parking for the entire project consistent with requirements of this section. Off-street parking lots are encouraged to be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures. No more than 20% of parking that is provided in an Urban Residential District may be in the form of stand-alone surface lots not located to the side or rear of buildings. Off-street parking shall not be adjacent to street intersections. Parking shall be permitted to extend into any setback area no more than two feet.

d) **Loading Standards.** Urban Residential Districts may share off-street loading facilities and are therefore allowed to provide these facilities at half the rate listed for the applicable uses. On-street loading spaces may be counted towards the project loading requirements as per Section 6-6 below.

e) **Landscaping.** Landscaping shall meet the requirements of Section 5-25-5.18.

5-25-5.17 Street Trees. Street trees are required in the pedestrian zone and along access roads at an average of one small maturing tree every 30 feet and one large maturing tree for every 40 feet for canopy trees. In selecting street trees, priority should be given to long-lived species proven to function well in urban settings with a form and branching pattern compatible with the space and type of adjacent traffic. Trees may be planted in minimum six-foot by six-foot pits. Tree frames and grates are not required but are recommended especially near store entrances, other sidewalk constraints, points of ingress, egress or public gathering areas. If tree grates are not used, an organic surfacing material shall be used to level the surface of the tree pit with the sidewalk. This material shall receive regular maintenance. To offer flexibility in the tree planting requirement, trees may be planted in planting strips adjacent to the curb edge of the sidewalk. Planting strips shall be no narrower than six feet wide. Planting strips may include grass, flowers and other plant material where appropriate. Planting strips may not be appropriate in pedestrian gathering areas. Notwithstanding the restrictions contained in other sections of this Ordinance or the City Code, no trees may be planted within thirty-five feet of street intersections.

5-25-5.18 Landscape / Buffering Standards. Landscaping and buffering shall be in accordance with Article XV of this Ordinance except as noted herein. Parking lots shall include interior and perimeter tree plantings made up of deciduous trees at a rate of one tree for every 1,500ft2 of vehicular use area. No parking space shall be farther than 45 feet from a tree. No shrubs are required for interior plantings for parking lots that are behind, to the side of, or located at the interior of the block of buildings. Parking areas adjacent to roadways require buffering from the street as specified in Article XV with the exception that the planting area will be eight feet wide. Stand-alone parking lots shall comply with all applicable landscape and buffering standards except that trees shall be provided at a rate of one tree for every 1,500 ft2 of parking and parking spaces shall be no further than 45 feet from a tree. Shrubs are also required as per the regular schedule. Landscaped islands within parking lots should be a minimum of 162 ft2 of planting area with a minimum width of eight feet if they are to include tree plantings. Buffering for Urban Residential Conditional Zoning District projects is measured and reviewed from the parcel lot lines used to establish the District and not on an internal lot by lot basis.

5-25-5.19 Open Space Standards. Functional open space enhances circulation within a site and contributes to the site's aesthetic qualities. All open space should be designed to be accessible and usable for occupants

and invitees of the Development. An Urban Residential Conditional Zoning District shall have an open space ratio of not less than 30%.

5-25-5.20 Common Space Standards. Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects. Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces. Common space design shall comply with the following:

a) **Size.** At least 10% of the acreage of a development shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.

b) **Trees.** One tree shall be planted for each 500 ft2 of common space. Trees shall have a minimum caliper of 3-3½ inches measured six inches above ground at the time of planting.

c) **Utilities.** All utilities service lines and connections shall be underground.

d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.

e) **Amenities.** Common space for a development shall include two or more of the following amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, public telephones, awnings, canopies, informational kiosks, and similar structures.

f) **Location.** A maximum of 30% of this required common space may be provided on an enclosed ground floor level provided the enclosed space meets all other requirements of these provisions.

Section 5-26 MSH Main Street Historic Overlay District. This district is designed to establish the main Street Historic District, a local historic district created pursuant to Chapter 28 of the City Code. It is an overlay zone, affecting the underlying zoning district only as stated herein.

5-26-1 Permitted Uses: Same as for underlying zoning district.

5-26-2 ~~Conditional Uses~~ Special Uses: Same as for underlying zoning district.

5-26-3 Development Requirements shall be the same as for underlying zoning district with the added requirement that no exterior portion of any building or other structure, nor above-ground utility structure, nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished without a ~~certificate of appropriateness~~ Certificate of Appropriateness issued by the Hendersonville Preservation Commission pursuant to Chapter 28, City Code.

Section 5-27 CHMU Commercial Highway Mixed Use Zoning District Classification. The Commercial Highway Mixed Use Zoning District Classification is intended to encourage a mix of high density residential development in conjunction with appropriately scaled and compatible commercial development, consisting of community and regional retail sales and services, professional offices, research facilities, restaurants, accommodations services and similar uses. Development design becomes a critical consideration when establishing regional activity centers that create attractive and functional roadway corridors which also encourage mixed-use and walkable design. In addition to the general dimensional and use provisions, the

regulations contained herein, along with those in Article XVIII which apply to mixed use zoning district classifications generally, address the design of buildings and development sites.*)*

5-27-1 Permitted Uses. The following uses are permitted by right in the CHMU Commercial Highway Mixed Use Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this Ordinance:

Accessory dwelling units subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Accessory uses & structures
Adult care centers registered with the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS)
Adult care homes
Agriculture
Animal hospitals & clinics so long as they contain no outdoor kennels
Automobile car washes
Automobile sales & service
Banks & other financial institutions
Business services
Camps
Child care centers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Child care homes
Civic clubs & fraternal organizations, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4
Congregate care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Construction trades facilities, so long as the storage of equipment and materials is screened from view from any public rights-of-way
Convenience stores with or without gasoline sales
Cultural arts buildings
Dance, health & fitness facilities
Day care facilities
Dry cleaning and laundry establishments containing less than 6,000 ft2 of floor area
Equipment rental & sales
Funeral homes
Greenhouses & commercial nurseries
Health clubs & athletic facilities
Home occupations
Hotels & motels
Laundries, coin-operated
Lawn & garden centers
Manufacturing, light
Music & art studios
Neighborhood community centers
Newspaper offices & printing establishments
Nursing homes, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Offices, business, professional and public
Parking lots & parking garages
Parks
Personal services

Progressive care facilities, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Public & semi-public buildings
Recreational facilities, indoors
Recreational facilities, outdoors, commercial
Religious institutions
Repair services, miscellaneous
Research & development with no outdoor storage and operations
Residential care facilities
Residential dwellings, single family
Residential dwellings, multi-family
Residential dwellings, two-family
Restaurants
Restaurants, drive-in
Retail stores (not including manufactured housing, boat & heavy equipment sales)
Schools, post-secondary, business, technical and vocational
Schools, primary & secondary
Service stations
Signs, subject to the provisions of Article XIII, below
Telecommunications antennas, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below
Theaters, indoors

5-27-2 ~~Conditional Uses~~ Special Uses. The following uses shall be permitted in the CHMU Commercial Highway Mixed Use Zoning District Classification only upon issuance of a ~~conditional use permit~~ Special Use Permit pursuant to Article X and shall be subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below:

Bus stations
Public utility facilities

5-27-3 Development Standards. The following standards shall apply to development within the CHMU Commercial Highway Mixed Use Zoning District Classification.

5-27-3.1 Parking & Loading. The requirements of Section 6-5, below, shall apply.

5-27-3.2 Dimensional Requirements.

Minimum Lot Area in Square Feet:	None
Minimum Lot Width:	None
Open Space Ratio:	≥.30
Common Space Ratio:	≥.10
Yard Requirements:	Varies with building type. See Design Standards.
Building Separation:	If buildings are separated, they must be separated by at least 15 feet. This provision shall not be construed to qualify any setback provisions contained elsewhere in this ordinance.
Building Height:	Varies with building type. See Design Standards.

5-27-3.3 Residential Density. The number of residential dwellings permitted on any development tract varies with regard to the open space ratio provided as noted on the following table.

Open Space Ratio	Maximum Dwelling Units / Acre
.40	8
.50	10
.60	12

5-27-4 Design Standards. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)
These standards are intended to apply to all development and redevelopment within the CHMU Commercial Highway Mixed Use Zoning District Classification. Applicants for authorization to undertake development or redevelopment within such zoning district shall demonstrate compliance with these standards or shall undergo alternative design review as provided for in Article XVIII, below.

5-27-4.1 Standards of General Applicability. The following standards shall apply to all development in the CHMU Commercial Highway Mixed Use Zoning District Classification regardless of use or building type.

5-27-4.1.1 General Site Development. Site development shall not result in the removal of lateral support for adjoining properties. Furthermore, development shall not create hazardous or dangerous conditions or result in the creation of a nuisance as specified in Section 6-13, below.

5-27-4.1.2 Physical Integration of Uses. Residential and commercial uses may be located within the same or adjoining structures provided appropriate health and safety regulations are followed.

5-27-4.1.3 Building Orientation. Primary façades, which may or may not contain an entrance to the building, shall face primary vehicular access or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street.

5-27-4.1.4 Common Space. NOTE: Sec. 5-27-4.1.4 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects. Common spaces are intended to be places for social interaction and, thus, may include impervious surfaces.

Unless interior common space is approved by the reviewing authority, common space shall be out-of-doors. Common space design shall comply with the following:

a) **Size.** At least 10% of the acreage of a site shall be devoted to common space. Common space shall count toward meeting open space requirements for a project.

b) **Trees.** One tree shall be planted for each 1000 ft2 of common space. Trees shall have a minimum caliper of 3-3½ inches measured six inches above ground at the time of planting.

c) **Utilities.** All utilities service lines and connections shall be underground.

d) **Seating.** Seating shall be provided to accommodate workers, residents and/or shoppers. Seating may be accomplished in whole or in part using planters or other similar structures.

e) **Amenities.** Common space for a development shall contain adequate amenities to animate and enliven the environment and to make it conducive for social interaction. Following is a list of such amenities: ornamental fountains, stairways, waterfalls, public art, arbors, trellises, planted beds, drinking fountains, clock pedestals, awnings, canopies, informational kiosks, and similar structures. This list is not intended to be exhaustive.

5-27-4.1.5 Architectural Details. NOTE: Sec. 5-27-4.1.5 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The appearance of all street side façades is important and shall be addressed in development design. Architectural elements like openings, sill details, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant shall provide distinctive architectural elements at the corner of buildings facing the intersection. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned.

All buildings shall provide detailed design along all façades which are visible from a street or common space. Detailed design shall be provided by using at least three of the following architectural features.

Dormers.
Gables.
Recessed entries.
Covered porch, entries.
Cupolas or towers.
Pillars or posts.
Eaves (minimum 6-inch projection).
Off-sets in building face or roof.
Window trim (minimum nominal four inches wide).
Bay windows.
Balconies.
Decorative patterns on exterior finish (e.g. scales / shingles, wainscoting, ornamentation).
Decorative cornices and roof lines (for flat roofs).

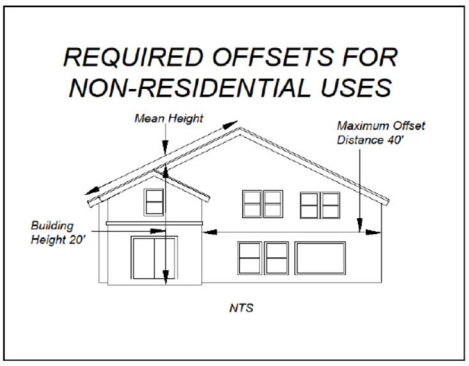
5-27-4.1.6 Building Façades. NOTE: Sec. 5-27-4.1.6 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Front, rear and side façades of buildings shall contain at least two building materials which shall contrast in color and texture. At least 15% of the façade, exclusive of windows, doors and trim, shall consist of stone, brick, decorative concrete or decorative block.

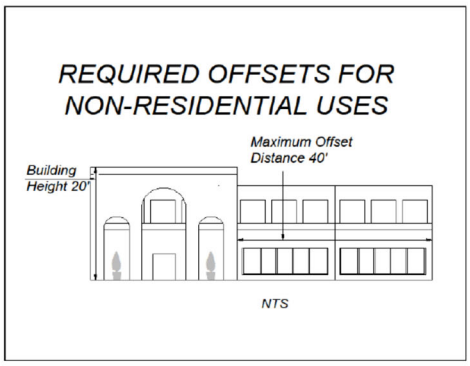
5-27-4.1.7 Windows. NOTE: Sec. 5-27-4.1.7 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Windows shall either be (1) recessed a minimum of three inches from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.

5-27-4.1.8 Building Scale. NOTE: Sec. 5-27-4.1.8 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
The scale of a building is a function of the size of the individual pieces of a building and their relationship to each other. The scale of a building is important in order to contribute to the overall diversity of building types, to give visual interest, and to maintain compatibility between buildings. These design standards regulate scale by means of offsets, that is, protrusions or breaks in the plane of façades.

a) **Scale, Buildings Containing Nonresidential Uses.** The following requirements apply to any building containing nonresidential uses, regardless whether the building also contains residential uses:

1) The distance between required offsets is related to the height of the building wall on a two-to-one basis. A building façade which is less than or equal to the height of the building shall not require an offset.





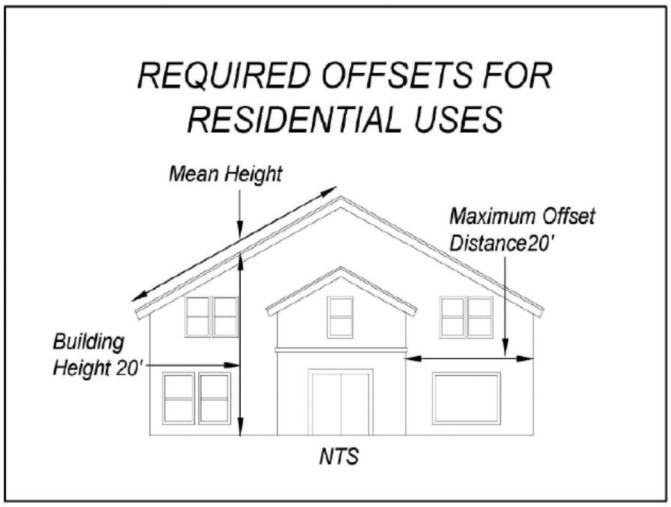
2) The height of any particular façade shall be measured from the average ground level to the mean height level between the eaves and ridge of a gable, hip or gambrel roof, or for flat roofs, to the top of the parapet.

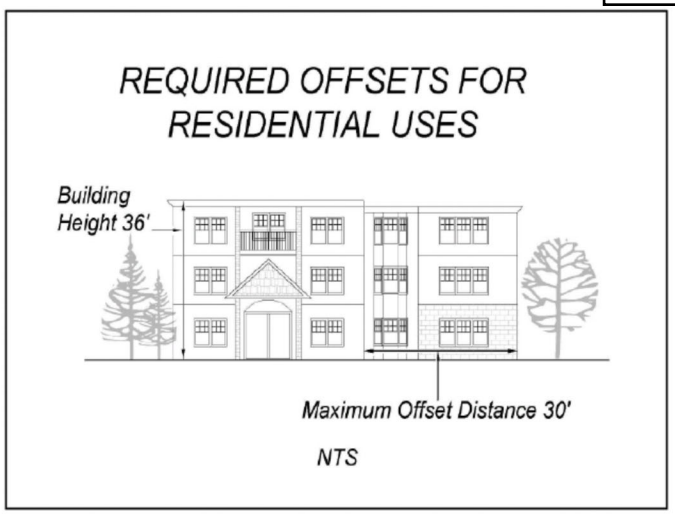
3) The depth or projection of the offset shall be 1/10th the length of the longest adjacent wall panel; provided, however, the minimum offset depth shall be one foot. By means of illustration, a building with a 20-foot wall panel shall have a two-foot offset adjacent to such wall panel.

4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.

b) **Scale, Buildings Containing Only Residential Uses.** The following requirements apply to any building containing only residential uses:

1) The distance between required offsets shall be related to the height of the building on a one-to-one basis; provided, however, no wall shall exceed 30 feet in length without an offset. A building façade which is less than or equal to the height of the building shall not require an offset. Provided, however, the provisions of this paragraph shall not be construed to require an offset for that portion of a façade containing a two-car garage.





2) The height of any particular façade shall be measured from the average ground level to the mean height level between the eaves and ridge of a gable, hip or gambrel roof, or, for flat roofs, to the top of the parapet.

3) Offsets shall have a minimum depth or projection of two feet regardless of the length of adjacent wall façades.

4) Each façade of a building visible from a street or common space shall comply with the offset requirements contained herein.

5-27-4.1.9 Streets and Sidewalks. Streets and sidewalks shall comply with the circulation and access requirements contained in Section 18-6-4.6, below.

5-27-4.1.10 Building Materials. NOTE: Sec. 5-27-4.1.10 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Building materials shall be used consistently on the exterior of the building and shall comply with the lists of prohibited materials contained herein.

Prohibited Building Materials. Unless authorized through alternative design compliance, the following building materials shall be prohibited within the CHMU Commercial Highway Mixed Use Zoning District Classification: plain concrete block (with or without paint); corrugated or ribbed metal siding; reflective glass; more than 50% glass on any façade; roll roofing; roll siding; plain unfinished concrete (painting does not constitute a finish); aluminum; unpainted metal; exposed plain pipe columns; metal wall siding; and any other materials not customarily used in conventional construction.

~~**5-27-4.1.11 Certain Exemptions for Single-Family and Two-Family Detached Dwellings.** Detached single-family and two-family dwellings shall be exempt from the requirements contained in Sections 5-27-5.1.4 (common space) and 5-27-5.1.8 (building scale).~~

5-27-4.2 General Standards for Residential Developments. NOTE: Sec. 5-27-4.2 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)

The following standards shall apply to developments containing only residential uses with the exceptio that multi-family buildings must comply with the general standards contained in Section 5-27-5.3, below.

5-27-4.2.1 General Appearance. Residential development shall contain a variation of façades and materials so that there shall not be a row or strip housing appearance. Means to accomplish this goal may include the use of dormers, gables, recessed entries, covered porch entries, bay windows, cupolas or towers, and a variation in the depth and height of walls, among others.

5-27-4.2.2 Architectural.

a) Useable porches and/or stoops, at least eight feet in width, shall be located on the front and/or side of the home.

b) Front-loading garages and carports shall be offset from the front façade of the house and visually designed to form a secondary building volume. Developers are encouraged to turn garages and carports so the openings or doors are not visible from the street. At no time shall the width of an attached garage exceed 50% of the total building façade.

c) Accessory buildings with a floor area greater than 150 ft2 shall be clad in materials similar in appearance to the principal structure.

d) Walls and fences located in the front yard shall be decorative and limited in height to no more than four feet above grade. Front-yard walls shall be of brick, stone or stucco. Front yard fences shall be wood, wrought iron or materials similar in appearance and durability. Side and rear yard fences may be chain link, wood, wrought iron, or similar material.

5-27-4.2.3 Configurations.

a) Main roofs on residential buildings shall be gables, hips or clerestory with a pitch between 5:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to a wall of the main building.

b) Foundation walls (except those under porches) shall be finished with brick, stucco or stone. If crawlspaces of porches are enclosed, they shall be enclosed with brick, stone, and lattice or any combination thereof.

5-27-4.3 General Standards for Nonresidential and Multi-Family Buildings. The following standards shall apply to all buildings containing nonresidential uses and multi-family dwellings.

5-27-4.3.1 Storage, Utility & Service Areas. Areas devoted to storage, garbage, recycling collection and utilities shall be enclosed and screened around their perimeter, and constructed of materials consistent with the principal building. Gas meters, electric meters, ground-mounted mechanical units, and any other similar structures shall be hidden from public view or screened with approved construction materials. Fences designed for screening shall be constructed of brick, stone, architectural stucco, concrete, wood or iron. Roof vents, mechanical units, utility equipment and telecommunication receiving devices located on the roof shall be screened from view. Solar technology components including solar panels and solar thermal collectors are exempt from this provision.

5-27-4.3.2 Parking & Vehicular Access. All vehicular use areas shall be set back a minimum of 20 feet from the right-of-way line of public right-of-way and shall be screened from view from such rights-of-way in accordance with Article XV, below.

5-27-4.3.3 Encroachments. Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

5-27-4.3.4 Roofs. Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

5-27-4.4 Specific Standards for Single-Family and Two-Family Detached Dwellings.

Minimum Setbacks:	Front: 15 feet Sides: 20% of lot width. The entire setback may be allocated to one side. Rear: 10 feet
Minimum Lot Width:	50 feet
Maximum Height:	2 ½ stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet.
Accessory Structures	Side: 3 feet Rear: 3 feet

5-27-4.5 Specific Standards for Townhouses. The townhouse is a building with two or more residential units that are located side-by-side. When an entrance is provided at-grade, the townhouse may be used as a live-work unit.

Minimum Setbacks:	Front: 8 feet Sides: 0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet Rear: 15 feet from centerline of alley, if applicable.
Minimum Lot Width:	16 feet
Maximum Height:	3 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the City.
Accessory Structures	Side: 3 feet Rear: 3 feet
Maximum Footprint:	400 ft2
Maximum No. of Structures:	1

5-27-4.6 Specific Standards for Multi-Family Dwellings. Multi-family dwelling consists of three or more dwelling units vertically and/or horizontally arranged. The ground floor may be available for commercial uses.

Minimum Setbacks:	Front: 10 feet Sides: 15 feet plus 5 feet for each floor above 2. Rear: 15 feet plus 5 feet for each floor above 2.

Parking:	Off-street parking shall be located in the rear or side y only and shall be screened from view from public roadways. On- street parking is encouraged for private streets and drives.
Vehicular Access:	Primary vehicular access from public roads shall be accomplished by means of a rear lane or alley only. No curb cuts or driveways are permitted along the frontage except for vehicular access to rear parking. These limitations shall not apply to parcels or buildings where primary vehicular access is by means of a private street or drive.
Maximum Height:	4 stories.
Encroachments:	Balconies, stoops, stairs, chimneys, open porches, bay windows, roof overhangs and raised doorways are permitted to encroach into the front setback a maximum of five feet. Upper story balconies may encroach into the right-of-way up to five feet with permission from the City.
Accessory Structures	Side: 0 feet Rear: 0 feet
Maximum Footprint:	400 ft2

5-27-4.7 Specific Standards for Commercial & Institutional Buildings. Commercial buildings are structures which can accommodate a variety of uses mixed either horizontally (shopping center) or vertically (dwelling unit over a store). Office buildings, hotels and inns can be placed in commercial buildings. Buildings containing both commercial and residential uses shall be classified as commercial buildings for the purposes of this section. Institutional buildings are specialized public or semi-public buildings intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, hospitals, post offices, and nonprofit or charitable clubs and organizations. Note there are exceptions from the maximum height restrictions for steeples, cupolas and similar structures. These are contained in Section 8-2, below.

Minimum Height:	14 feet to the top of the parapet for buildings with flat roofs. There is no minimum height requirement for other buildings.
Maximum Height:	4 stories
Minimum Setbacks:	Front: 10 feet Sides: 15 feet plus 5 feet for each floor above 2. Rear: 15 feet plus 5 feet for each floor above 2.
Minimum Lot Width:	None.
Encroachments:	Balconies, stoops, chimneys, roof overhangs and bay windows are permitted to encroach into any setback up to 5 feet.
Accessory Structures	Side: 3 feet Rear: 3 feet.

Section 5-27-5 CHMUCZD Commercial Highway Mixed Use Conditional Zoning District Classification. The purpose and requirements of this classification are identical to the CHMU Commercial Highway Mixed Use Zoning District Classification except that a rezoning to CHMU Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be

permitted in the CHMU Commercial Highway Mixed Use Conditional Zoning District Classification only rezoning to CHMUCZD.

Development or redevelopment exceeding 50,000 ft2 of gross floor area.
Telecommunications towers, subject to ~~special requirements~~ Supplementary Standards contained in Section 16-4, below.
Permitted uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in 5-27-1, above.
~~Conditional uses~~ Special Uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in 5-27-1, above.

This page intentionally left blank.

ARTICLE VI
GENERAL PROVISIONS

Section 6-1 Application of Regulations. The regulations set forth in this Ordinance affect all land, every building, and every use of land and/or building and shall apply as follows:

6-1-1 Use. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this Ordinance for the district in which it is located.

6-1-2 Height and Density. No building shall hereafter be erected or altered so as to exceed the height limit or to exceed the density regulations of this Ordinance for the district in which it is located.

6-1-3 Lot Size. No lot, even though it may consist of one or more adjacent lots of record in single ownership, shall be reduced in size so that the lot width or depth, front, side or rear yard, lot area per dwelling unit, or other requirements of this Ordinance are not maintained. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land for public utilities or street right-of-way purposes.

6-1-4 Yard Use Limitations. No part of a yard or other open space required about any building or use for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or other open space similarly required for another building or use.

6-1-5 One Principal Building on a Lot. Every building hereafter erected, moved or structurally altered shall be located on a lot, and in no case shall there be more than one principal building and its customary accessory buildings on the lot, except in the case of specially designed complexes of institutional, residential, commercial or industrial buildings in an appropriate zoning district classification.

6-1-6 Lot Frontage. All lots shall front on a public street.

6-1-7 Corner Lots. In any residential district, the side yard requirements for corner lots along the side street shall be increased by ten feet. Accessory buildings shall observe all setback requirements.

6-1-8 Accessory Structures. Accessory structures shall not be located in any required front yard or any required front or side yard of a corner lot. In all other cases, the accessory structure shall meet the setback requirements for the zoning district classification in which it is located.

6-1-9 Calculation of Lot Areas. No part of a road right-of-way lying within lot lines may be used in calculating minimum lot sizes requirements.

Section 6-2 Nonconformities. The purpose of this section is to regulate and limit the continued existence of uses and structures lawfully established prior to the effective date of this ordinance, or any amendment thereto, that do not conform to such ordinance, as amended. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this section. As used in this section, the term, “effective date of this ordinance, or any amendment thereto,” refers to the date of the ordinance which first rendered a use, structure or land nonconforming.

6-2-1 Nonconforming Uses. A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this ordinance, or any amendment thereto, but which does not conform to the regulations for the zoning classification in which it is located.

Nonconforming uses may be continued subject to the following limitations:

a) No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings or structures than was occupied by such use at the time it became nonconforming; provided, however, a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.

b) No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use; provided, however, such building or structure may be enlarged or extended upon prior authorization from the Board of Adjustment, which authorization shall not be granted unless the Board of Adjustment makes each of the following findings of fact:

1) The proposed enlargement or extension shall be de minimis in relation to the existing building or structure.

2) The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase in dwelling units for a residential use nor in gross floor area for a nonresidential use.

3) The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible than it is in its existing circumstances.

4) The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

c) A nonconforming use of a structure may not be changed to another nonconforming use unless such change is authorized by the Board of Adjustment. In order to authorize a change in nonconforming use, the Board of Adjustment shall consider the relative impacts of the existing nonconforming use and the proposed nonconforming use with regard to traffic, noise, pollution, visual appearance and compatibility with the neighborhood, and shall make the following findings:

1) The proposed use is expected to result in impacts which are less than those associated with the existing use.

2) The proposed use will be more compatible with the surrounding neighborhood than is the existing use.

3) Approval of the change in nonconforming use serves the public health, safety and general welfare.

4) Failure to approve the change in nonconforming use would result in a hardship to the owner of the property on which the nonconforming use is situated.

An existing nonconforming use shall be discontinued within 60 days of the date of approval of a change in nonconforming use. Subsequent to that time, such existing use shall become unlawful.

d) Where a nonconforming use ceases for 180 consecutive days, then the use shall not be re-established or resumed, and any subsequent use of the land or structure shall conform to the requirements of this ordinance. Vacancy and non-use of the building or structure, regardless of the intent of the owner, shall constitute discontinuance under this provision.

e) Where a building or structure devoted to a nonconforming use is damaged to the extent of 50% or m of its current value, such building or structure, if restored, shall thereafter be devoted to conforming uses. Provided, however, AM radio, FM radio, and television towers and associated facilities may, in conformance with this subsection, be repaired and used as before, so long as tower dimensions are not increased, regardless of the degree of damage. This section shall not apply to structures regulated by Article XIII of this ordinance.

6-2-2 Nonconforming Structures. A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.

b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.

d) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:

1) The change in use or renovation does not increase the floor area of the structure.

2) The change in use is to a permitted use within the district.

3) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.

e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.

f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.

g) Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50% of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

6-2-3 Nonconforming Vacant Lots. A nonconforming vacant lot is a lot that was lawfully created prior to the effective date of this ordinance, or any amendment thereto, but which does not conform to the minimum gross land area or minimum lot requirements for the zoning classification in which it is located.

a) Except as provided herein, a nonconforming vacant lot may be used for any of the uses permitted by this ordinance in the zoning classification in which it is located, provided that the use meets all limitations and minimum requirements for setback and yards, height, open space, buffers, screening, parking, density and floor area required in this ordinance for the zoning classification in which the lot is located.

b) If compliance of the structure(s) intended on the nonconforming lot with applicable setback requirements is not reasonably possible, the nonconforming lot may be used as a building site subject to the granting of a ~~variance~~ Variance from such setback requirements by the Board of Adjustment in accordance with the provisions of Article X.

c) With regard to residential dwellings, ~~variances~~ Variances authorized pursuant to subsection b), above, shall be limited to single-family dwellings. Two-family or multi-family residential dwellings shall not be entitled to such a ~~variance~~ Variance.

d) Where a nonconforming lot abuts another lot of record (whether conforming or nonconforming) held in the same ownership at or subsequent to enactment of this section, such lots shall be combined or recombined as necessary to form a conforming lot or lots and shall not thereafter be subdivided except in compliance with all of the requirements of the Subdivision Ordinance. Where a nonconforming lot was created by public taking action or as a result of a court order, the above combination or recombination of lots shall not be required.

6-2-4 Repairs and Maintenance. Minor repairs to and routine maintenance of land, buildings, structures, or other development of land devoted to a nonconforming use or having nonconforming structures are permitted, provided the cost of such repairs and maintenance within any 12 month period does not exceed 10% of the current assessed taxable value of the land, buildings, structure, or other development of land.

Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the Code Enforcement Officer or Building Inspector because of lack of repairs and maintenance shall not be restored, repaired, reconstructed, or used except in conformity with the provisions of this section.

Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the Zoning/Code Enforcement Officer or Building Inspector but not because of lack of repairs and maintenance, may be repaired and restored subject to the requirements of this section.

Section 6-3 Interpretation of District Regulations. The regulations for the various zoning district classifications shall be enforced and interpreted according to the following rules:

6-3-1 Uses. Uses not designated as permitted~~, conditional or special,~~ or Special Use shall be prohibited. Permitted uses subject to ~~special requirements~~ Supplementary Standards, ~~conditional uses~~ and ~~special uses~~ Special Uses shall be permitted only according to the additional regulations imposed. Permits for a ~~conditional use~~ Special Use shall be approved or disapproved by the Board of Adjustment. ~~Permits for a special use shall be approved or disapproved by the City Council.~~

6-3-2 Minimum Regulations. Regulations set forth by this Article shall be general requirements applicable to all uses in all district classifications, unless other regulations are more restrictive or establish a higher standard.

6-3-3 Land Covenants. ~~Unless restrictions established by covenants with the land are prohibited by or are contrary to the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative.~~ Where property is subject to private restrictions or covenants, such restrictions shall not operate to lessen or invalidate the requirements of this Ordinance, nor shall the provisions of the Ordinance operate to lessen or invalidate the private restrictions or covenants. Where the private restrictions or covenants conflict with the terms of this Ordinance, the more restrictive provision(s) shall govern development of the property. More restrictive provision shall mean that, as

between the provision(s) in the private restrictions or covenants and this Ordinance, the more restric provision(s) is the one that imposes greater restrictions or burdens, or more stringent controls.

Section 6-4 Visibility at Intersections. On a corner lot nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of two and one-half feet and ten feet in a triangular area formed by a diagonal line between two points on the right-of-way lines, 20 feet from where they intersect. This regulation does not apply in the C-1 Central Business District.

Section 6-5 Off-Street Parking.

6-5-1 Purpose. The purpose of this section is to specify off-street parking requirements that provide adequate parking facilities to meet the needs generated by the proposed use. These requirements are intended to establish standards that ensure off-street parking areas are designed and located to protect the public health, safety and welfare, expedite traffic movements, minimize congestion and protect surrounding neighborhoods and uses.

6-5-2 General Provisions.

6-5-2.1 Off-Street Parking. All new development, additions to buildings or structures, or conversions of use for which a zoning compliance permit is required shall provide permanently maintained off-street parking in accordance with the regulations of this Section.

6-5-2.2 Change of Use. When the existing use of any building, structure or property is changed to a new use, off-street parking based on the new use shall be provided as required by this Section.

6-5-2.3 Expansion of Building, Structure or Use. When a building, structure or use is enlarged or increased in square footage of floor area, seating capacity, number of employees, or otherwise, off-street parking shall be provided as required by this Section.

6-5-2.4 Multiple Uses. Where multiple uses within a building or structure are identified or multiple buildings or structures are located on a single lot, the minimum off-street parking requirements for the various uses shall be computed separately. The required parking spaces for the number of separate uses may be combined in one lot, provided the required space assigned to one use may not be assigned to another use at the same time except as otherwise provided herein.

6-5-2.5 Exemption to Off-Street Parking. Off-street parking is not required in the Seventh Avenue Municipal Service District.

6-5-2.6 Minimum Number of Parking Spaces. The minimum number of parking spaces shall be provided for each use as set forth in Table 6-5-2, except as otherwise provided by ordinance. *[See Article V, Section 5-6-3.1 for the C-1 Central Business Zoning District Classification parking and loading requirements.]* For the purposes of parking calculations, the gross floor area of any parking garage shall not be included within the gross floor area of the building. For any use not specified in Table 6-5-2 or otherwise provided by ordinance, specific requirements shall be determined by the Community Development ~~Assistance~~ Director and shall be based upon requirements for similar uses, expected traffic generated by the proposed use, and other information from appropriate traffic engineering and planning criteria.

6-5-2.7 Use of Off-Site Parking. Individual parking spaces shall be limited to the parking of motor vehicles. However, off-street parking in excess of the minimum requirements may be used for other purposes such as storage, as provided by ordinance.

6-5-2.8 Accessible Parking Spaces. Off-street parking areas shall be in accordance with the Americans with Disabilities Act (ADA) standards and the North Carolina Accessibility Code.

6-5-2.9 Landscaping Requirements for Off-Street Parking and Vehicular Use Areas. Landscaping for off-street parking and vehicular use areas shall be in accordance with the provisions of Article XV, below.

6-5-2.10 Lighting. Lighting for off-street parking and vehicular use areas shall be in accordance with the provisions of Article VI, Section 6-13-4, below.

6-5-2.11 Off-Street Loading and Unloading. Off-street loading and unloading shall be in accordance with the provisions of Article VI, Section 6-6, below.

6-5-2.12 Rounding of Quantities. When calculating the number of required parking spaces results in a fraction, the fractional requirement shall be rounded up to the next highest whole number.

6-5-2.13 Certificate of Zoning Compliance. All off-street parking and loading requirements shall be in place and ready for use prior to issuance of a certificate of zoning compliance.

Table 6-5-2

USES	PARKING SPACE REQUIREMENT
Animal hospitals & clinics	1 per each 200 ~~ft2~~ square feet of gross floor area
Animal boarding facilities	1 per each 400 ~~ft2~~ square feet of gross floor area
Art galleries, museums	1 per each 500 ~~ft2~~ square feet of gross floor area
Automobile sales, service & repair	1 per 2 employees at maximum employment on a single shift and 2 per each 300 ~~ft2~~ square feet of repair or maintenance space
Bed & breakfast facilities	2 per the dwelling unit and 1 per each lodging unit
Bowling alleys	2 per each lane plus 1 additional for each 2 employees
Breweries	1 per each 2 employees at maximum employment on a single shift
Bus stations	1 per each 4 seats in waiting area
Camps	1 per each site plus 10 additional
Car wash, full service	1 per 2 employees at maximum employment on a single shift and stacking area 10 times the capacity of the car wash.
Car wash, self service	0.5 per each wash bay plus 2 per each wash bay for stacking
Child care centers	1 per employee plus 4 drop-off and pick-up
Child care home	1 per employee plus 4 drop-off and pick-up

USES	PARKING SPACE REQUIREMENT
Cideries	1 per each 2 employees at maximum employment on a single shift
Cideries,(hard)	1 per each 2 employees at maximum employment on a single shift
Civic clubs, private clubs & fraternal organizations	1 per each 250 ~~ft2~~ square feet of gross floor area
Conference center	1 per each 3 persons allowed based on the maximum occupancy as established by local codes
Congregate care facilities	1 per each independent dwelling unit and 1 for every 10 in- dependent dwelling units for visitors and 1 per employee on the largest shift and 1 per every 4 beds for assisted living or nursing beds
Convenience stores with or without gasoline sales	1 per each 200 ~~ft2~~ square feet of gross floor area
Day care facilities	1 per employee plus 4 drop-off and pick-up
Day centers	1 per 2 employees and volunteers at maximum staffing on a single shift
Distilleries	1 per each 2 employees at maximum employment on a single shift
Exhibition buildings	1 per each 3 persons allowed based on the maximum occupancy as established by local codes
Fairgrounds	1 per 4 seats provided for patron use plus 1 per each 100 ~~ft2~~ square feet of floor or ground area used for amusement or assembly but not containing fixed seats
Fitness, athletic & dance facilities	1 per each 150 ~~ft2~~ square feet of gross floor area
Financial services	1 per each 300 ~~ft2~~ square feet of gross floor area
Food pantries	1 per 2 employees and volunteers at maximum staffing on a single shift
Gas Station, self service	2 per each employee at maximum employment on a single shift
Gas Station, combined with other use	Follow other use parking requirement
Golf courses	4 per tee
Golf driving ranges, par 3 golf	1 per tee
Grocery stores	1 per each 200 ~~ft2~~ square feet of gross floor area.
Hardware & home improvement center	1 per each 300 ~~ft2~~ square feet of gross floor area
Heavy equipment, sales, rentals, leases and service	1 per 2 employees at maximum employment on a single shift
Hospitals	1 per each 2 patient beds
Hotels & motels	1 per guest room plus 1 per 600 ~~ft2~~ square feet of public meeting area and restaurant area
Libraries	1 per each 4 seats provided for patron use

USES	PARKING SPACE REQUIREMENT
Manufacturing	1 per each 2 employees at maximum employment on a single shift
Microbreweries	1 per each 3 seats or stools plus 1 per each 2 employees on the shift with the largest employment
Mini-warehouses, exterior openings	1 per 2 employees at maximum employment on a single shift
Mini-warehouses, interior openings	1 per 2 employees at maximum employment on a single shift plus 1 per 20 rental units
Mobile food vendors	2 per vendor or motor vehicle
Mortuary , funeral homes, cemeteries, mausoleums, columbariums, memorial gardens, crematoriums	1 per each 4 seats in assembly room or chapel
Music & art studios	1 per each 150 ~~ft2~~ square feet of gross floor area
Nursery & greenhouses, commercial	1 per 2 employees at maximum employment on a single shift
Nursery, lawn & garden centers	1 per each 400 ft^2 of indoor gross floor area plus 1 per each 1000 ~~ft2~~ square feet of outdoor display and storage
Nursing homes	1 per each 6 patient beds plus 1 per each staff or visiting doctor plus 1 per each employee on the largest shift
Offices, medical	1 per each 250 ~~ft2~~ square feet of gross floor area
Offices, professional, business or public	1 per each 400 ~~ft2~~ square feet of gross floor area
Personal services	1 per each 200 ~~ft2~~ square feet of gross floor area
Pharmacy/Drug store	1 per each 300 ~~ft2~~ square feet of gross floor area
Planned residential development	1.5 per unit w/ 1 or 2 bedrooms and 2 per unit w/ 3+ bedrooms
Progressive care facilities	1 per each independent dwelling unit plus one per each 10 independent dwelling units for visitors plus 1 per every employee on the largest shift plus 1 per every 4 beds for assisted living or nursing care beds
Public assembly	1 per 4 seats provided for patron use plus 1 per each 100 ~~ft2~~ square feet of floor or ground area used for amusement or assembly but not containing fixed seats
Recreational facilities, indoors	1 per each 200 ~~ft2~~ square feet of gross floor area
Religious institutions	1 per each 4 seats
Residential dwellings	1 per each dwelling unit or 1.5 per each dwelling unit exceeding three bedrooms
Rest and convalescent homes, homes for the aged and similar institutions	1 per 6 patient beds and 1 for each staff or visiting doctor and 1 for every employee on the largest shift for the entire project
Restaurants	1 per each 3 seats or stools plus 1 per each 2 employees on the shift with the largest employment

USES	PARKING SPACE REQUIREMENT
Restaurants, drive – in	1 per each 3 seats or stools plus 1 per each 2 employees on the shift with the largest employment
Retail stores and shopping centers	1 per each 250 ~~ft2~~ square feet of gross floor area. For uses with greater than 40 % gross floor area used for inventory storage not accessible to the general public, the inventory storage area may be calculated at 1 per 500 ~~ft2~~ square feet
Schools, college, business, technical & vocational	1 per each 3 students plus 1 for each 2 employees
Schools, high school	1 per each 10 students plus 1 per each classroom and administrative office
Schools, primary & secondary	2 per each classroom and administrative office
Shelter facilities	1 per 2 employees and volunteers at maximum staffing on a single shift.
Theaters, indoor	1 per 4 seats provided for patron use plus 1 per each 100 ~~ft2~~ square feet of floor or ground area used for amusement or assembly but not containing fixed seats
Theaters, outdoor	1 per 4 seats provided for patron use plus 1 per each 100 ~~ft2~~ square feet of floor or ground area used for amusement or assembly but not containing fixed seats
Veterinary clinics	1 per each 200 ~~ft2~~ square feet of gross floor area
Wineries	1 per each 2 employees at maximum employment on a single shift
Wholesale & industrial	1 per each 2 employees at maximum employment on a single shift

6-5-3 Shared and Off-Site Parking. Parking requirements for two or more uses may be satisfied with shared parking. Shared parking may be approved only when the subject uses have inherent differences in parking activity patterns and the right of joint use of a parking facility is evidenced by a contract establishing joint use. Shared parking shall be subject to review and approval by the Community Development ~~Assistance~~ Director or a designee.

6-5-3.1 Shared Parking Location. Parking shall be provided on the same lot or, in the case of a planned development with multiple buildings, within the planned development.

6-5-3.2 Off-Site Parking Location. Off-site parking, whether shared or not, shall be on a lot located within 200 feet of the use lot as measured from the exterior property boundary of the use lot to the exterior property boundary of the off-site parking lot.

6-5-3.3 Shared Parking Report. Calculation of shared parking requirements shall be based on a professional parking analysis and management plan provided by the applicant. The report shall include a basis for predicting the parking required for a particular mix of uses on a lot, or on a lot and the off-site lot.

6-5-3.4 Implementation. The owner or manager of a project approved under the shared and off- site parking alternative, once built, shall maintain an accurate, up-to-date record of the usage of the gross floor area for the project, both occupied and vacant, according to type of use. Community Development

~~Assistance~~ Director or a designee may require this record be provided when the owner applies for a ne or development approval for the subject lot.

6-5-3.5 Parking Affidavit. When shared or off-site parking is permitted, the owner of the site(s) on which the parking is located shall file a parking affidavit with the Community Development ~~Assistance~~ Director or a designee. The parking affidavit shall transfer the rights of a specific number of parking spaces from one property (which can no longer take credit for them) to another for the specific hours of use supported by the parking analysis.

6-5-4 Reduction of Off-Street Parking Requirements. Where it can be demonstrated through a professional parking analysis and management plan that the demand for parking is less than that required in Table 6-5-2, or as otherwise provided by ordinance, a special exception to the requirements may be granted by the Community Development ~~Assistance~~ Director or a designee to satisfy the minimum parking requirements.

6-5-4.1 Parking Report. Calculation of parking requirements shall be based on a professional parking analysis and management plan provided by the applicant and reviewed by the Community Development ~~Assistance~~ Director or a designee. The Community Development ~~Assistance~~ Director or a designee may require a parking demand study conducted by a licensed traffic engineer or other traffic professional acceptable to the Community Development ~~Assistance~~ Director or a designee.

6-5-4.2 Maximum Reduction. The maximum reduction in required parking shall not exceed 40%. This waiver of required parking may not be combined with other allowed parking reductions.

6-5-4.3 Reservation of Parking Area. The site plan shall show all required parking spaces, including those for which a reduction is requested. No structures or other improvements except parking, driveways, and underground utilities may be constructed within the unimproved parking area and said area shall be landscaped. Landscaping materials shall be subject to review and approval by the Community Development ~~Assistance~~ Director or a designee.

6-5-5 Minimum Design Requirements.

6-5-5.1 Motor vehicle parking spaces shall measure 9 feet by eighteen feet.

6-5-5.2 All parallel motor vehicle parking spaces shall measure 9 feet 6 inches by twenty-two feet.

6-5-5.3 Parking spaces shall be designed to prevent a vehicle from protruding or overhanging a sidewalk.

6-5-5.4 Uncovered off-street parking may be located in required yards.

6-5-5.5 Back-out parking into the street right-of-way is prohibited except for single, two, three and four-family dwellings.

6-5-5.6 Aisle width shall be based on parking angle and direction of flow according to Table 6-5-5.

Table 6-5-5

Parking Angle (Degrees)	One Way Aisle Width (Feet)	Two way Aisle Width (Feet)
30º	14'	18'
45º	15'	19'

60º	17'	21'
90º	24'	24'

Section 6-6 Off-Street Loading and Unloading Space. Development and redevelopment projects in all districts except the C-1 Central Business District shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley or, if there is no alley, to a street. For the purposes of this section, an off-street loading space shall have a minimum dimension adequate to accommodate the largest vehicles expected to be served and, in any event, no less than 12 feet by 40 feet and an overhead clearance of 14 feet in height above the alley or street grade.

Retail operations: One loading space for each 20,000 ft2 of gross floor area or fraction thereof.
Wholesale and Industrial Operations:

Building Area in ~~ft2~~ square feet	**Number of Spaces**
1 – 40,000	1
40,000 – 100,000	2
100,000 – 160,000	3
160,000 – 240,000	4
240,000 – 320,000	5
320,000 – 400,000	6
Each 90,000 above 400,000	1 additional

Section 6-7 [Reserved.] See Section 6-1-7.

Section 6-8 [Reserved.] See Section 6-1-8.

Section 6-9 Outdoor Retail Sales, Outdoor Retail Display and Outdoor Retail Storage.

6-9-1 Purpose: The purpose of this section is to provide for the appropriate location and design of outdoor retail sales, outdoor retail display and outdoor retail storage of inventory in conjunction with legally operating businesses. The intent is to protect the flow of vehicular and pedestrian traffic, maintain emergency access and minimize the visual impacts to surrounding properties and private and public rights-of-way.

6-9-2 General Provisions.

6-9-2.1 Permitted Districts: Outdoor retail sales, outdoor retail display and outdoor retail storage shall be permitted as an accessory use and seasonal outdoor retail sales not exceeding 90 consecutive days in a 12-month period shall be permitted as a principal or accessory use in the following zoning district classifications provided they meet all requirements of this section and all other requirements established in this Ordinance:

C-1 Central Business
C-2 Secondary Business
C-3 Highway Business
PMDCZD Planned Manufacturing Development Conditional Zoning District
I-1 Industrial
PCDZD Planned Commercial Development Conditional Zoning District
CMU Central Mixed Use
GHMU Greenville Highway Mixed Use

6-9-2.2 Location: The following standards shall apply to the location of outdoor retail sales, outdoor retail display and outdoor retail storage areas:

a) Outdoor retail sales, outdoor retail display and outdoor retail storage areas shall not be located within any required front, side or rear yard areas or required building setbacks.

b) Outdoor retail sales, outdoor retail display and outdoor retail storage areas shall not disrupt the normal function of the site or its pedestrian or vehicular circulation.

c) Outdoor retail sales, outdoor retail display and outdoor retail storage areas shall be located so as not to interfere or conflict with sidewalks or pedestrian ways. A minimum of five feet of continuous unobstructed sidewalk width shall be maintained for pedestrian flow along all sidewalk and pedestrian areas provided on a lot in order to prevent pedestrians and others from having to enter the parking lot or drive aisle to maneuver around the display or storage area.

d) Outdoor retail sales, outdoor retail display and outdoor retail storage areas shall not be located within any required vehicular parking spaces, loading areas, landscape areas, interior access drives, open space, common open space, fire lane, emergency access or egress areas. Sidewalks counted towards meeting common open space requirements may be used for outdoor display areas. Vehicular parking spaces in excess of the minimum required may be used for outdoor retail display and outdoor retail storage areas.

e) Outdoor retail sales and display areas shall be allowed along the front, side and rear of a building.

f) Outdoor retail storage areas shall be limited to the side and rear of a building.

6-9-2.3 Size: Outdoor retail sales, outdoor retail display and outdoor retail storage areas shall not exceed a combined area equal to 10% of the gross floor area of the principal structure. When a business or tenant occupies a portion of a principal structure, the maximum area allowed for each business or tenant shall not exceed 10% of the gross floor area occupied by that business or tenant. Seasonal outdoor retail sales permitted as a principal use are exempt from this size provision.

6-9-2.4 Height: The height of an outdoor retail display shall not exceed eight feet as measured from finished grade. This height limitation shall not apply to individual items which by their nature exceed eight feet in height.

6-9-2.5 Screening: The following standards shall apply to the screening of outdoor retail storage areas:

a) All stored inventory shall be fully screened from adjacent properties, parking areas, pedestrian areas, public streets and private streets. Screening materials shall be opaque. Examples of opaque screening materials include chain link fences with winged privacy slats, solid board, solid vinyl and stockade fences, masonry walls and densely planted vegetation.

b) The height above grade of screening shall be at least six feet and shall not exceed the lesser of 20 feet or the height of the roofline.

6-9-2.6 Site Plan Required. Outdoor retail storage areas shall be shown on a site plan and are subject to site plan approval by the Community Development ~~Assistance~~ Director.

6-9-2.7 Exemptions. The temporary storage of materials and equipment used during construction of a building or structure for a period not to exceed one year and for which a valid building permit is issued are exempt from these provisions.

Section 6-10 Storage Containers. For purposes of administering this Section, the term "storage containers" shall include "storage trailers". Storage containers shall require permits from the Community Development ~~Assistance~~ Director or a designee; they shall be removed from the premises upon which they are located upon the expiration of the time period designed in the permit. Two storage containers per lot shall be permitted for a period not exceeding 180 consecutive days in a 12 month period. Storage containers shall meet all setback requirements for the zoning district in which they are located and shall be placed in the rear yard wherever possible. No storage container shall be permitted on a vacant lot. No storage container shall contain facilities for utility service. No storage container shall display any signs, lettering or advertising device, with the exception of a required owner identification sign with letters not to exceed three inches in height. This sign shall contain the name, address and phone number of the owner and may also contain a storage container identification number. These regulations shall not apply to the following:

a) Construction service trailers used for offices or for storage of tools or materials on job sites for the duration of construction;

b) Storage trailers used as construction service facilities which are a portion of the inventory of the equipment used by the business to transport materials from one job to another, and not used for purposes of storage;

c) Storage trailers, on the lot of a storage trailer sales or rental business, that constitute part of the inventory of such business and that are not currently used for purposes of storage.

Storage containers shall be permitted only in the C-3, PCD and I-1 zoning district classifications. Enforcement of these provisions shall be accomplished through Article IX, below.

Section 6-11 Use of Manufactured/Mobile Homes. It shall be unlawful for any person to place or maintain any manufactured/mobile home used for human habitation or to use any manufactured/mobile home for living, sleeping or business purposes on any premises within the City's planning jurisdiction except upon premises located within a manufactured/mobile home park, a permit for which has been granted pursuant to the requirements of this chapter; provided; however, one manufactured/mobile home may be parked or temporarily stored on any premises outside of manufactured/mobile home park for a period not exceeding 72 hours, and provided further no living quarters are maintained nor any business conducted therein while such manufactured/mobile home is so parked or temporarily stored. These regulations shall not apply to the following:

a) Manufactured/mobile homes used for office on job sites for the duration of construction;

b) Manufactured/mobile homes which have been issued Temporary Use Permits in accordance with Section 8-3 of this Ordinance;

c) One manufactured/mobile home used as an office on a manufactured/mobile home sales lot. Only one such home may be used as an office.

Section 6-12 Sidewalks. It is the intent of this section that sidewalks shall be provided in residential zoning districts on one side of every street and in nonresidential districts along both sides of the street.

Sidewalks shall be constructed from property line to property line within the street right-of-way, or, in the alternative, within areas set aside by dedication, or otherwise, in accordance with the City's Sidewalks and Driveway Entrance Standards.

Section 6-12-1 Residential Districts. Sidewalks shall be required for new construction in areas zoned PRDCZD, PMH, R-40, R-40SU, R-20, R-20SU, R-15, R-15SU, R-10, R-10SU, R-6, R-6SU when one of the following conditions is present:

a) When the property adjoins property with an existing sidewalk;

b) When an existing sidewalk is within 400 feet of the property on the same side of the street;

c) When the property is within one and one-half (1½) miles linear traverse of a school, hospital, library or government building.

Notwithstanding the foregoing, however, within the City's area of extraterritorial jurisdiction sidewalks shall not be required in the following circumstances:

a) The platting of a minor subdivision as defined in the Subdivision Ordinance;

b) The construction of a single-family or two-family dwelling on previously platted property.

The City Manager may require that a sidewalk be built across the street from the site of new construction when the following conditions exist:

a) No sidewalk adjoins the site;

b) A sidewalk exists on the other side of the street in the vicinity of the site; and

c) There is no legal impediment to constructing the sidewalk on the other side of the street.

In cases where a sidewalk already exists on the opposite side of the street, and no sidewalk exists along the property adjacent to the subject property, then a sidewalk is not required to be built along the frontage of the subject property.

Section 6-12-2 Other Districts. In all other zoning district classifications sidewalks shall be required for new construction from property line to property line. In the case of corner lots, sidewalks shall be provided along both streets.

Furthermore, if the new construction is intended for a commercial, industrial, or institutional use, sidewalks shall be required to connect street sidewalks with any entrances intended for public use.

Section 6-12-3 Payment of Fee in Lieu of Construction of Sidewalks. The City Manager may allow the applicant to pay the cost of constructing sidewalks into the City Sidewalk Fund in lieu of requiring construction of the sidewalks when one or more of the following conditions exist:

a) Construction of sidewalks will result in a hardship;

b) Construction of sidewalks will not result in useful pedestrian walkways due to one or more of the following:

1) Topographical features will result in impractical design.

2) The lack of adjacent right-of-way for future sidewalk construction.

c) The sidewalk location is not identified as a short-term recommendation, long-term recommendation or included as part of the comprehensive recommended pedestrian network in the City of Hendersonville Pedestrian Plan.

As an alternative to a payment in lieu of the installation and construction of sidewalks or a portion thereof, the City Manager may approve the applicant constructing an equivalent linear footage of sidewalk off site. The specific location for the sidewalk construction shall be at the City Manager's discretion. The off-site sidewalk construction shall be completed, inspected and approved prior to a certificate of occupancy being issued.

Section 6-13 Nuisances. It shall be a violation of this Ordinance to operate any use in such a fashion as to constitute a nuisance as specified in this section.

6-13-1 Noise. Other than ordinary construction activities, no use shall be operated so as to generate recurring noises that are unreasonably loud, cause injury, or create a nuisance to any person of ordinary sensitivities. No nonresidential use shall be operated so as to generate any noise in an adjacent district, as detected in that district without instruments, that is louder than the noise which could be generally expected from uses permitted in that district. Noise occurring activities shall also be in conformance with Chapter 20 of the City Code.

6-13-2 Fumes and Odors. No use shall emit fumes, gases, or odors in concentrations or amounts that cause injury or create a nuisance to any person of ordinary sensitivities on another property.

6-13-3 Vibration. Other than ordinary construction activities, no use shall be operated so as to generate inherent or recurring ground vibrations detectable at the property line which create a nuisance to any person of ordinary sensitivities on another property.

6-13-4 Lighting. Lighting facilities, if provided, shall be aimed, directed, shielded or arranged so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way.

Section 6-14 Burden of Proof. The burden of proof shall rest with the applicant in all proceedings required or authorized by this ordinance.

Section 6-15 Rights-of-Way for Roads and Streets.

~~**6-15-1 Reservation of Right-of-Way.** The orderly development of land is dependent upon the protection of existing and proposed major roadways in the City. The provisions of this section are intended to provide for the reservation of right-of-way for such roadways under appropriate conditions.~~

~~**6-15-1.1 Reservation Under the Roadway Corridor Official Map Act.** Pursuant to authority granted by Article 2E of NCGS Chapter 136, the City or the NCDOT may from time to time adopt, amend, supplement or change a roadway corridor official map for any streets or roadways identified in the Comprehensive Transportation Plan.~~

~~a) After a roadway corridor official map is filed with the Register of Deeds, no building permit shall be issued for any building or structure or part thereof located within the roadway corridor, nor shall approval of a subdivision be granted with respect to property within the roadway corridor. The~~

~~provisions of this section shall not apply to valid building permits issued prior to the effective date of this section or to building permits for buildings and structures which existed prior to the filing of the roadway corridor, provided the size of the building or structure is not increased and the type of building code occupancy is not changed.~~

~~b) No application for building permit issuance or subdivision plan approval shall be delayed by the provisions of this section for more than three years from the date of the original building permit or subdivision plan submittal.~~

~~6-15-1.2~~6-15-1 Rights of Way and Streets.

6-15-1.1 **Setbacks for Existing Roadways.** Applicants for development authorization for parcels adjoining existing roadways identified in the Comprehensive Transportation Plan shall propose locations for structures and other improvements which do not encroach upon the proposed rights-of-way listed in such Plan.

6-15-1.~~3~~2 Variances. A ~~variance~~ Variance from the provisions of this section may be granted by the Board of Adjustment or by City Council, as appropriate, upon demonstration (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the ~~variance~~ Variance, no reasonable use can be made of the property. (2) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a ~~variance~~ Variance. (3) The hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a ~~variance~~ Variance shall not be regarded as a self-created hardship. (4) The requested ~~variance~~ Variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

6-15-2 Dedication of Right-of-Way with Density Transfer.

a) Whenever a tract of land located within the planning jurisdiction of the City is proposed for a use requiring development authorization under Article VII below, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to NCGS Section 136-66.2, the City may require the applicant to dedicate for street or highway purposes the right-of-way within such corridor. If the City elects to require such dedication it shall allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to the subsection unless the entity granting development authorization shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided elsewhere in the Zoning Ordinance.

b) If the City does not require the dedication of right-of-way within the corridor pursuant to subsection a), above, but an applicant for development authorization elects to dedicate the right-of-way, the City may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan.

Section 6-16 Common Open Space Standards.

6-16-1 Purpose. These common open space standards are established in order to provide for the reservation of open spaces in both residential and non-residential developments located in Hendersonville and its area of jurisdiction. Preservation of open space in developing areas serves a variety of purposes, including meeting

the recreational needs of residents, reducing stormwater runoff, and enhancing air quality. The standards set forth below provide for the protection of common open space in both residential and non-residential developments. The term common open space, as used herein, means that the land is available for the enjoyment of residents of a residential development and invitees of a nonresidential development rather than the public at large.

6-16-2 Common Open Space Requirement for Residential Developments. These requirements shall apply to all planned residential development conditional zoning districts and major subdivisions (consisting of nine or more lots):

a) There shall be reserved for the use of all residents of the development either 10% of the project area or 500 ~~ft2~~ square feet per dwelling unit, whichever is more.

b) Land reserved to meet the requirements of this section shall meet the following standards:

1) Open water, wetlands, and floodplains may be used for up to 50% of the reservation requirement;

2) Land that is burdened with easements may be used provided that the easements do not interfere with the use of the land for open space and recreation purposes and do not permit future development; and

3) Perimeter setbacks may provide up to 50% of the required common open space, exclusive of perimeter landscaping and buffering.

c) The following types of land are unacceptable for common open space reservation:

1) Land occupied by streets, drives, parking areas, or structures other than recreational structures;

2) Land containing or contaminated by hazardous materials or other materials considered objectionable by the Community Development ~~Assistance~~ Director or a designee;

3) Land which exceeds a 33% slope for more than 50% of the property area;

4) Land with a minimum width of less than 24 feet unless specifically approved by the Community Development ~~Assistance~~ Director or a designee; and

5) Areas designated as open space for individual units

d) All common open space shall be set aside and improved no later than the following applicable date:

1) For subdivisions: prior to the sale of any lot;

2) For planned residential development conditional zoning districts: no later than the date on which certificates of occupancy are issued for the first 75% of the total number of dwelling units to be constructed in the project area.

e) Any structures located in any common open space shall be accessory to recreational use of the space.

f) The required common open space shall be planned and improved so that it is accessible and usable by persons living in the development. Common open space containing natural features worthy of preservation may be left unimproved.

g) Arrangements for the perpetual maintenance of common open space must be approved in writing by Community Development ~~Assistance~~ Director or a designee. Any conveyance to a homeowners association shall be subject to restrictive covenants and easements reviewed by the Community Development ~~Assistance~~ Director or a designee and recorded and filed in accordance with the times specified in paragraph d), above. The covenants and easements shall prohibit future development of any common open space for other than open space or recreation purposes and shall provide for continued maintenance of any common open space and recreational facilities.

6-16-3 Common Open Space Requirements for Non-Residential Developments. These requirements shall apply to all non-residential developments which are subject to site plan review pursuant to Section 7-3 or a conditional zoning district pursuant to Section 7-4.

a) At least 10% of the project area shall be devoted to common open space.

b) Common open space for non-residential developments shall be used for landscaping, lawns, screening or buffering. It may not contain any streets, parking or loading areas, outdoor storage, trash handling, utility or service areas, or areas with impervious surfaces other than sidewalks, recreational facilities and meeting areas.

c) Planting, installation, and maintenance of common open space shall be done in accordance with the standards contained in Article XV, below.

Section 6-17 Separability. Should any section or provision of this Zoning Ordinance be declared invalid by any court, such declaration shall not affect the validity of the Zoning Ordinance as a whole or any part thereof which is not specifically declared to be invalid.

Section 6-18 Transportation Impact Analysis. The purpose of a transportation impact analysis (TIA) is to assess the impact of a proposed development on the existing transportation system. A TIA will (1) ensure that the transportation network has adequate capacity to handle projected transportation demand associated with the project, (2) identify problems with the transportation system, (3) delineate solutions to identified problems, and (4) identify improvements to be incorporated into the proposed development.

6-18-1 TIA Required. Applicants for development authorization in which the proposed development, redevelopment, or change of use is expected to generate 100 or more peak-hour trips (a.m. or p.m.) or 1,000 or more trips daily shall have prepared by a qualified professional a TIA meeting the guidelines established in this section. In addition to the foregoing, the Community Development ~~Assistance~~ Director shall have the discretion to require a TIA when a development's traffic will substantially affect an intersection or a roadway segment already identified as operating at a failing level of service, when a development may create a hazard to public safety, or when a development will substantially change the off-site transportation system or connections to it.

6-18-2 Pre-submittal Conference. An applicant for development authorization for any project expected to meet or exceed one or both of the TIA thresholds specified in Section 6-19-1, above, shall schedule a pre-submittal conference with the City. The engineering firm selected to prepare the TIA shall attend this meeting the purpose of which is to establish the study area, the trip distribution, the traffic counts to be utilized, approved developments in the area, pass-by and internal capture percentages, additional hours of analysis, if required (other than a.m. or p.m. peak), and resolve any other questions specific to the site.

6-18-3 TIA Submission. Three copies of the TIA, if required, shall accompany the application for development authorization. The TIA shall be prepared by a licensed engineer registered to practice in the State

of North Carolina who shall have traffic assessment and transportation management experience. At a minimum, the TIA shall include the following:

a) Study purpose and objectives;

b) Description of the site and study area boundaries including appropriate mapping and rationale for selection of the study area boundaries;

c) A summary of existing conditions including, but not limited to, surrounding street and key intersection traffic volumes (daily and peak-hour), turning movements, capacities, safety deficiencies, and funded transportation improvements;

d) Anticipated or approved development in the area;

e) Trip generation, trip distribution, and discussion of the following:

1) Trip generation rates shall be based on trip generation rates contained in the latest edition of *Trip Generation* published by the Institute of Transportation Engineers (ITE). The applicant shall also provide the ITE code used to identify the development trip generation rate and assumptions used or data collected for any variations from generally accepted ITE rates or equations.

2) Pass-by trip factors and assumptions.

3) Internal trip assumptions for mixed use developments.

4) Trip distribution assumptions.

f) Projection of future traffic volumes and assessment of future roadway and intersection operating conditions for the year of the ultimate completion of the project. All projections should specifically document projected background traffic as well as the traffic generated by the proposed development. If the project is to be phased; projections for each phase of the development is required. If the un-phased build-out period of the project is greater than nine years, then a minimum of one intermediate and one full build-out projection is required. All projections and assessments should include the following three scenarios:

1) No build;

2) The development as proposed;

3) The development as built with any necessary improvements.

g) Analysis of the key elements of the development and evaluation of the impacts of the development on the following:

1) **Generalized Peak Hour and/or Daily Link Level of Service (LOS) Analysis.** Using the peak hour directional volumes and daily traffic volumes forecast and service thresholds, a general evaluation shall be made of the street system for the short term and long-term horizon years. If the project is to be phased; then an assessment of conditions after the completion of each phase of the development is required. Incremental differences attributable to the land use action shall be identified. A map showing generalized levels of service shall be presented for each design year.

2) **Access Analysis.** The design, number, and location of access points to collector and arterial roadways must be fully analyzed. The number of access points shall be kept to a minimum and be designed to be consistent with the type of roadway facility. All access points, regardless of the classification of the roadway facility the access points connect to, shall follow the North Carolina Department of Transportation's most current *Policy on Street and Driveway Access to NC Highways*. In areas where current evidence suggest there is a higher than average crash rate, an access analysis may be required to include a safety evaluation of the corridor. This may include the collection and analysis of crash history in an effort to determine causational factors. This information may influence the exact location and design of proposed access points.

3) **Intersection Analysis (Signal Warrant Analysis, Phasing Analysis, Intersection Crash Analysis and Progression Analysis).** The appropriateness of the development's access locations and type must be established. For full-access locations, a signal warrant analysis based on the Manual on Uniform Traffic Control Devices must be conducted for each design year. Traffic signals specifically warranted by the land use action shall be identified.

4) **Peak Hour Intersection Level of Service.** An AM and PM peak hour intersection level of service analysis shall be conducted for each intersection, based on procedures specified in the most recent release of the Highway Capacity Manual. Levels of service for signalized intersections shall be based on the signal timings developed for the signal progression analysis.

5) **Turn Lane Requirements and Storage.** Turn lane storage needs shall be identified for the "warranted" situation, based on projected turning volumes and NCDOT guidelines. Appropriate documentation of the calculations must be provided.

6) **Sight Distance.** The identification of sight distances at all development entrances shall be conducted.

7) **Appropriateness of Acceleration or Deceleration Lanes.** All proposed development access points on arterials shall be evaluated to determine the need for acceleration lanes or deceleration lanes, with justification and basis provided for recommendations.

8) **Pedestrian and Bicycle Analysis.** Continuity and adequacy of pedestrian and bike facilities shall be provided to the nearest attraction (exiting or planned) within ¼ mile of the development site. Destinations of significance include bus stops, elementary schools, parks, activity centers and major bicycle facilities. Adherence to the Americans with Disabilities Act (ADA) shall be required.

9) **Public Transportation Analysis.** Existing and proposed (if any) public transportation facilities analysis shall be provided.

10) **Special Analysis / Issues.** The City may require specific focused traffic analyses relative to the proposed development.

h) Recommendations for site access and transportation improvements or mitigation measures needed to maintain traffic flow to, from, within and adjacent to the proposed development at an acceptable and safe level of service (generally assumed at LOS D or better). Any recommendations for roadway improvements should identify funding sources for these improvements.

i) Data collected for the study shall be made available to the City for evaluation of the study conclusions. The format for date submission as well as format for data to be provided to the City will be determined at a pre-consultation meeting between the applicant and the City.

6-18-4 TIA Review. The TIA shall be submitted for review and shall be of sufficient scope and detail to allow the evaluation of the impact of the development and the need for roadway capacity, operation and safety improvements resulting from the development. City comments regarding the review of the TIA shall be relayed by the City to the engineering firm who prepared the TIA. Any additional operational deficiencies, mitigation measures and/or safety concerns identified during the review of the TIA shall be addressed by the engineering firm who prepared the TIA. A letter of approval shall be issued by the City once the TIA is determined to be complete.

6-18-5 Improvements Required. In those cases where the City or the North Carolina Department of Transportation requires improvements to be constructed in order to accommodate additional traffic generated by the proposed development, the improvements shall be funded and/or constructed by the project developer in accordance with the standards and direction provided by the City or by the North Carolina Department of Transportation. The improvements shall be in place or under construction prior to issuance of any certificate of occupancy or certificate of completion required for any phase or portion of the project.

This page intentionally left blank.

ARTICLE VII
DEVELOPMENT REVIEW

Section 7-1 Purpose and Structure. It is the intent of this Article to provide the process by which proposed development is reviewed and the standards by which it is to be evaluated. All development shall require prior authorization from the appropriate person or entity. This Article establishes three levels of review: (1) zoning compliance review for small projects is set forth in Section 7-2; (2) site plan review for larger projects is set forth in Section 7-3; and (3) conditional zoning district review, which is designed for development expected to have the greatest impacts, is set forth in Section 7-4. The remaining sections of Article VII contain requirements which apply to one or more of the levels of review.

Section 7-2 Zoning Compliance Review. Except as otherwise specifically provided in this article, it shall be unlawful to undertake any development until the City Manager has issued for such development a zoning compliance permit certifying that it complies with the applicable provisions of this ordinance.

It shall also be unlawful to change the type of use or type of occupancy of any land or structure until the City Manager has issued for such intended use a zoning compliance permit certifying that it complies with the applicable provisions of this ordinance.

When a building permit or sign permit is required, such permit shall not be issued prior to issuance of the zoning compliance permit required for the development, and such building or sign permit shall comply with the approved zoning compliance permit, including all conditions of approval attached thereto.

No building or structure for which a zoning compliance permit has been issued shall be used or occupied until, after final inspection, a certificate of occupancy has been issued indicating compliance with the provisions of this ordinance and all other state and local laws, including conditions of the zoning compliance permit.

The City Manager may delegate the authority to issue zoning compliance permits to the Planning Director or Zoning Administrator or both.

Section 7-3 Site Plan Review. Some development, due to its type or magnitude, requires thorough review of development plans in order to assure compliance with the provisions of this ordinance. Site plan review and approval in accordance with this section is required prior to issuance of a zoning compliance permit for any development or use described in Section 7-2, with the following exceptions:

a) Development of a single- or two-family dwelling on a zoning lot, or any uses accessory thereto;

b) Any commercial, industrial, or institutional development consisting of less than 5,000 ft2 of floor area;

c) Addition of not more than 15% of previously existing parking spaces, or 10 parking spaces, whichever is greater;

d) Any sign;

e) Any development undergoing rezoning to a conditional zoning district pursuant to Section 7-4, below; and

f) Major or minor subdivisions.

7-3-1 Applications. There are two types of site plan review, preliminary and final, as described below. All applications for site plan approval shall be made to the Community Development ~~Assistance~~ Director or a

designee on forms prescribed by the Community Development ~~Assistance~~ Director. Applications shall include, without limitation, the name and address of the applicant, the name and address of the owner of all the property involved, the relationship of the applicant and property owner(s) in connection with the application, and a site plan conforming to the specifications of Subsection 7-3-3 for a preliminary site plan and Subsection 7-3-4 for a final site plan. If the applicant is other than the record owner of the property, the consent of the record owner to the application shall be noted on the application or in some other fashion acceptable to the Community Development ~~Assistance~~ Director. The application shall also designate an agent for the project to whom notice may be given by the City. The Community Development ~~Assistance~~ Director shall prescribe any other material that may reasonably be required to determine compliance with this article and shall require sufficient copies for necessary referrals and records.*)*

7-3-2 Fees. A fee shall be paid to the City of Hendersonville for each application for site plan approval to cover the costs of advertising and other administrative expenses. Such fee shall be set by a resolution of City Council.

7-3-3 Review of Preliminary Site Plans. Review of preliminary site plans applies to larger projects where the costs of developing detailed final plans can be substantial. It is designed to provide the applicant an opportunity to obtain at a reasonable cost binding authorization to develop property in a certain fashion. Review of preliminary plans is a function of the Planning Board. Preliminary plan review is required of all development undergoing site plan review except for the following:

a) Any commercial, industrial or institutional development consisting of less than 20,000 ~~ft2~~ square feet of floor area;

b) Addition of not more than 30 parking spaces;

c) Any development which has already received preliminary site plan approval;

d) Any minor planned residential development consisting of less than nine dwelling units.

For development projects under a) above, notice of receipt of a development application for commercial or industrial development between 10,000 ~~ft2~~ square feet to less than 20,000 ~~ft2~~ square feet of floor area shall be provided in the following manner. The City shall prominently post a notice of receipt of a development application on the site or on an adjacent public street or highway right-of-way. The notice shall be a minimum of 18 inches by 24 inches in size and shall identify the means to contact an official for information about the development application. The notice shall be posted within 10 days of receipt of a development application and remain on the site or on an adjacent public street or highway right-of-way for a minimum of 30 days.

Approval of a preliminary site plan by the Planning Board does not entitle the applicant to develop property, but it does entitle the applicant to final site plan approval pursuant to Subsection 7-3-4, below, upon submittal of an application for final site plan approval, payment of the applicable fee and submittal of a final site plan conforming to the preliminary site plan approval, including any conditions attached thereto.

7-3-3.1 Processing of Applications for Preliminary Site Plan Approval. The Community Development ~~Assistance~~ Director or a designee shall conduct a preliminary review of an application to determine if it is complete, which is to say, all information requested on the application has been provided and the site plan contains all items required by Section 7-3-3.2. If the Community Development ~~Assistance~~ Director or a designee determines that an application is incomplete, the Community Development ~~Assistance~~ Director or a designee shall notify the applicant in writing of all deficiencies. A complete application and site plan must be in the possession of the Community Development ~~Assistance~~ Director or a designee at least 32 days prior to a Planning Board meeting in order to be scheduled for that meeting.

Once the Development Assistant Director or a designee determines the application to be complete, the Community Development ~~Assistance~~ Director or a designee shall cause an analysis to be made by qualified representatives of the City and such other agencies or officials as appear appropriate in the circumstances of the case, to determine compliance with applicable provisions of this ordinance. ~~The Development Assistance~~Notice of the completeness determination shall be provided to the Applicant(s) as required by Chapter 40 of the Code of Ordinances for the City of Hendersonville. The Community Development Director or a designee shall then submit to the Planning Board a report of their analysis.

Substantial modification of the site plan subsequent to the Community Development ~~Assistance~~ Director's determination of completeness may result in the application being deferred to a subsequent meeting of the Planning Board. Any material modification of the site plan within seven days of the Planning Board meeting shall result in deferral of the application to the next available meeting.

The City Manager may waive these time lines in extraordinary circumstances where strict enforcement would work a substantial hardship on the applicant and where the City's ability to make an informed decision on the application would not be compromised.

7-3-3.2 Contents of Preliminary Site Plan. Applicants for developments required to undergo preliminary site plan review shall, as a part of the application for such development, submit a preliminary site plan which shall show the following:

a) The date of the site plan or submittal, including any revisions thereto;

b) The proposed title of the project and the name of the engineer, architect, landscape architect, planner and/or licensed surveyor; developer; and owner of record;

c) The north arrow point, scale at not greater than one inch equals 40 feet and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;

d) Location of site by an insert vicinity map at a scale no less than one inch equals 2000 feet;

e) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;

f) City limits line or a note indicating that the project site and any adjoining parcels are totally within or without the city limits;

g) Names of adjacent property owners;

h) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;

i) Location of 100-year floodplain and floodway, if applicable. Other significant natural features affecting the site including but not limited to wetlands, major rock outcrops and lakes or streams;

j) All proposed streets with proposed names, pavement widths and rights-of-way and showing sight distances for all entrances and exits and their relationship to street and driveway intersections within a 200-foot radius of the intersection such entrance and exit with any public right of way. All alleys, driveways, curb cuts for public streets and handicap ramps, loading areas and provisions for off-street

parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;

k) Preliminary utility layout, including location and size of existing and proposed water, sanitary and storm sewer lines;

l) Location and size of all existing and proposed entrances and exits to the site. All proposed entrance and exit points, regardless of the classification of the roadway facility the entrance and exit points connect to, shall follow the North Carolina Department of Transportation's most current *Policy on Street and Driveway Access to NC Highways*;

m) Proposed reservations or dedications for parks, playgrounds, school sites and open spaces and a note indicating ownership and maintenance provisions;

n) A survey showing tree line before site preparation with species and diameter of trees 12 inches or greater DBH (diameter at breast height) indicated and showing areas to be screened, fenced, walled and/or landscaped;

o) General location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;

p) Notations to include the total project area, proposed lot areas (or individual areas owned by a homeowners association), the amount and percentage of the site to be covered by buildings, open space, streets and parking and other facilities;

q) General location, size, height, orientation and appearance of proposed signs;

r) General location of proposed project phasing lines and notation including special conditions pertinent to establishing sales or model units, if applicable;

s) A transportation impact analysis, if one is required by the terms of Section 6-19, above, demonstrating the project will comply with the requirements of Section 7-11, below.

The Development Assistant Director or a designee has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical. The Community Development ~~Assistance~~ Director or a designee, Planning Board or City Council may require additional information from the applicant where such is necessary to enable a fully informed decision on the matter.

If the project is to be completed in phases, items a), b), and c), above, may be submitted in phases as well.

7-3-3.3 Planning Board Action. Action on an application for preliminary site plan approval shall be taken by the Planning Board only after consideration at a regular or special meeting. Notice of the date, time and place of the meeting at which the matter is to be considered shall be published once in a newspaper of general circulation not less than five nor more than 15 days prior to the date of the hearing. Similar notice shall also be mailed to the owner of the property which is the subject of the application and the owners of all parcels of land adjacent thereto. Ownership shall be determined by reference to the Henderson County tax listing. If the Community Development ~~Assistance~~ Director or a designee deems that a proposed project is likely to have significant impacts on additional neighboring properties, may mail notice to the owners of such neighboring properties.

7-3-3.4 Standards for Review. An application for preliminary site plan approval shall not be approved unless the Planning Board determines that the application and final site plan demonstrate compliance with this ordinance, including the provisions of Section 7-11 below, and other applicable regulations. The Planning Board may impose such reasonable conditions on an approval as will ensure such compliance with this ordinance.

~~**7-3-3.5 Review by City Council.** Within 15 days of the date of the meeting at which the Planning Board makes a decision on an application for preliminary site plan approval, any substantially affected party may file a notice with the city clerk requesting City Council to review such decision. Upon receipt of a notice of review, the city clerk shall schedule a public hearing for the next available meeting of City Council, which shall render a decision based upon the standards for review contained in Subsection 7-3-3.4 Final site plan approval pursuant to Section 7-3-4, below, shall not be granted until such time as the time to seek review as provided herein has passed or, if review is requested, until such time as City Council has taken final action on such application.~~

7-3-3.5 Reserved.

7-3-3.6 Effect of Preliminary Site Plan Approval. Approval of a preliminary site plan shall entitle the applicant to the issuance of a zoning compliance permit upon submittal of an application and final site plans meeting the requirements of Section 7-3-4, below. Approval of a preliminary site plan shall constitute a site specific vested right pursuant to Chapter 40 of the City Code. The applicant shall have two years from the date of such approval to obtain final site plan approval. An applicant who has been granted preliminary site plan approval shall be divested of the right to develop in accordance with such preliminary site plan approval if the applicant fails to obtain final site plan approval in accordance with this section.

7-3-4 Review of Final Site Plans. All development for which site plan approval is required shall undergo final site plan review, including development which has received preliminary site plan approval pursuant to Subsection 7-3-3, above.

Final site plan review is required of smaller projects and projects which have already undergone preliminary or conceptual plan review as a final step prior to issuance of a zoning compliance permit. The process is intended to provide a means for city staff to review detailed plans to ensure the project meets development standards in the Zoning Ordinance as well as any conditions which may have been imposed as a part of any preliminary or conceptual approval.

7-3-4.1 Processing of Applications for Final Site Plan Approval. The Community Development ~~Assistance~~ Director or a designee shall conduct a preliminary review of an application to determine if it is contains all items required by Section 7-3-4.3. If the Community Development ~~Assistance~~ Director or a designee determines that an application is incomplete, the Community Development ~~Assistance~~ Director or designee shall notify the applicant in writing of all deficiencies. Once the Community Development ~~Assistance~~ Director or designee determines the application to be complete, ~~the~~ notice of the completeness determination shall be provided to the Applicant(s) as required by Chapter 40 of the Code of Ordinances for the City of Hendersonville. The Community Development ~~Assistance~~ Director or designee shall cause an analysis to be made of the completed application by qualified representatives of the City and such other agencies or officials as appear appropriate in the circumstances of the case, to determine compliance with applicable provisions of this ordinance. The Community Development ~~Assistance~~ Director or designee shall then submit to the City Manager, or a designee appointed by the City Manager, a report of their analysis.

7-3-4.2 Standards for Review. The City Manager, or a designee appointed by the City Manager, shall render a decision in writing either approving or denying the application. An application for site plan approval shall not be approved unless the City Manager, or a designee appointed by the City Manager,

determines that the application and site plan demonstrate compliance with this ordinance, including th provisions of Section 7-11, below, and other applicable regulations. If the decision is to deny the application, the City Manager, or a designee appointed by the City Manager, shall recite with specificity the reasons for such denial.

7-3-4.3 Contents of Final Site Plan. A site plan showing the following shall accompany an application for site plan approval:

a) The date of the site plan or submittal, including any revisions thereto;

b) The proposed title of the project and the name of the engineer, architect, landscape architect, planner and/or licensed surveyor; developer; and owner of record;

c) The north arrow point, scale at not greater than one inch equals 40 feet and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;

d) Location of site by an insert vicinity map at a scale no less than one inch equals 2000 feet;

e) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;

f) City limits line or a note indicating that the project site and any adjoining parcels are totally within or without the city limits;

g) Names of adjacent property owners;

h) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;

i) Existing topography and proposed finished contours at not more than two-foot intervals, with project bench mark clearly identified. Location of 100-year floodplain and floodway, if applicable. Other significant natural features affecting the site including but not limited to wetlands, major rock outcrops and lakes or streams. The Community Development ~~Assistance~~ Director or a designee may require topography at intervals smaller than two feet if such is necessary to permit an informed analysis of the site plan;

j) All proposed streets and/or driveways with proposed names, pavement widths and rights-of-way, and showing sight distances and their relationship to all street and driveway intersections within a 200-foot radius of the intersection of such entrances and exits with any public road. All alleys, driveways, curb cuts for public streets and handicap ramps, loading areas and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of public or private streets and/or driveways shall be included;

k) Utility layout, including location and size of existing and proposed water, sanitary and storm sewer lines, electrical transmission lines, gas pipelines, street lights, fire hydrants, and garbage disposal facilities;

l) Proposed reservations or dedications for parks, playgrounds, school sites and open spaces and a no indicating ownership and maintenance provisions. Include a copy of condominium declaration and/or maintenance agreements, if applicable;

m) A landscape plan showing wood line before site preparation with typical species and average diameter of trees indicated and showing areas to be screened, fenced, walled and/ or landscaped, including required buffers, existing and proposed, with details of fences or walls and plant locations, sizes and species;

n) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above average grade for each building;

o) Notations to include the total project area, proposed lot areas (or individual areas owned by a homeowners association), the amount and percentage of the site to be covered by buildings, open space, streets and parking and other facilities;

p) General location, size, height, orientation and appearance of proposed signs;

q) General location of proposed project phasing lines and notation including special conditions pertinent to establishing sales or model units, if applicable;

r) Site lighting plan;

s) Road profiles, if required by the Community Development ~~Assistance~~ Director;

t) A letter from the Henderson County Erosion Control Local Program indicating that plans have been filed and approved. In those instances when a letter from the Henderson County Erosion Control Local Program is not required, the applicant shall demonstrate on the site plan and/or in such accompanying documents as may be necessary that the proposed development will comply with the mandatory standards contained in NCGS Section 113A-57;

u) Any other permits required by the project;

v) Final stormwater management plan meeting the requirements of the City of Hendersonville Code of Ordinances;

The Community Development ~~Assistance~~ Director may establish additional requirements for site plans~~, which may be triggered by conditions such as~~ where necessary for compliance with the terms of this Ordinance or any other land development regulation, including but not limited to standards governing density, topography, location, and anticipated traffic volumes on or near the site. In addition, if the Community Development ~~Assistance~~ Director determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

~~**7-3-4.4 Review by City Council.** Within 15 days of the rendition of a decision denying an application for final site plan approval, the applicant may file a notice with the city clerk requesting City Council to review such decision. Upon receipt of a notice of review, the city clerk shall schedule a public hearing for the next available meeting of City Council, which shall render a decision based upon the standards for review contained in Subsection 7-3-4.2.~~

Section 7-4 Conditional Zoning Districts. Conditional Zoning Districts are created for the purpose of providing an optional rezoning choice where the owner of property proposes to rezone property and, in order to,

among other reasons carry out the purposes of the Comprehensive Plan, proposes to impose special limita and conditions on the use of the property proposed for rezoning.

Conditional Zoning Districts are zoning districts in which the development and use of the property is subject to predetermined standards and the rules, regulations and conditions ~~imposes~~imposed as part of the legislative decision creating the district and applying it to each individual development project. For the R-40, R-20, R-15, R-10, R-6, C-1, C-2, C-3, C-4, I-1, MIC, CMU, RCT, GHMU, HMU, and CHMU zoning district classifications, there are hereby established parallel conditional zoning district classifications zoned R-40CZD, R-20CZD, R-15CZD, R-10CZD, R-6CZD, C-1CZD, C-2CZD, C-2CZD, C-3CZD, C-4CZD, I-1CZD, MICCZD, CMUCZD, RCTCZD, GHMUCZD, HMUCZD and CHMUCZD. Also established are the PMDCZD, PRDCZD, PMHCZD, UVCZD and URCZD. ~~These were established to replace special use~~ Special ~~Use zoning districts.~~

Certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Some land uses are of a nature or scale that may have significant impacts on both the immediately surrounding area and the entire community, which cannot be controlled by district standards. There also circumstances in which district designations allow a use by right that would not be appropriate for a particular property though the use could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted comprehensive plan, and adopted district. The review process established in this section provided for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the neighboring properties.

The conditional zoning district is a means by which such special conditions can be imposed. The Conditional Zoning District classification will be considered for rezoning only with the consent of all of the property ~~owner~~owners. If, for any reason, any condition imposes pursuant to these regulations is found to be illegal or invalid or if all of the ~~applicant~~applicants should fail to accept any condition, it is the intent of this ordinance that the authorization of such Conditional Zoning District shall be null and void and of no effect and that proceedings shall be instituted to rezone the property to its previous zoning classification.

7-4-1 Fee. A fee shall be paid to the City of Hendersonville for each application for a rezoning to a Conditional Zoning District to cover the costs of advertising and other administrative expenses. The fee shall be set by a resolution or ordinance of City Council.

7-4-2 Pre-application conference. It is recommended that any person desiring to rezone a property to a conditional zoning district schedule a pre-application conference with the Community Development ~~Assistance~~ Director or designee to become familiar with the conditional zoning district rezoning process and to identify and correct, if possible, potential problem areas with a development concept. Submittals for a pre-application meeting include a location map and a sketch plan of the project, including property boundaries, building footprints, parking, driveways, entrance locations, and such other information which may be requested by the Community Development ~~Assistance~~ Department staff.

7-4-3 Application. Property may be rezoned to a Conditional Zoning District only in response to, and consistent with, an application (petition) submitted on forms provided by the Community Development ~~Assistance~~ Department, by the owners of all of the property to be included in the district. An application for conditional zoning must include a site plan (as described below) and supporting information and text that specifies the actual use or uses intended for the property and any conditions that in addition to predetermined requirements, will govern the development and use of the property.

7-4-3.1 Conceptual Plan. To facilitate the discussion during the neighborhood compatibility meeting required by Section 7-4-4, the applicant shall submit to the Community Development ~~Assistance~~ Department, as a part of the application for a conditional zoning district rezoning, a conceptual plan

showing how development is proposed for the site. The conceptual plan shall show the location and boundaries of the property and how individual buildings are to be situated on the site, including distances from these buildings to property lines, as well as proposed drives and parking. The locations of signs and outdoor lighting shall also be shown where appropriate. Proposed restrictive covenants, if available, shall also be presented. The conceptual plan need not be exactly to scale; although, all distances and dimensions shall be shown.

7-4-4 Neighborhood Compatibility Meeting. This ordinance provides a process whereby affected property owners, residents and developers have an opportunity to participate in a dialog as to how development is to be integrated into their neighborhoods. This is accomplished by a neighborhood compatibility meeting to be facilitated by the Community Development ~~Assistance~~ Director or a designee, within 21 days of receipt of a complete application, including the required fee and conceptual plan.

7-4-4.1. Notification of Participants. At least seven calendar days prior to the meeting, notice of the meeting shall be given in the following fashion:

a) The developer shall be informed of the meeting by mail. Failure of the developer, or their authorized agent, to attend this meeting shall lead to an automatic annulment of the application.

b) Property owners within 400 feet of any property line of the proposed sites shall be informed of the meeting by mail.

c) All other persons shall be informed of the meeting by a conspicuously placed standardized on-site sign.

7-4-4.2 The Developer's Presentation. During the neighborhood compatibility meeting the developer shall explain to the affected property owners the proposed use for the site. The presentation shall include the developer's position on the compatibility of the project. It is always the developer's responsibility to propose a compatible project.

7-4-4.3 Relevant Topics to Be Discussed. Following the developer's presentation, affected property owners and residents shall be permitted time to question the developer about points which remain unclear. Questioning shall center on the proposal's compatibility as presented, not the question of whether the site should be developed or its use changed.

7-4-4.4 Result of Neighborhood Compatibility Meeting. Following the exchange of views between the developer and affected property owners/residents, the Community Development ~~Assistance~~ Director or a designee shall review orally the points voiced during the informal compatibility meeting. Included in the review shall be proposals or counter-proposals to which both parties have agreed in an effort to make the project compatible, as well as those points where disagreement still exists. Upon conclusion of the review, the Community Development ~~Assistance~~ Director or a designee shall ask those assembled if the positions presented represent an accurate consensus of the opinions expressed by the developer and affected property owners/residents. When they do, the meeting shall be concluded and the Community Development ~~Assistance~~ Director or a designee shall record the opinions in the Community Development ~~Assistance~~ Director's report. The Community Development ~~Assistance~~ Director's report shall become a part of the application file.

7-4-4.5 Final Site Plan and Completeness Review. Upon completion of the neighborhood compatibility meeting, it shall be the responsibility of the applicant to submit a final site plan meeting the requirements of Section 7-3-4.3, above. Notice of the completeness determination shall be provided to the Applicant(s) as required by Chapter 40 of the Code of Ordinances for the City of Hendersonville.

7-4-5 Processing of Application. The completion date for the application shall be the date of receipt of information requested by the Community Development ~~Assistance~~ Director pursuant to Section 7-3-4.3. The applicant will be scheduled for the next Planning Board meeting which is at least 24 days in the future. Substantial modification of the application subsequent to the complete date may result in the application being deferred to a subsequent meeting of the Planning Board. Any material modification of the application within seven days prior to the Planning Board meeting shall result in deferral of the application to the next available meeting.

7-4-6 Conditions to Approval of Conditional Zoning District. In ~~approving~~considering an application for the reclassification of property to a Conditional Zoning District, the Planning Board may recommend, and the City Council may recommend that reasonable and appropriate conditions be attached to the approval of the rezoning. Conditions and site specific standards shall be limited to those that address the conformance of the development and use of the site to City of Hendersonville ordinances and comprehensive plan. Any such conditions should relate to the impact of the proposed use on surrounding properties, support facilities, pedestrian and vehicular circulation systems, screening and buffering areas, timing of development, road and right-of-way improvements, water and sewer improvements, stormwater drainage, open space and other matters that the Planning Board and/or City Council may find appropriate or the applicant may propose. The Tree Board may make recommendations to City Council concerning the proposed landscape plan. The applicant shall have a reasonable opportunity to consider and respond to any such conditions prior to the final action by the City Council. Only those conditions mutually approved by the City Council and the applicant may be incorporated into the rezoning approval.

7-4-7 Mediation. Based on the level of contentiousness concerning the application, the City may recommend mediation. Even if the City does not recommend mediation, the opposing parties may choose to mediate at any point in the process.

If mediation is employed, which is wholly voluntary, the Planning Director, in consultation with the applicant and one or more representatives of those contesting the application, shall choose a mediator. The mediator should consult with the planning department on the past history of the property, visit the site of the proposed land development, and review the proposed plan.

The mediator then works with the planning staff, the applicant and other parties, to arrange a meeting space, set ground rules and time limits, and to attempt to negotiate a mediated agreement. The planners participate in the mediation, representing the interests and concerns of the City.

If the mediation results in a mutually acceptable settlement among the interested parties, the mediator prepares a written agreement which all parties sign. Copies of the mediated agreement are given to all parties.

The time requirements of this section are suspended for the time an application is in the mediation process.

7-4-8 Public Hearing. Within 45 days of receiving the recommendation of the Planning Board or receipt of the mediator's report, whichever last occurs, City Council shall conduct a public hearing on the application. Notice of the date, time and place of the public hearing shall be published in a newspaper of general circulation once a week for two successive weeks with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing.

Notice of the date, time and place of the public hearing shall also be mailed to the owner of the property which is the subject of the application, the person or entity whose application or request is the subject of the hearing, and the owners of all parcels of land situated within 400 feet of any of the boundaries of the subject parcel. Ownership shall be determined by reference to the Henderson County tax listing. The notice shall be deposited in the mail not less than ten nor more than 25 days prior to the date of the hearing. Within that same

time period, the City shall prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

7-4-9 Final Action. The City Council may request that reasonable and appropriate conditions be attached to the reclassification of a property to a Conditional Zoning District. If a reclassification of a property to a Conditional Zoning District is approved, the development and use of the property shall be governed by the existing zoning ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the official zoning map. All conditions imposed must be consented to in writing by all applicants, otherwise the conditional rezoning will be invalid as provided in Section 7-4 above.

Only those uses and structures indicated in the approved rezoning application and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to Section 7-6 of this ordinance.

7-4-9.1 Conditions to Approval of Rezoning to a Conditional Zoning District. In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend and City Council may request that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the City, County or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by City Council.

7-4-9.2 Effect of approval. If a petition is approved under this Section, the district that is established, the approved petition, and all conditions which may have been attached to the approval, are binding on the property as an amendment to this ordinance and to the Zoning Map. All subsequent development and use of the property shall be in accordance with the standards for the approved conditional zoning district, the approved petition, including the conceptual site plan, and all conditions attached to the approval, unless such approval shall lapse or the property is rezoned.

If a petition is approved, the petitioner shall comply with all requirements established for obtaining a zoning compliance permit, a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. Any development in the district shall comply with all provisions of and conditions to the approved petition and site plan.

7-4-10 Revised Final Site Plans. Revised Final site plans shall be reviewed by the Community Development ~~Assistance~~ Director or a designee to ensure conformance with any modifications agreed to as conditions of a petition for the reclassification of property to a conditional zoning district.

7-4-11 Issuance of Zoning Compliance Permit. A zoning compliance permit shall be issued upon certification by the Community Development ~~Assistance~~ Director or a designee that a revised final site plan demonstrating compliance with any modifications agreed to as conditions of the petition for reclassification of the property to a conditional zoning district has been received.

~~**7-4-12 Review of Approval of a Conditional Zoning District.** It is intended that property shall be reclassified to a Conditional Zoning District only in the event of firm plans to develop the property.~~

~~Therefore, no sooner than three (3) years after the date of approval of the petition, the Planning Board m~~ ~~examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the City Council a report, which may recommend that the property be classified to another district.~~

7-4-12 Reserved.

Section 7-5 Project Phasing. If a project is to be developed in phases, the plan for the entire development will be used to determine the nature of review it will receive. Before development may commence, the entity with power to issue development authorization, that is, the City Manager, Planning Board, or City Council, as the case may be, must approve a master plan for the entire development site.

Final plans for the development may be submitted in stages and may be approved by the entity which approved the master plan provided that the following requirements are met:

a) All stages shall be shown with precise boundaries on the master plan and shall be numbered in the expected order of development.

b) Each phase must be able to function independently of subsequent phases.

c) All the data required for the project as a whole shall be given for each stage shown on the plan.

d) A proportionate share of open space shall be included in each stage of the development.

e) The phasing shall be consistent with the traffic circulation, drainage, and utilities plan for the entire development.

Section 7-6 Modification of Development Authorizations. Development may only take place in accordance with approvals granted hereunder. Any deviation from approved development requires review and approval pursuant to this section.

In general, the entity which approved the development for which modification is sought will be responsible for deciding whether to approve modifications to such development. There are two exceptions to this rule. First, in some circumstances, as defined herein, the City Manager, or a designee appointed by the City Manager, may authorize modifications which are deemed minor. Second, if the intensity of the entire development, taking into consideration the proposed modification and any previous modifications, would exceed the threshold for a higher level of review and if such modifications, viewed cumulatively, do not qualify as de minimis, as defined herein, the entire development will be required to undergo the higher level of review.

Proposed modifications shall qualify as de minimis if the cumulative effect of such modifications would not ~~increase the established intensity of the development by more than 10%. Intensity shall be measured in terms of dwellings or persons per acre, whichever is applicable, for residential developments and in terms of gross floor area for non-residential developments. The established intensity shall be the intensity approved in the initial zoning compliance permit for the development or the intensity existing as of 6 September 1996, whichever occurs later.~~alter any development standard by more than 10% as allowed by N.C.G.S. Section 160D-403(d) for administrative decisions, N.C.G.S. 160D-703 for conditional district rezonings, and N.C.G.S. Section 160D-705 for quasi-judicial decisions. No change in density nor in permitted uses may be approved as a de minimis modification, but may only be approved as an amendment approved by the original approval authority.

De minimis (10%) increases or reductions in developmental intensity for nonresidential development may be approved pursuant to this Section. Intensity shall be measured in terms gross floor area. The established

intensity shall be intensity as originally approved, or in existence as of September 6, 1996, whichever is la
By way of illustration, if the owner of a commercial development with an established intensity of 45,000 ft2 of floor area proposed a 6,000 ft2 addition, the entire development, including that which is existing or previously approved, will be required to undergo rezoning to a conditional zoning district in accordance with Section 7-4. If the owner of such development proposed a 4,000 ft2 addition, the modification would qualify as de minimis and would be processed under site plan review.

7-6-1 Modifications of Developments Authorized Under Zoning Compliance Review. The City Manager ~~shall~~may approve minor modifications to developments authorized under zoning compliance review so long as the total development, including all modifications, complies with applicable provisions of the Zoning Ordinance and so long as the total development does not exceed the thresholds for site plan review.

7-6-2 Modifications of Developments Authorized Under Site Plan Review. The City Manager may approve a minor modification of a zoning compliance permit for changes to plans approved under site plan review as long as such changes continue to comply with the approving action of the Planning Board and all other applicable requirements and so long as the total development, including all modifications, does not exceed the threshold for rezoning to a conditional zoning district. The City Manager shall not have the authority to approve a modification for any substantial changes to plans approved under site plan review unless such changes are specifically required by a condition of approval.

If a substantial change is proposed, the City Manager shall require the filing of an application for approval of the modification which shall be reviewed in accordance with the procedures established in Section 7-3.

7-6-3 Modifications of Developments Authorized Under Special Use Review and Conditional Zoning Districts. The City Manager is authorized to approve minor modifications to the approved final plans of developments authorized under ~~special use~~ Special Use Permit review and conditional zoning districts but major modifications may only be authorized by City Council in accordance with procedures set forth herein. A modification shall be deemed minor if it is not a major modification. A modification shall be deemed major if it proposes a substantial departure from the approving action of City Council with regard to the original application or any subsequent modifications. Substantial departure from such approving action shall exist whenever the proposed modification would result in one or more of the following:

a) A substantial change in the boundaries of the site approved by City Council;

b) A substantial change from the use(s) approved by City Council;

c) A substantial increase in the floor area approved by City Council;

d) A substantial increase in the number of residential dwelling units;

e) A substantial increase in the density of nursing homes, rest homes, congregate care facilities or progressive care facilities;

f) A substantial change in the location of one or more principal and/or accessory structures approved by City Council;

g) Structural alterations significantly affecting the basic size, form, style, ornamentation, and appearance of principal and/or accessory structures as shown on the plans approved by City Council;

h) A substantial change in pedestrian or vehicular access or circulation approved by City Council; and

i) A substantial change in the amount or location of open space, landscaping or buffer screens approved by the City Council.

If the proposed action is determined to be a major modification, the City Manager shall require the filing of a request for a map amendment. The City Manager shall prescribe the form(s) of application as well as any other material reasonably required to determine compliance with this article.

Section 7-7 Expiration and Revocation of Zoning Compliance Permits. This section governs the expiration and revocation of zoning compliance permits issued subsequent to zoning compliance review or site plan review. The expiration and revocation of zoning compliance permits issued subsequent to rezoning to a conditional zoning district are governed by the provisions of Subsection 7-4-12.

7-7-1 Commencement. If a building permit for the use, construction, or activity authorized by approval of an application for a zoning compliance permit or modification of a zoning compliance permit is not obtained within six months of the date of approval, or within such further time stipulated in the approval, the approval shall expire and any City permit issued pursuant to the approval shall be void. The City Manager may grant a single extension of the starting time limit for up to 12 months unless the City Manager determines that paramount considerations of health, the general welfare, or public safety require reconsideration by the entity which granted development authorization. The City Manager shall determine whether the use, construction, or activity has started.

7-7-2 Completion. If all construction and actions authorized or required by a zoning compliance permit or modification thereof are not completed within 18 months or such other completion date stipulated in the permit or modification, the permit holder may request an extension of the completion time limit from the City Manager. The City Manager may grant extensions of the time limit for periods of up to 12 months if the City Manager determines the following: a) the permit holder requested the extension prior to the expiration of the completion time limit; b) the permit holder has proceeded with due diligence and good faith; and c) conditions have not changed so substantially as to warrant reconsideration of the approved development. The City Manager shall determine whether or not all construction and actions authorized or required have been completed.

7-7-3 Revocation. If any conditions of a zoning compliance permit or modification, including completion time limits, or requirements of this ordinance applicable to the permit or modification are violated, ~~the City Manager may revoke the permit or modification~~permit, as modified, may be revoked by the original approving authority, following the same procedure as the original approval of the zoning compliance permit.

The ~~City Manager~~original approval authority may reinstate a revoked zoning compliance permit or modification of zoning compliance permit if the City Manager determines the following: a) the holder of the revoked permit or modification submitted a request for reinstatement within 90 days of revocation; b) the violations that were the cause of the revocation have been corrected; and c) the development fully complies with all conditions of the permit or modification and all applicable requirements of this ordinance.

Section 7-8 Planned Developments. This section applies to all planned developments regardless of use district or classification and regardless of the development review process required. A planned development consists of land that is under unified control and planned and developed as a whole and which includes principal and accessory structures and uses substantially related to the character and purposes of the planned development. A planned development shall be constructed according to comprehensive and detailed plans which include not only streets, utilities, lots or building sites, and the like, but also site plans and floor plans for all buildings as intended to be located, constructed, used, and related to each other, and detailed plans for other uses and improvements on the land as related to the buildings~~.~~, provided that floor plans shall not be required for single-family or two-family dwelling units unless consented to by the applicant.

A planned development shall include a program for the provision, operation, and maintenance of such areas, facilities, and improvements as will be for common use by some or all of the occupants of the planned development district, but which will not be provided, operated, or maintained at general public expense.

7-8-1 Statement of Purpose. The purpose of this section is to promote the efficient and well-planned use of land through unified development of sites while providing the City with open space, compatible uses, optimum service of community facilities and adequate vehicular access and circulation. A planned development ~~is~~must be situated, designed, landscaped and buffered in such a manner that it will be compatible with environmentally sensitive areas, such as flood plains or steep slopes, and with existing or proposed land uses in adjoining neighborhoods.

7-8-2 Ownership Control. The land in a planned development shall be under single ownership or management at the time of construction or proper assurances shall be provided that the project can be successfully completed.

7-8-3 Establishment of Planned Developments. Except for minor planned residential developments, which may be developed in certain use district as specified herein, planned developments may only be established in one of the planned development conditional zoning district classifications, that is, PRDCZD, PCDCZD, PMDCZD, PIDCZD, or PMHCZD. Planned developments shall be appropriately located with respect to intended functions, to the pattern and timing of development indicated in the Comprehensive Plan and to public and private facilities existing or clearly to be available by the time the development reaches the stage where they will be needed.

Section 7-9 "As-Built" or Record Drawings. This section applies only to development which has undergone site plan or is within a conditional zoning district. "As-built" or record drawings shall be submitted prior to the issuance of the last Certificate of Occupancy for the project. These drawings shall be submitted in two parts. The first, at a scale not greater than one inch equals 40 feet, shall show all features on the site plan. The second, at a scale not greater than one inch equals 200 feet, may show only all underground facilities on the site and the depth of bury. Plans and verifications shall be signed and sealed by an architect, engineer or surveyor licensed to practice in the State of North Carolina.

Section 7-10 Project Infrastructure. Project infrastructure refers to the improvements, such as water and wastewater lines, streets and roads, stormwater management facilities, sidewalks and street lighting, which are necessary to sustain the intended use of a project.

7-10-1 Construction of Project Infrastructure. Upon approval of the final site plan by the City Council, the applicant shall proceed with the construction of project infrastructure, including but not limited to, roads, water and sewer facilities, drainage, sedimentation and erosion control facilities, and lighting.

Except as provided in Section 7-10-2 below, and prior to issuance of a building permit, the applicant shall complete, install and provide for the dedication of all project infrastructure as specified on the approved final site plan. The applicant shall certify the dedication of said improvements in a form acceptable to the City.

All construction undertaken pursuant to the final site plan shall be inspected and approved by the City of Hendersonville and/or appropriate local, state, and federal agencies prior to issuance of a certificate of occupancy for the development.

7-10-2 Guarantee in Lieu of Construction of Project Infrastructure. In lieu of requiring the completion, installation and dedication of all project infrastructure prior to the issuance of a building permit, the City of Hendersonville may accept a bond with approved surety or a letter of credit payable to the City of

Hendersonville in an amount equal to 120% of the estimated cost of the installation of the required improvements, whereby the improvements may be constructed and utilities installed without cost to the City in the event of default of the developer.

The letter of credit or bond shall remain in full force and effect until such time as the construction of project infrastructure is completed and accepted by the City of Hendersonville. No bond or letter of credit may be called without 60-days prior written notice to the City.

Failure to maintain in effect a City-approved financial guarantee of any incomplete improvement shall suspend the approval of the plan and any permits issued as a result of the plan approval.

All financial guarantees must contain language requiring the completion of all project infrastructure as shown on the approved final site plan and the guarantee of these improvements for an 18-month warranty after they have been accepted by the City.

All financial guarantees must either be issued from a financial institution incorporated in the State of North Carolina or be redeemable at a financial institution incorporated in the State of North Carolina.

Section 7-11 Adequate Facilities Review. Certain developments, due to their type, size and/or location, tend to have greater impacts on public services and facilities than does development generally. In order to ensure that such development is undertaken only when there are adequate public facilities to serve it, no development undergoing site plan review or conditional zoning district review shall be approved unless City staff, the Planning Board or City Council, as the case may be, first determines that adequate facilities and services will be available to such development before it is occupied. Specifically, no development undergoing site plan review or rezoning to a conditional zoning district shall be approved unless City staff, the Planning Board or City Council, as the case may be, finds that all of the following conditions exist or will exist on or before the date that buildings or land in the proposed development will be occupied:

a) **Water Supply.** There will be an adequate potable water supply available for the proposed occupancy. An adequate public water supply shall include adequate potable water for consumption and other inside and outside uses, and adequate water pressure and fire flow to meet established standards of the City for fire protection.

b) **Wastewater.** There will be adequate connections to public wastewater disposal systems with adequate capacity to handle the type and volume of flow from the proposed occupancy.

c) **Roads.** The road system in the development will connect to segments of the public road system with adequate capacity to handle the projected traffic flow, both on an average basis and at peak hours. Furthermore, the development shall be so located with respect to major street, bicycle and pedestrian networks, or public transportation facilities, and shall be so designed, as to provide direct access to the development without creating substantial additional traffic in residential neighborhoods outside the development.

Developments failing to meet these criteria may be approved if the applicant a) provides private facilities, utilities, and services approved by appropriate public agencies as substituting on an equivalent basis, and assures their satisfactory continuing operation, permanently or until similar public utilities, facilities, or services are available and used; or b) makes provision acceptable to the City for offsetting any added net public cost of early commitment of public funds made necessary by such development.

In determining net public costs, the difference in anticipated public installation, operation, and maintenance costs and the difference in anticipated public revenue shall be considered. Expenses involved in making such

determinations shall be paid by the applicant. Determinations shall be made by the City or by experts acceptable to the City.

Section 7-12 Aggregation. Two or more developments shall be aggregated and treated as a single development under this ordinance when they are determined to be part of a unified plan of development and are physically proximate to one another. Each of the criteria listed below is indicative of a unified plan of development. Whenever one or more are found to exist, the reviewing authority may, but is not required to, determine that two or more projects are part of a unified plan of development:

a) The same person has control of the developments;

b) The same person has ownership or a significant legal or equitable interest in the developments;

c) There is common management controlling the form of physical development or disposition of parcels of the development;

d) There is a reasonable closeness in time between the completion of some or all of one development and the submission of an application for authorization of other development which is indicative of a common developmental effort;

e) A master plan or series of plans or drawings exists covering the developments sought to be aggregated;

f) There is a voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments sought to be aggregated;

g) There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.

Section 7-13 Appeals of Development ~~Decisions.~~Approvals and Determinations. Development ~~decisions~~approvals and determinations rendered pursuant to this article are subject to review in the manner set forth herein.

7-13-1 ~~Administrative Remedies.~~Appeals . There are two separate bodies charged with responsibility for ~~administrative~~ review of ~~development~~administrative decisions: City Council and the Board of Adjustment. In no case will decisions of either of those bodies be subject to review by the other. Judicial review from their decisions ~~may be available in accordance with Section 7-13-2, below.~~shall be as provided in Chapter 160D of the General Statutes.

The following ~~development~~ decisions are subject to ~~administrative~~ review in the manner indicated:

a) **Zoning compliance permits.** ~~Decisions~~Administrative decisions regarding applications for issuance of zoning compliance permits under Section 7-2 are subject to review by the Board of Adjustment upon the timely filing of an appeal pursuant to Section 10-6, below.

b) **Preliminary site plans.** Administrative Decisions of the Planning Board regarding applications for preliminary site plan approval under Section 7-3-3 are subject to review by ~~City Council upon the timely filing of a notice of review pursuant to Section 7-3-3.5, above~~or to a legal challenge file with the Henderson County Superior Court in accordance with the provisions of Article 14 of Chapter 160D of the General Statutes. If the decision of the Planning Board is a quasi-judicial decision made after an evidentiary hearing, then the decision will be subject to an appeal in the nature of certiorari to Superior

Court in accordance with N.C.G.S. Section 160D-1402 or may be subject to a legal challenge as authorized by N.C.G.S. Section 160D-1403.1.

c) **Final site plans.** ~~Decisions~~Administrative decisions regarding applications for final site plan approval under Section 7-3-4 are subject to review by ~~City Council upon the timely filing of a notice of review pursuant to Section 7-3-4.4, above.~~ are subject to review by or to a legal challenge file with the Henderson County Superior Court in accordance with the provisions of Article 14 of Chapter 160D of the General Statutes. If the decision of the Planning Board is a quasi-judicial decision made after an evidentiary hearing, then the decision will be subject to an appeal in the nature of certiorari to Superior Court in accordance with N.C.G.S. Section 160D-1402 or may be subject to a legal challenge as authorized by N.C.G.S. Section 160D-1403.1.

7-13-2 Judicial Review. Judicial review of development decisions rendered pursuant to this article shall be in accordance with this section and with NCGS. In no event shall a party be entitled to judicial review until such time as all administrative remedies have been exhausted.

a) **Zoning compliance permits.** Decisions of the Board of Adjustment regarding appeals from development decisions concerning applications for zoning compliance permits may be appealed to the Superior Court in accordance with Section 10-10, below. Such appeals shall be in the nature of certiorari.

b) **Preliminary site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for preliminary site plan approval may be appealed to the Superior Court by any aggrieved party. Such appeals shall be in the nature of certiorari and must be filed within 30 days after the filing of the decision in the office of the City Clerk or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing, whichever is later. The copy of the decision of the Council may be delivered to aggrieved parties either by personal service or by registered mail or certified mail return receipt requested.

b) ~~c)~~ **Final site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for final site plan approval may be appealed to the Superior Court by any aggrieved party in the same manner as decisions regarding preliminary site plans set forth in the preceding paragraph.

7-14 Notice of Decisions, Development Approvals and Determinations Under this Ordinance. Notice of the following types of decisions, development approvals or determinations that are made under this Ordinance shall be provided as stated:

a) **Administrative Decisions, Development Approvals And Determinations By Staff.** Written notice of administrative decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the administrative decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the administrative decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

b) **Administrative Decisions, Development Approvals And Determinations By the Planning Board or City Council.** Written notice of administrative decisions, development approvals and determinations made by the Planning Board or City Council shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b) as required by N.C.G.S. Section 160D-1403(b). Posting of the property

by the applicant or owner(s) (if not the applicant) with notice of the administrative decision, develo approvals and determinations made by the Planning Board or City Council shall not be required, but is recommended in order to provide constructive notice to the public of the administrative decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

~~a)~~c) **Decisions Regarding Evidentiary Hearings By The Zoning Board Of Adjustment or By City Council.** A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment or City Council following an evidentiary hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment or City Council shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

This page intentionally left blank.

ARTICLE VIII
EXCEPTIONS AND MODIFICATIONS

Compliance with the requirements of this Ordinance is mandatory except that under the specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

Section 8-1 Minimum Required Front Yard for Dwellings. The minimum required front yard requirements of this Ordinance for dwellings shall not apply on any lot where the average front yard of existing buildings located wholly or in part within 100 feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required front yard. In such cases, front yard on such lot may be less than the required front yard, but not less than the average of the front yards of the aforementioned existing buildings.

8-1-1 Exceptions to Setback Regulations. The following features shall not be subject to the required minimum setbacks:

Bridges
Doghouses
Driveways, walks and parking areas
Fences and walls not exceeding nine feet in height
Landscape features such as entrance piers, columns, gates, planters and gardens
Playhouses, not exceeding 64 ft2 in floor area
Required building entry ramps
Retaining walls
Stormwater management facilities such as head walls and culverts

Section 8-2 Height Limitations. The following structures may exceed the height limitations contained in Article V of this Ordinance by no more than 20% of that specified for any zoning district classification: church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, chimneys, smokestacks, conveyors, flag poles, masts and similar structures, except as otherwise restricted in the vicinity of airports or elsewhere in this Ordinance.

Section 8-3 Temporary Use Permits for Manufactured/Mobile Homes. No more than one manufactured/mobile home may be permitted in the rear yard of a residential dwelling on a platted lot as an accessory structure, provided, the manufactured/mobile home shall meet the principal structure setback requirements for the district in which it is located. Such use shall be temporary and shall be based on a finding by Board of Adjustment that a personal hardship situation exists (such as the need to care for elderly parents or other dependents) which justifies a special exception of this nature. Temporary Use Permit shall be issued in such cases for one year, and may be renewed by the Zoning Administrator so long as the hardship continues to exist.

All such manufactured/mobile homes situated in rear yards must have access to city water and sewer service or individual systems approved in writing by the County Health Officer and such manufactured/ mobile homes must be maintained in such a way as to create no nuisance conditions. Furthermore, if any such manufactured/mobile home must be situated closer to the side or rear yard line than the required setback for the district involved, a variance must be obtained from the ~~Zoning~~ Board of Adjustment.

This page intentionally left blank.

ARTICLE IX
ADMINISTRATION, ENFORCEMENT, BUILDING PERMITS, CERTIFICATE OF ZONING COMPLIANCE AND PENALTIES

Section 9-1 Administrative Officer. An Administrative Officer designated by the City Council shall administer and enforce this Ordinance.

If the Administrative Officer shall find that any of the provisions of this Ordinance are being violated, the Administrative Officer shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Administrative Officer shall order discontinuance of illegal buildings or structures or illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

Section 9-2 Building Permits Required. No building or other structure shall be erected, moved, added to or structurally altered without a building permit issued by the Administrative Officer. No building permit shall be issued by the Administrative Officer except in conformity with the provisions of this Ordinance, unless the Administrative Officer receives a written order from the Board of Adjustment in the form of an administrative review, ~~conditional use~~ Special Use, or variance as provided by this Ordinance.

Section 9-3 Application for a Building Permit. All applications for a building permit shall be accompanied by a fee according to a sliding scale currently in use by the City and plans in duplicate drawn to scale which indicate the following:

9-3-1 The shape and dimensions of the lot on which the proposed building or use is to be erected or constructed.

9-3-2 The location of the said lot with respect to adjacent rights-of-way.

9-3-3 The shape, dimensions and location of all buildings, existing and proposed on the said lot.

9-3-4 The nature of the proposed use of the buildings or land, including the extent and location of the use on the said lot.

9-3-5 The location and dimensions of off-street parking and means of ingress and egress to such space.

9-3-6 Any other information which the Administrative Officer may deem necessary for consideration in enforcing the provisions of this Ordinance.

One copy of the plans shall be returned to the applicant by the Administrative Officer, after the Administrative Officer has marked such copy either as approved or disapproved and attested to same by his signature on such copy. The original and one copy of the plans similarly marked shall be retained by the Administrative Officer.

Section 9-4 Construction and Use to be as Provided In Applications, Plans, Permits and Certificates of Zoning Compliance. Building permits or certificates or zoning compliance issued on the basis of plans and applications approved by the Administrative Officer authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction differing with that authorized shall be deemed a violation of this Ordinance and punishable as provided by Section 9-7 hereof.

Section 9-5 Remedies. If any building is erected, constructed, reconstructed, repaired, converted or maint or any building, structure or land is used in violation of this Ordinance, the Administrative Officer or other appropriate authority or any adjacent or other property owner who would be damaged by such violation, may institute injunction or other appropriate action in proceeding to stop the violation.

Section 9-6 Procedures Upon Discovery of Violations.

a) If the Administrative Officer finds that any provision of this Ordinance is being violated, the Administrative Officer shall send a Violation Notice by certified mail, return receipt requested or by hand delivery to the owner of record of the real property. The Administrative Officer may also deliver such Notice to the occupant, tenant or user of the property subject to the violation. The Administrative Officer shall indicate the nature of the violation and order the action necessary to correct it. Additional written Notices may be sent at the Administrative Officer's discretion.

b) The final written Notice (and the initial written Notice may be the final Notice) shall state what action the Administrative Officer intends to take if the violation is not corrected.

Section 9-7 Violations.

a) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or ~~special or conditional use permits~~ Special Use Permits, shall subject the offender to a civil penalty in the amount of $500. Violators shall be issued a written Notice which must be paid within ten days.

b) Each day's continuing violation shall be a separate and distinct offense.

c) A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a Notice of Violation in accordance with Section 9-7 and did not take an appeal to the Board of Adjustment within the prescribed time.

d) Notwithstanding subsection a) above, provisions of this Ordinance may be enforced through equitable remedies issued by a court of competent jurisdiction, including but not limited to all remedies provided by Chapter 160D of the General Statutes.

e) In addition to or in lieu of remedies authorized in subsections a) and d) above, violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or conditional zoning districts or ~~conditional use permits~~ Special Use Permits, may be prosecuted as a misdemeanor, punishable as provided in NCGS 14-4.

f) Any combination of enforcement mechanisms provided by this Section may be used by the City with respect to a violation of this Ordinance.

Section 9-8. Appeals. Any enforcement decision or written determination interpreting the provisions of this Ordinance may be appealed to the Zoning Board of Adjustment in accordance with Article X below.

This page intentionally left blank.

ARTICLE X
BOARD OF ADJUSTMENT

Section 10-1 Establishment of Board of Adjustment and Qualifications of Members. A Board of Adjustment is hereby established. Said Board of Adjustment shall consist of ten members; seven members of the Board of Adjustment shall be citizens of the City of Hendersonville and shall be appointed by City Council and three members who reside in the City's area of extraterritorial jurisdiction shall be appointed by the Board of Commissioners of Henderson County.

Terms shall be three years; however, City Council and the Henderson County Board of Commissioners may appoint members for a lesser term in order to achieve a balanced system of overlapping terms. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment. Notwithstanding the foregoing, the City Council may remove any member of the Board of Adjustment for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the Board of Adjustment to carry out its designation functions.

The three members appointed to the Board of Adjustment by the Board of County Commissioners as representatives of the City of Hendersonville's Extraterritorial Jurisdiction shall have equal rights, privileges and duties with other members of the Board in all matters pertaining to the regulation of the Zoning Ordinance in the City and its extraterritorial jurisdiction.

City Council or the County Board of Commissioners, as appropriate, may appoint alternate members to serve on the Board of Adjustment in the absence of any regular members. Alternate members shall be appointed for the same term and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

Section 10-2 Conflicts of interests. The Board of Adjustment shall consider conflicts of interest as follows:

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to NCGS 160D-109 (b) where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

A member of any board exercising quasi-judicial functions pursuant to NCGS 160D-109 (d) 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 maker. Impermissible violations of due process 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.

If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection per NCGS 160-109 (e) [Resolution of Objection]

Section ~~10-2~~ 10-3 Powers of the Board of Adjustment. The Board of Adjustment shall have the following powers:

a) To hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Zoning Ordinance or the Subdivision Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. As used in this section, the term "decision" includes any final or binding order, requirement or determination.

b) To hear and decide requests for variances from the dimensional requirements of the Zoning Ordinance, in accordance with Section 10-8, below;

c) To review applications for ~~conditional use permits~~ Special Use Permits and to issue ~~conditional use permits~~ Special Use Permits in accordance with the provisions of Section 10-7, below;

d) To make interpretations of the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions as arise in the administration of the Zoning Ordinance;

e) To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties;

f) To request City Council to hold public hearings on matters within the purview of the Board of Adjustm

g) To hear and decide any other matter as required by the provisions of the Zoning Ordinance and the Code of the City of Hendersonville;

h) To adopt rules not inconsistent with the Zoning Ordinance or NCGS governing the organization of the Board of Adjustment and proceedings before the Board of Adjustment.

Section ~~10-3~~ 10-4 Officers. The Board of Adjustment shall elect one member to serve as Chair and preside over its meetings and shall create and fill such offices and committees as it may deem necessary. The term of the Chair and other offices shall be one year with eligibility for re-election. The Chair, or any member temporarily acting as chair, is authorized to administer oaths to any witnesses in any matter coming before the Board of Adjustment.

Section ~~10-4~~ 10-5 Meetings. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible. All meetings of the Board of Adjustment shall be open to the public.

Notice of date, time and place of the public hearing conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request 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 the Zoning Ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail not less than 10 nor more than 25 days prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the public hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board of Adjustment shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.

If any member of the Board of Adjustment misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year, their status as a member of the Board of Adjustment shall be replaced or reappointed by City Council or the County Board of Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board of Adjustment, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

The chair of the Board of Adjustment or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. ~~160A-393 (d)~~ may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment.

If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Section ~~10-5~~ 10-6 Quorum and Voting. The concurring vote of seven (7) members of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for the calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

A member of any Board of Adjustment exercising quasi-judicial functions pursuant to this Article 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 maker. Impermissible violations of due process 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. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section ~~10-6~~ 10-7 Appeals of Administrative Decisions. The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

a) Any person who has standing under ~~G.S. 160A-393 (d)~~ NCGS 160D-1402 (1) (2) or the city may appeal a decision of the Board of Adjustment. An appeal is taken by filing notice of appeal with the City Clerk. The notice of appeal shall state the grounds of the appeal.

b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

c) The owner or other party shall have 30 days from receipt of written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision provided the sign remains on the property for at least 10 days. Posting of the signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of the signs is not required.

e) The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

f) An appeal of a notice of violation or other enforcement order stays all legal proceedings in furtherance of the action appealed from, unless the Administrative Officer certifies to the Board of Adjustment, after the notice of appeal has been filed with the city clerk, that because of facts stated in an affidavit, a stay would, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case proceedings shall not be stayed except by a restraining order, which may be granted by a court.

g) If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of the property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

h) Subject to the provisions of subdivision (f) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

i) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any part of the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make an order, requirement, decision, or determination that ought to be made. The Board of Adjustment shall have all powers of the official who made the decision.

j) When hearing an appeal pursuant to ~~G.S. 160A-400.9 (e)~~ NCGS 160D-102, NCGS 160D-947, or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in ~~G.S. 160A-393(k)~~ NCGS 160D-1402 (1) (2).

k) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

Section ~~10-7~~ 10-8 ~~Conditional Use Permits.~~ Special Use Permits. A ~~conditional use permit~~ Special Use Permit from the Board of Adjustment is required for all ~~conditional uses~~ Special Uses.

~~10-7-1~~ 10-8-1 **Application.** When a ~~conditional use permit~~ Special Use Permit is required by the terms of this Ordinance, application for such permit, along with a fee established by resolution of City Council, shall accompany the application for a building permit.

~~10-7-2~~ 10-8-2 **Preliminary Site Plan.** The application for a ~~conditional use permit~~ Special Use Permit shall be accompanied by seven copies of a preliminary site plan showing the following:

a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;

b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;

c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;

d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of public right-of-way;

e) City limits line;

f) Names of adjacent property owners;

g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;

h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100 year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;

i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, drive-ways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;

j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;

k) Location and size of all entrances and exits to the site showing sight distances and their relation-ship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;

l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;

m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;

n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;

o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the Administrative Officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the Administrative Officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the Administrative Officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the Administrative Officer shall notify the applicant in writing of such deficiencies. An application for a ~~conditional use permit~~ Special Use Permit will not be scheduled for ~~public hearing~~ Evidentiary Hearing until

such time as the Board of Adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this Ordinance.

~~10-7-3~~ 10-8-3 ~~Public Hearings~~ Evidentiary Hearings on Applications for ~~Conditional Use Permits~~ Special Use Permits. Once the Administrative Officer is in receipt of a complete application and seven copies of a complete site plan, the Administrative Officer will schedule the application for ~~a public hearing~~ an Evidentiary Hearing before the Board of Adjustment.
(added a block paragraph space to break up this section into more legible 5-8 line max. sections)
The Administrative Officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request 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 the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city 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.
(added a block paragraph space to break up this section into more legible 5-8 line max. sections)
The Board of Adjustment shall conduct ~~a quasi-judicial hearing~~ an Evidentiary Hearing (quasi-judicial hearing) on the application. Per NCGS 160D-406 (d), the applicant, the local government, and any person who would have standing under NCGS 160D-1402(c), shall have the right to participate as a party at the Evidentiary Hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. ~~and shall allow any interested party to appear, either in person or by agent or attorney.~~

~~10-7-4~~ 10-8-4 Board of Adjustment Action on Applications for ~~Conditional Use Permits~~ Special Use Permits. After the ~~public hearing~~ Evidentiary Hearing, and on consideration of the record, the Board of Adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The Board of Adjustment shall not approve an application for a ~~conditional use permit~~ Special Use Permit, with or without conditions, unless it makes each of the following findings of fact:

a) The proposed use complies with the standards for such use contained in Article XVI;

b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and

c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

Section ~~10-8~~ 10-9 Variance~~s~~. A ~~variance~~ Variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A ~~variance~~ Variance constitutes permission to depart from the literal requirements of the ordinance.

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:

~~a)~~ 1) Unnecessary hardship would result from the strict application of the ordinance. ~~It shall not be nece~~ It is not necessary to demonstrate that, in the absence of the ~~variance~~ Variance, no reasonable use can be made of the property.

~~b)~~ 2) ~~The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit, public safety is secured, and substantial justice is achieved.~~ The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a ~~variance~~ Variance. A ~~variance~~ Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

~~c)~~ 3) ~~The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a ~~variance~~ Variance is not a self-created hardship.

~~d)~~ 4) ~~The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~ The requested ~~variance~~ Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

The Board of Adjustment shall not have authority to grant a ~~variance~~ Variance when to do so would: 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any ~~variance~~ Variance, provided that the conditions are reasonably related to the ~~variance~~ Variance.

Section ~~10-9~~ 10-10 Processing of Applications Before the Board of Adjustment. An application to the Board of Adjustment pursuant to the terms of this Article, whether it be in the nature of a request for a ~~variance~~ Variance or a ~~conditional use permit~~ Special Use Permit or an appeal from an administrative determination, must be received by the Zoning Administrator at least 20 days prior to the date of a Board of Adjustment meeting in order to be scheduled for such meeting.

Section ~~10-10~~ 10-11 Quasi-Judicial Decisions and Judicial Review.

a) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board of Adjustment's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the Board of Adjustment. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board of Adjustment. The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

b) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the n of certiorari pursuant to ~~G.S. 160A-393~~ NCGS 160D-1402 (1) (2). A petition for review shall be filed with the clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

This page intentionally left blank.

ARTICLE XI
AMENDMENTS

Section 11-1 Initiation of Amendments. This Zoning Ordinance, including the Official Zoning Map, may be amended only by the City Council. Changes or amendments may be initiated by City Council, the Planning Board, Board of Adjustment, City Staff, or by one or more private citizens, provided however that the amendment of the Official Zoning Map to a conditional zoning district may only be initiated by all of the owners of the property subject to the rezoning.

Section 11-2 Application.

a) An application for any amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be applied, the names and addresses of the owner or owners of the lot in question, the use of each adjacent property and such other information as shall be requested by the Planning Director. Such application shall be filed not less than 30 days prior to the Planning Board's meeting at which the application is to be considered.

b) No application for any change in the zoning regulations applicable to the same property or any part thereof shall be filed until the expiration of one year from the date of final determination by City Council. Provided, however, the one-year waiting period shall not be applicable to the rezoning of all or any part of property previously considered by City Council where the new application requests assignment of a different zoning district classification.

Section 11-3 Fee. A fee shall be paid to the City of Hendersonville for each application for an amendment to cover the cost of advertising and other administrative expenses. The fee shall be determined by a resolution of City Council and may be amended at any time in like manner.

Section 11-4 Standards. The advisability of amending the text of this Zoning Ordinance or the Official Zoning Map is a matter committed to the ~~legislative discretion~~ Legislative Decision of the City Council, per NCGS 160D-102 (19), and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning Map, the City Council shall consider the following factors among others:

a) **Comprehensive Plan Consistency.** Consistency with the Comprehensive Plan and amendments thereto. This must be considered initially and independently by the Planning Board ahead of consideration by City Council per NCGS 160D-604 (d). The Planning Board shall provide a written recommendation to City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

Per NCGS 160D-605 (a), a plan amendment and a zoning amendment may be considered concurrently by the City Council. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602 (b), the City Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

b) **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property. Per NCGS 160D-601 (d) Down-Zoning, no amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local

government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an ar land in one of the following ways:

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

c) **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment. Also, see NCGS 160D-601 (d) Down-Zoning.

d) **Public Interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare. Also, see NCGS 160D-601 (d) Down-Zoning.

e) **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment. Also, see NCGS 160D-601 (d) Down-Zoning.

f) **Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

Section 11-5 Action by the City Council.

11-5-1 Notice of Public Hearing. No amendment shall be adopted by the City Council until after a public notice and hearing. Notice of the date, time and place of the public hearing shall be published in a newspaper of general circulation once a week for two successive weeks, with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing.

a) When a zoning map amendment is proposed, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail not less than ten nor more than 25 days prior to the date of the public hearing. The person of persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, the City may elect to either make the mailed notice provided for in subsection (a) of this section, or may as an alternative elect to publish notice of the hearing in a newspaper of general circulation once a week for two successive weeks, with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing, provided that each advertisement shall not be less than one-half of a newspaper page in size.

c) When a zoning map amendment is proposed, the City shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. The notice shall be a minimum of 18 inches by 24 inches in size. When multiple parcels are included within a

proposed zoning map amendment, a posting on each individual parcel is not required, but the city s post sufficient notices to provide reasonable notice to interested persons.

11-5-2 Planning Board Action. Before taking any action on a proposed amendment to the Zoning Ordinance, Subdivision Ordinance, or the Official Zoning Map, the City Council shall consider the Planning Board's written recommendations regarding adoption of the amendment. If no written report is received from the Planning Board within 30 days of referral of the amendment to that Board, the City Council may proceed in its consideration of the amendment without the Planning Board report.

11-5-3 Protest Petitions.

11-5-3.1 Effect. In case of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths (3/4) of all members of the City Council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Ordinance as a result of annexation.

To qualify as a protest against a zoning map amendment, the petition must be signed by the owners of either 20% or more of the area included in the proposed change or 5% of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to that contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

11-5-3.2 Petition Form and Requirements. No protest against any change in, or amendment to the Zoning Map shall be valid or effective for the purposes of this section unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the City Clerk in sufficient time to allow the City at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. In addition to the proper owner signatures, a protest petition shall identify each property owner signing the petition by address and by parcel qualifying the property owner to protest. Identification of qualifying parcel shall be by Henderson County Land Records map and parcel identification number. A person who has signed a protest petition may withdraw their name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in this section at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

11-5-4 Property Owner Consent Under Certain Circumstances. Amendments, modifications, supplements, repeal or other changes in Zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without the consent of the owner with regard to lots for which building permits have been issued pursuant to NCGS ~~160A-417~~ 160D-403 and NCGS 160D-1110 prior to the enactment of the Ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to NCGS ~~160A-418~~ 160D-403 (c) and NCGS 160D-1111, and unrevoked pursuant to NCGS ~~160A-422~~ 160D-403 (f) and NCGS 160D-1115.

Section 11-6 Scope of Proceedings. It is the intent of this ordinance that applicants for rezoning to any district other than a conditional zoning district shall be prohibited from discussing the specific manner in which they intend to use or develop the property.

This page intentionally left blank.

ARTICLE XII
DEFINITION OF TERMS

For the purpose of interpreting this Ordinance, certain words and terms are herein defined. The following words shall, for the purpose of this Ordinance, have the meaning herein indicated. To the extent that ~~a~~ definitions contained herein below conflict with a definition contained in Chapter 160D of the General Statutes, or if a word, term or phrase is defined in Chapter 160D but is not defined by this Ordinance, the definitions contained in Chapter 160D shall control, unless the context within this Ordinance indicates otherwise.

Section 12-1 Interpretation of Commonly Used Terms and Words.

Words in the present tense include the future tense.

Words used in the singular number include the plural and words used in the plural include the singular unless the natural construction of the wording indicates otherwise.

The word "person" includes a firm, association, corporation, trust and company as well as an individual.

The words "used for" shall include the meaning "designed for".

The word "structure" shall include the word "building".

The word "lot" shall include the words "plot", "parcel", or "tract".

The word "shall" is always mandatory and not merely directory.

The word "map" or "zoning map" shall mean the "Official Zoning Map, City of Hendersonville".

Section 12-2 Definition of Commonly Used Terms and Words.

Accessory Use or Structure: A use or structure on the same lot with, and of nature customarily incidental or subordinate to the principal use or structure.

Accessory Dwelling Unit: A separate and complete dwelling unit which is contained on the same lot as the structure of a single-family dwelling or business.

Adaptive Reuse. The development of a new use for an older building or buildings.

~~**Administrative Adjustment:** A An Administrative Adjustment variance is a relaxation of the terms of the Zoning Ordinance or Subdivision Ordinance where such variance difference will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance an Administrative Adjustment allows changes to quantified zoning/development standards equal to or less than 10% during plan/project review. The following standards are authorized for an Administrative Adjustment:~~
~~- min.setbacks~~
~~- min. lot size~~
~~- min. lot width~~
~~- min. lot depth~~
~~- max. lot coverage~~
~~- min. off-street parking~~

~~- max. height~~
~~These are not applicable to changes in base zoning, use, or density. For requested differences to standards greater than 10% during plan/project review, see *Variance.*~~

Administrative Officer: The official charged with the enforcement of the Zoning Ordinance.

Adult Care Center: A facility where an individual, agency, or organization provides supervision or care for more than six adults in a place other than their usual place of abode.

Adult Care Home: A home where an individual provides supervision or care for no more than six adults in the individual's home.

Adult Establishment: Any structure or use of land which is an adult establishment as defined in NCGS Section 14-202-10 (or any successor thereto) and NCGS 160D-902. Provided, however, the term shall not include massage therapy establishments or the provision of massage therapy as regulated under Chapter 16, City Code.

Agriculture: means the use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal husbandry, and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities. The term shall not include agricultural industries such as commercial poultry or swine production, cattle or swine feed lots, fur bearing animal farms, commercial greenhouses, commercial fish or poultry hatcheries, and other similar activities.

Alley: A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Animal Boarding Facility. A facility whose primary purpose is the boarding of household pets. This term includes animal kennels, which are commercial establishments where the grooming, boarding, training, and selling of animals may be conducted, and animal shelters, which are typically governmental or nonprofit organizations devoted to the welfare, protection and humane treatment of animals. The term shall not be construed to include facilities where the boarding of animals is an incidental use, such as animal hospitals or clinics and pet stores.

Antenna: ~~Communications equipment that transmits and receives electromagnetic radio signals in the provision of all types of wireless communications services.~~ Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services per NCGS 160D-931 (1).

Antenna, Concealed: An antenna that is designed and erected on or in a building in such a way that it blends in with the existing facade and/or is located such that it is not readily visible to an individual at adjacent street level.

Base Flood: The flood having a 1% chance of being equaled or exceeded in any given year, that is, the 100-year flood.

Bed and Breakfast Facilities: An establishment that supplies temporary accommodations and breakfast to overnight guests for a fee.

Bedroom: See *Sleeping Room.*

Berm: A mound of earth.

Breweries: An establishment that engages in the production of malt beverages as defined in North Carolina General Statue 18B-101.

Broadleaf: Leaves which are broad, not needle or scalelike.

Buffer: A specified land area together with the planting, landscaping and improvements required on the land used to visibly separate one use from another or to shield or block noise, lights or other nuisances.

Buildable Area: The portion of a lot remaining after required yards have been provided.

Building: ~~Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods, materials, or business activity of any kind or nature.~~ Any structure used or intended for supporting or sheltering any use or occupancy.

Building, Accessory: A building subordinate to the main building on a lot and used for the purposes customarily incidental to those of the main building.

Building, Height of: The vertical distance measured from the average grade to the highest point of the co[illegible] of a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

Building Materials: Any material or inventory which is used for the construction, alteration, or repair of a building or structure and is physically incorporated into the building or structure.

Building Permit: An official administrative authorization issued by the ~~city or the city's designee~~ the local government prior to beginning construction consistent with the provisions of ~~G.S. 160A-417~~ NCGS 160D-1110.

Building, Principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Building, Setback Line: A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutter and similar fixtures) and the street or highway right-of-way when measured perpendicularly thereto.

Bus Station: Any premises for the transient housing or parking of motor-driven buses and the loading and unloading of passengers.

Business Services: Establishments primarily engaged in rendering services to business establishments on a contract or fee basis, such as advertising, credit reporting, collection of claims, mailing, reproduction, stenographic, news syndicates, computer programming, photocopying, duplicating, data processing, services to buildings, and help supply services.

Canopy Tree: A tree with a large, broad spreading crown, usually broadleaf and deciduous with a minimum mature height of 40 feet.

Cemetery: Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes.

Certificate of Appropriateness (COA): A document issued by the Hendersonville Historic Preservation Commission indicating that proposed work is appropriate for the historic district/landmark and meets criteria in the local code. Exterior portions of any building or structure on property which lies within historic district boundaries, or has been listed as a locally designated landmark, may not be materially altered, restored, moved or demolished unless a COA has been issued per NCGS 160D-947 (Certificate of appropriateness required).

Child Care Center: An individual, agency or organization providing supervision or care on a regular basis to more than six children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

Child Care Home: A facility run by an individual that provides supervision or care on a regular basis in the individual's home for not more than six children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

Cideries, hard: An establishment that engages in the production of hard ciders classified as unfortified wine as defined in North Carolina General Statue 18B-101.

Civic Club: A building and related facilities owned or operated by a corporation, association, or group of individuals established for the fraternal, social, educational, recreational, or cultural enrichment of its members and whose members meet certain prescribed qualifications for membership. Civic clubs by definition shall be limited to those clubs, associations, organizations or corporations which are not operated for profit.

Collocation: ~~The installation of new wireless facilities on previously approved structures, including towers, building, utility poles, and water tanks.~~ The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term does not include the installation of new utility poles, city utility poles, or wireless support structures per NCGS 160D-931 (8).

Common Space: Common space is intended to shape the design and character of a project through a connecting system of pedestrian areas that create a relationship among the various components of the built environment. It shall be designed to create areas where workers, residents and shoppers, as the case may be, are directly or indirectly invited to gather, browse, sit, interact or congregate. It shall be arranged as community space with open areas, landscaping, seating facilities and lighting fixtures which provide for safety and visual effects.

Community Association: A homeowners association, condominium association, or similar organization, organized to own, maintain and operate common facilities and to enhance and protect their common interests.

Conditional Zoning (District): A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment per NCGS 160D-102 (7).

Condominium: A single-dwelling unit in a multiunit dwelling or structure, that is separately owned, or rented from owner, and may be combined with an undivided interest in the common areas and facilities of the property. Also see Dwelling Unit.

Congregate Care Facility: A facility composed of residential and congregate areas and affording health-sustaining services to assist the residents. The residential components shall be considered as self-contained dwelling units as defined in the NC Building Code. The facility shall also have congregate areas for use by or service to the residents which may include dining, recreation and medical areas. In addition, services may be provided such as custodial care, physical therapy, social, and recreation coordination.

Construction Trades Facility: An establishment primarily engaged in construction, including new work, additions, alterations, reconstruction, and repairs. Offices for construction trades which are separate from and do not include construction plants or storage should be classified as offices for purposes of this ordinance.

Cultural Arts Building: A building which may include “live” or legitimate theater, art galleries, museums and/or offices for related groups and societies operated by non-profit organizations. Only incidental retail sales of tickets or admission to displays or performances and sale of refreshments are permitted.

Day Centers: An establishment that provides a combination of case management, resources or a range of like services to aid persons who are primarily indigent, needy, homeless, or transient.

Decision, Administrative: Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations per NCGS 160D-102 (1).

Decision, Legislative: The adoption, amendment, or repeal of a regulation under NCGS 160D or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement per NCGS 160D-102 (19).

Decision, Quasi-Judicial: A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving ~~variances~~ Variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board per NCGS 160D-102 (28).

Determination: A written, final, and binding order, requirement, or determination regarding an administrative decision.

Developer: A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property per NCGS 160D-102 (11). As used herein, Developer may also refer to the Applicant.

Development: Any of the following, per NCGS 160D-102 (12):

a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.

b. The excavation, grading, filling, clearing, or alteration of land.

c. The subdivision of land as defined in G.S. 160D-802.

d. d. The initiation or substantial change in the use of land or the intensity of use of land.

Development ~~approval~~Approval or Development Permit: An administrative or quasi-judicial approval made pursuant to NCGS 160D-102 (13) that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, ~~variances~~ Variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by land development regulations adopted pursuant to ~~this~~ Chapter 160D of the General Statutes, including but not limited to plat approvals, permits issued, development agreements entered into, and building permits issued. Unless expressly stated otherwise in this Ordinance, applications for development approvals reviewed under this Ordinance may be filed by the landowner(s), a lessee, or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner(s). A easement holder may also apply for development approval if authorized by easement. Applications by any person other than the landowner(s) shall require the written consent of the landowner(s). The form of such written consent shall be approved by the City Attorney.

Development ~~regulation~~Regulation: A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to NCGS 160D-102 (14), or a local act or charter that regulates land use or development.

Dish Antenna: A dish antenna, or earth station, or satellite TV antenna is defined as an accessory structure and shall mean a combination of 1) an antenna or dish antenna whose purpose is to receive communication or other signal from orbiting satellites and other extraterrestrial sources; 2) a low-noise amplifier which is situated at the focal point of the receiving component and whose purpose is to magnify and transfer signals; and 3) a coaxial cable whose purpose is to carry the signals into the interior of the building.

Dish Antenna Height: The height of the antenna or dish shall be that distance as measured vertically from the highest point of the antenna or dish, when positioned at its lowest angle for operation, to ground level at the bottom of the base which supports the antenna.

Dish Antenna Setback: The setback of a dish antenna shall be measured from the center mounting post supporting the antenna.

Display Area, Outdoor: That portion of a lot used for the display of inventory available for immediate purchase from a business located on that same lot and not in an enclosed building or under a permanent roof structure. For purposes of this definition, the parking or display of vehicles, recreational vehicles, campers, travel trailers, toy haulers, boats, trailers, rental equipment, building materials, bulk landscaping materials, and prefabricated buildings associated with a legally established business, and, salvage building materials [and second hand appliances] displayed for sale on the premises of a commercial enterprise whose principal business is the sale of salvage building materials from stock shall be excluded. Permanent garden centers associated with a retail establishment which are located within a fenced self-contained area shall not be considered outdoor retail display or outdoor retail storage.

Distilleries: An establishment that engages in the production of spirituous liquors or liquors as defined in North Carolina General Statue 18B-101.

~~**District**~~ **Zoning District:** Any section of the City of Hendersonville or its extraterritorial area in which zoning regulations are uniform~~.~~ per NCGS 160-703 (c).

District: A defined section of the City of Hendersonville or its extraterritorial jurisdiction (ETJ) area.

Dry Cleaning Establishment, Limited: A dry cleaning establishment which occupies a space of no greater than 2,000 ~~ft2~~ square feet of ground area, has a volume of no more than 40,000 cubic feet, all operations are contained on premises within the structure, which may have a pick-up and drop-off window for customer service and provided the dry cleaning operation and all chemicals related thereto shall be in compliance with all applicable standards and requirements of the Environmental Protection Agency (EPA) and all other applicable agencies.

Dwelling: ~~Any building, or portion thereof, which is designed for living and/or sleeping purposes.~~ Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith per NCGS 160D-102 (15). For the purposes of Article 12 of this Chapter [NCGS 160D], the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

Dwelling, Apartment: A structure of at least two stories where dwelling units are located above other units.

Dwelling, Multi-Family: A building arranged to be occupied by three or more families living independently of each other.

Dwelling, Single-Family Attached: A one-family dwelling attached to two or more one-family dwellings by common vertical walls. No dwelling unit may be located above another unit.

Dwelling, Single-Family Detached: A dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and which is not attached to any other dwelling by any means.

Dwelling, Two-Family: A building arranged to be occupied by two families living independently of each other, the structure having two dwelling units.

Dwelling Unit: ~~A building, or portion thereof, designed, arranged and/or used for living quarters for one or more persons living as a single housekeeping unit with cooking facilities, but not including mobile homes or~~

~~units in hotels or other structures designed for transient residence.~~ A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Occupation of property can be under *Condominium* or *Fee Simple* ownership, or rental status.

Electronic Gaming Operation: Any business enterprise, whether as a principal or accessory use, where persons use electronic machines to conduct games of chance and where money, credit, merchandise or other items or allowance of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. "Electronic Gaming Operation" as used herein shall not include (1) any lottery operated pursuant to NCGS Chapter 18C or any other like operation expressly permitted to operate in North Carolina by applicable statute or (2) any game, machine, operation or device permitted to be operated by virtue of NCGS 14-306(b) or any successor provision.

Evergreen: A plant which has green foliage throughout the year.

Fall Zone: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards~~.~~ per NCGS 160D-931 (14).

Fee Simple: Owning all interests in real estate, both building and land underneath a given building.

Flood Insurance Rate Map (FIRM): An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Food Pantry: A nonprofit establishment that primarily distributes food but may also distribute non-food items and other resources to needy individuals and families.

Food Processing Establishment: A commercial establishment in which food is processed or otherwise prepared for human consumption but not consumed on the premises.

General Statutes, or G.S., or NCGS: The North Carolina General Statutes.

Greenhouse: A permanent structure, designed to protect plants. This structure may or may not have a permanent heating system installed in it. For the purposes of this Ordinance, cold frames (temporary structures covered with plastic or other materials, supported by metal pipes) are included in this definition.

Hazardous Waste Facility: All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating or disposing of hazardous waste. A facility may consist of several treatment or disposal operation units (e.g. one or more landfills, surface impoundments, or combinations of them) (from 15A NCAC 13A - Part 260.10 at (32)).

Hearing, Administrative: A proceeding to gather facts needed to make an *Administrative Decision* per NCGS 160D-102 (2). This may also be referred to as *Administrative Review*, per NCGS 160D-935 (c).

Hearing, Evidentiary: A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation per NCGS 160D-102 (16).

Hearing, Legislative: A hearing to solicit public comment on a proposed legislative decision per NCGS 1 102 (20).

Home Occupation: An occupation conducted in a dwelling unit provided that:

a) No person other than members of the family residing on the premises shall be engaged in such occupation.

b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25% of the floor area of the principal structure or one thousand ft2, whichever is smaller, shall be used in the conduct of the home occupation.

c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one ft2 in area, non-illuminated, and mounted flat against the wall of the principal building.

d) No accessory structures or outside storage of materials or equipment shall be allowed in connection with the home occupation.

e) There shall be no sales on the premises in connection with such home occupation.

f) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard or side yard.

g) Only vehicles used primarily as passenger vehicles (passenger automobiles, passenger vans and passenger pick-up trucks, each having a load capacity of one ton or less) shall be permitted in connection with the home occupation.

h) Home occupations may be in operation only between the hours of 7:00 a.m. and 9:00 p.m.

Inventory: Goods, other than farm products, which:

a) Are held by a person for sale or to be furnished under a contract of service;
b) Are furnished by a person under a contract of service; or
c) Consist of raw materials, work in process, or materials used or consumed in a business.

Land Development Regulation: see **Development Regulation.**

Land Disturbing Activity: Any activity involving the clearing, cutting, excavating, filling, or grading of land or any other activity which alters land topography or vegetative cover.

Landowner or Owner: The holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the landowner. As used herein, "landowner" refers to all holders of the title in fee simple of a parcel of real property. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

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

Lot, Corner: A lot which occupies the interior angle at the intersection of two street lines. The street lines forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning compliance permit.

Lot, Depth: The depth of a lot is the mean distance of the side lines of the lot measured from the midpoint of the front lot line to the midpoint of the rear lot line.

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

Lot Width: The distance between side lot lines measured at the building setback line.

Mini-Warehouse: A building containing separate storage units of varying sizes leased or rented on an individual basis for the dead storage of customers' goods.

Manufactured/Mobile Home: A structure, transported in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more ~~ft2~~ square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein, and which is regulated as outlined in the "North Carolina Regulations for Manufactured/Mobile Homes" published by the NC Department of Insurance~~.~~ and per NCGS 160D-102 (23) and NCGS 143-145 (7).

Manufactured Home Park: A contiguous parcel of land under single ownership which has been developed for the placement of manufactured/mobile homes for non-transient use. This definition shall not include manufactured/mobile home sales lots on which unoccupied manufactured/mobile homes are parking for purposed of inspection and sale.

Manufacturing, Heavy: Any manufacturing other than light manufacturing as defined herein.

Manufacturing, Light: The assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in such processes does not exceed 25% of the floor area of all buildings on the property.

Merchandise Gaming Operation: Any game, machine, operation or device permitted to be operated by virtue of NCGS 14-306(b) or any successor provision.

Microbreweries: An establishment that engages in the production of malt beverages as defined in North Carolina General Statue 18B-101. Annual production shall be less than ~~15,000~~ 25,000 barrels.

Miscellaneous Repair Services: Establishments primarily engaged in miscellaneous repair services, such as radio and television repair, refrigeration and air conditioning repair, electrical and electronic repair, reupholstery and furniture repair, watch repair, etc.

Mobile Food Vendor: Are licensed motor vehicles or mobile food units which offer for sale and consumption food and beverages (excluding alcohol). This definition shall not apply to approved vendors during a permitted special event or as an accessory use to an approved primary use.

Motor Freight Terminal: A building or area in which trucks, including tractor or trailer units, are parked, stored, or serviced, including the transfer, loading or unloading of goods. A terminal may include facilities for the temporary storage of loads prior to transshipment.

Neighborhood Community Center: A facility used for recreational, social, educational and cultural activities, owned and operated by a community association, as defined herein, a non-profit corporation recognized as a charitable, religious or education organization pursuant to Section 501c(3) of the Internal Revenue Code, or a public group or agency and integral to and serving the residents of an identified neighborhood. The term shall not include facilities owned or operated by a fraternal organization.

Nonconforming Use: A legal use of a building and/or land that antedates the adoption of future amendments of these regulations and does not conform to the regulations for the district in which it is located.

Nonresidential Floor Area: Nonresidential floor area is the sum of enclosed areas on all floors of a non-residential building or buildings measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and any below-grade floor areas used for access and storage. Not countable as floor area are:

a) Open terraces, patios, atriums, or balconies;
b) Carports, garages;
c) Breezeways;
d) Below-grade areas with no external access which are used for storage.

Nonresidential Floor Area Allowance: Nonresidential floor area allowance (NFAA) is the amount of nonresidential floor area which may be permitted on any lot. It shall be determined by applying the factors for any given zoning district classification to the gross area of a development lying within the roadway corridor and the gross area of any portion of a development lying outside the roadway corridor.

Nursing Home: A facility for chronic or convalescent patients. It is designed to provide long-term care for persons who require medical or nursing care. Nursing homes require skilled nursing personnel and life-support systems and are licensed by the State of North Carolina.

Open Space: The total gross land area on a development site which is not covered by buildings or vehicular use areas. Portions of a development site which qualify as common space, as defined herein, shall also qualify as open space. Open space is essentially unimproved pervious area but does include common space and pedestrian facilities. Minimum open space required shall be the number of square feet derived by multiplying gross land area by the applicable open space ratio (OSR). Also defined per 160D-1307 (2): Any undeveloped or predominantly undeveloped land in an urban area that has value for or is used for one or more of the following purposes:
a. Park and recreational purposes.
b. Conservation of land and other natural resources.
c. Historic or scenic purposes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Open Storage: Unroofed storage areas, whether fenced or not.

Owner: See **Landowner.**

Parking Space: A storage space of not less than nine feet by 18 feet for one automobile, plus the necessary access space. It shall always be located outside the street right-of-way.

Permitted By Right: This term refers to the process within zoning that permits development "by right", meaning that a proposed land use is allowed in a Zoning District subject only to Administrative (i.e. professional City staff) review and approval. Under "by right zoning", it requires no additional discretionary review by the Planning Board, Board of Adjustment, or City Council.

Permitted By Right, Subject to Supplementary Standards: (see **Supplementary Standards)**

Personal Services: Establishments primarily engaged in providing services generally to individuals, such as dry-cleaning and laundry pick-up facilities, portrait photographic studios, beauty and barber shops, seamstress shops, shoe repair shops, and clothing rental shops.

Pet-Sitting: The temporary boarding of no more than six (6) household pets at one time in a dwelling unit.

Planned Unit Development: A residential or commercial development which promotes the efficient and well-planned use of land through unified development while providing the City with open space, compatible uses, optimum service of community facilities and adequate vehicular access and circulation.

Principal Structure: A structure containing the principal or primary use on the lot.

Private Club: Any person, firm, corporation or association, key club, bottle club, locker club, pool club or any other kind of club or association having, possessing or requiring membership and excluding the general public from its premises or place of meeting, or congregating, or operating, or exercising control over any other place where persons are permitted to drink alcoholic beverages, consume food, observe entertainment, live or otherwise, play at video, mechanical or electronic games and/or dance, other than in a private home. Nothing in this definition or elsewhere in this ordinance permits a Private Club to conduct, contain or house an Electronic Gaming Operation in any district in which it is not otherwise expressly permitted by this ordinance.

Public Utility Facility: Any structure or facility transmitting a service provided by a government or public utility, including, without limitation, fire stations, emergency medical service centers, telephone and repeater stations, pumping substations, and water towers, but not including telecommunication towers, antennas, and other telecommunication devices.

Recreational Facilities, Outdoor, Commercial. Any business establishment operating for profit, which is primarily engaged in providing outdoor recreational activities to the general public. "Commercial outdoor recreation" includes such uses as miniature golf courses, skateboard courses, water slides, mechanical rides, fish ranches or other similar uses.

Recreational Facility, Indoors: An establishment providing amusement, entertainment or recreation indoors typically for an admission charge. Types of indoor recreational facilities include, but are not limited to: dance halls, studios, live theater, bands, bowling. An establishment is not an indoor recreational facility under this definition solely because it conducts, contains or houses an Electronic Gaming Operation, whether as a principal or accessory use.

Religious Institutions: To include churches, synagogues, temples, or other buildings or site designated as a place of worship on a continuous, reoccurring basis.

Residential Care Facility: Establishments primarily engaged in the provision of residential, social and personal care for children, the aged and special categories of persons with some limits on ability for self-care but where medical care is not a major element. Such facilities include homes for the aged and infirm and other similar residential care uses not otherwise defined in this ordinance.

Rest Homes: A facility for the care of the aged and infirm whose principal need is a home with such sheltered and custodial care as their age and infirmities require. Medical care is only occasional, such as may be required in the home of any individual. The residents of such homes will not, as a rule, have remedial ailments for which continuing skilled planned medical and nursing care is indicated.

Restaurant: An establishment designed, in whole or in part, to accommodate the consumption of food and/or beverages. Unless specifically noted otherwise, this term shall not include establishments with drive-in or drive-through facilities.

Restaurant with Drive-Through Facility: A building or portion thereof where food and/or beverages are sold, and where a driveway is located so that vehicles may drive up to a window and received food and/or beverages for consumption either on the premises or elsewhere.

Retail Sales, Outdoor: The use of an area not in an enclosed building or under a permanent roof structure for the display of inventory.

Retail Sales, Seasonal Outdoor: Temporary outdoor use of an area for the display of inventory related to a holiday, season of the year or otherwise not offered on a regular basis.

Retail Storage, Outdoor: Outdoor storage of goods for retail sale.

Retail Store: An establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Such use may process some of the products which it sells so long as such processing is incidental to such retail sales. The term shall not be deemed to include establishments in which the sale of goods or merchandise is incidental to another use, such as junk yards and wrecking yards as defined by NCGS 136-143.

Roadway Corridor: Roadway corridors are areas established adjacent to principal roadways the purpose of which is to assist in establishing the nonresidential floor area allowance for any development. Unless otherwise specified, the roadway corridor shall contain all land situated within 250 feet of the right-of-way line for the roadway.

Salvage Building Materials: Any article or material that has been reclaimed or salvaged from a building or permanent structure and that constituted real property or fixtures at the time of such reclamation or salvage.

Search Ring: The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Setback: An open, unobstructed area that is required by this Zoning Ordinance to be provided from the furthermost projection of a structure to the property line of the lot on which the building is located.

Shelter Facility: A building or group of buildings owned or operated by a governmental or non-profit organization used for the purpose of providing boarding and/or lodging and ancillary services on the premises to primarily indigent, needy, homeless, or transient persons.

Shrub: A woody plant, usually multi-stemmed or well-branched from the base, the branches being retained to the ground. When used for buffer plantings, shrubs must also reach a mature height between four and 15 feet.

Sign: Any outdoor notice containing words, letters, figures, numerals, emblems, devices, trademarks or trade names or combination thereof.

Sign, Advertising: Any sign or display, pictorial or otherwise, including any standard poster panel, painted bulletin or billboard, either free-standing or attached to a structure, which advertises or directs attention to any business commodity, service, entertainment or other activity conducted, sold or offered elsewhere than on the premises on which the sign is located, or which is conducted, sold or offered on such premises only incidentally, if at all.

Sign Area: The area of a sign shall be considered to be that of the smallest rectangular figure which encompasses all lettering, wording, design or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts or extensions shall be included in the area of a sign, but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

Sign, Animated: A sign that uses mechanical, electrical or illuminating devices that blink, flash, flicker, scintillate, scroll, vary in intensity, brightness or color that depicts or gives the appearance of action, motion, movement or rotation.

Sign, Business Identification: A sign which directs attention to a business, commodity, service, entertainment, or other activity conducted, sold or offered on the premises upon which the sign is located.

Sign, Changeable Message: A sign that is designed for displaying words, numbers, symbols, figures, or images that can be changed to indicate a different message.

Sign, Ground: Any sign placed upon or supported by the ground independent of any other structure.

Sign, Monument: A ground sign that is monolithic, with a solid-appearing base that is flush with the ground.

Sign, Off-Premises: Any sign used for the purpose of displaying, advertising, identifying or directing attention to business products, operations or services sold or offered at a site other than the site where such sign is displayed.

Sign, Pole: A ground sign that is mounted on a free standing pole or other support so that the bottom edge of the sign face is six feet or more above grade.

Sign, Portable: Any permanent or temporary sign which is affixed to or placed in or upon any parked vehicle, trailer or other parked device designed or capable of being towed or transported, the primary purpose of which is to direct attention to a business, commodity, service, entertainment or other activity.

Sign, Projecting: A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

Sign, Roof: A sign that is mounted on the roof of a building or which is wholly dependent for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable or hip roof or the deck line of a building with a mansard roof.

Sign, Wall: A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign and which does not project more than 12 inches from such building or structure.

Sign, Window: A sign that is applied or attached to the exterior or interior of a window or located in such manner within a building that it can be seen from the exterior of the structure through a window.

Significant Negative Environmental Impact: (applicable to the PMDCZD District) Any use of a building, structure or land producing an effect, exceeding the following standards:

a) **Electrical Disturbance or Interference**

1) Electrical disturbance that adversely affects any operations or equipment, as measured at the boundary of the zoning lot.

2) Otherwise cause, create, or contribute to the interference with electronic signals (including television, and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

b) **Noise.** Any use generating noise levels greater than 67 decibels (dBa), as measured at the boundary of the nearest residential zoning district.

c) **Vibration.** Any use generating transmitted vibration that is perceptible to the human sense of touch, as measured at the boundary of the zoning lot.

d) **Air Pollution.** Any use that emits any "air contaminant" including any odorous emissions, as defined in NCGS 143-213, that exceeds applicable State of North Carolina standards concerning air pollution.

Site Plan: A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an Administrative Decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a Quasi-Judicial Decision. A site plan may also be approved as part of a Conditional Zoning decision.

Sleeping Room: A room designated as sleeping or bedroom on the plans and permit application. NOTE: 2018 North Carolina State Building Code – Residential Code, uses the term *Sleeping Room*; NCGS 160D-706 (b) uses the term *Sleeping Unit*, and these two terms are substantially the same.

Special Use: City-designated uses that require site-specific approvals via a quasi-judicial process (Board of Adjustment). This process is used for uses that might only fit a particular area in certain situations, or for which additional scrutiny is desired. These standards generally involve some discretion, so the City of Hendersonville uses a quasi-judicial process to help ensure the rights of all parties to a fair hearing are protected. Some zoning districts allow certain uses only as "special uses," and the process for approving these special uses requires the applicant to present—and the Board of Adjustment to consider—competent, material, and substantial evidence that the proposed use meets certain standards outlined in the ordinance. If sufficient evidence is presented that the proposal meets the standards, the permit is issued; if sufficient evidence is not presented, the permit is denied.

Special Use Permit: A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

The term includes permits previously referred to as conditional use permits or special exceptions per NCG 160D-102 (30).

Special Flood Hazard Area: The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year.

Standing [legal]: Referenced from:

§ 160D-1402. Appeals in the nature of certiorari.

(c) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section:

(1) Any person possessing any of the following criteria:

a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. An option or contract to purchase the property that is the subject of the decision being appealed.

c. An applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A local government whose decision-making board has made a decision that the governing board believes improperly grants a ~~variance~~ Variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the governing board.

Storage Container: A structure towed or transported by vehicle and used for the storage of goods. The removal of the structure's wheels, if any, or any other alteration to the structure shall not eliminate or change any requirement pertaining to storage containers. For the purposes of this Ordinance, a storage container is considered to be a temporary use.

Storage, Outdoor: The storage of any inventory associated with the primary use, located outside a building and not under a permanent roof structure for a period of time exceeding 48 hours, the storage of which is not accessory to a residential use. For retail uses, outdoor storage areas are not readily accessible to the buying public. For purposes of this definition, the outdoor storage of vehicles, recreational vehicles, campers, travel trailers, toy haulers, boats, trailers, rental equipment, building materials, bulk landscaping materials, and prefabricated buildings associated with a legally established business, and, salvage building materials [and second hand appliances] displayed for sale on the premises of a commercial enterprise whose principal business is the sale of salvage building materials from stock shall be excluded.

Story: A space in a building between the upper surface of a floor and the upper surface of the floor or roo above; provided, however, that where the floor level of the first story is at least five feet below the adjoining finished grade, the space shall be considered a basement and not counted as a story.

Story, Half: A story under a gable, hip or gambrel roof of which the wall plates on at least two opposite exterior walls are not more than four and one-half feet above the floor of such story.

Street: A dedicated public or private right-of-way for vehicular traffic which affords the principal means of access to abutting property.

Street Line: The dividing line between a right-of-way and the contiguous property.

Structure: A combination of material assembled, constructed or erected at a fixed location, including a building, the use of which required attachment to the ground or to something attached to the ground.

Supplementary Standards: Additional standards required of certain Permitted by Right uses in certain Zoning Districts.

Telecommunications: The transmittal or reception of signals over the airwaves as a commercial or public service, including, without limitation, telephonic, radio, television, cable television, or microwave signals. For purposes of this ordinance, the term shall not include a non-commercial individual use such as residential television antennas, satellite dishes, or ham radio antennas, or a commercial use that is purely incidental to other business activities of the owner.

Telecommunications Tower: A tower, pole, or similar structure, exceeding 20 feet in height, which supports or incorporates, or is intended to support or incorporate, one or more telecommunications antennas operated for commercial or public purposes above ground, whether freestanding, guyed, or affixed to a building. The term shall include mobile towers.

Telecommunications Tower, Concealed: A telecommunications tower designed and installed in a manner such that the antenna(s), supporting apparatus and associated structures are aesthetically and architecturally appropriate with regards to an existing structure or immediate environment in which the tower is located.

Temporary Use: Any building, structure or use of land which is designated by this Ordinance as temporary in nature and subordinate to a primary building, structure or use of land. A temporary use shall require a building permit issued for a specified period of time given in this Ordinance.

Tower Height: The vertical distance measured from the ground to the uppermost point of the telecommunications tower and any antenna affixed thereto.

Tree: A living, woody, self-supporting perennial plant, ten feet or more in height when mature, usually having a single elongated main stem and distinct crown.

Understory Tree: A small (approximately ten to 25 feet high when mature), usually shade tolerant tree, capable of thriving in the lower light intensities found under the canopy of tall trees.

Utility Pole: A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

~~**Variance:** A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the~~

~~actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue har~~
~~As used in this Ordinance, a variance is authorized only for height, area and size of a structure or size of yards and open space.~~

Variance: ~~A~~ Variance ~~variance~~ is a relaxation of the terms of the Zoning Ordinance where such ~~variance~~ Variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, ~~a variance~~ a Variance allows changes to zoning/development standards greater than 10% during plan/project review, subject to quasi-judicial review and approval with the Board of Adjustment. The following standards are authorized for a Variance:
- min.setbacks
- min. lot size
- min. lot width
- min. lot depth
- max. lot coverage
- min. off-street parking
- max. height

These are not applicable to changes in base zoning, use, or density.

Vehicular use area: All portions of a site or property designed to receive vehicular traffic, including parking, driveways, loading or unloading areas, which have an improved surface such as gravel, asphalt, brick, or concrete pavement.

Wineries: An establishment that engages in the production of unfortified wines as defined in North Carolina General Statue 18B-101.

Wireless facility: The set of equipment and network components, exclusive of the underlying support structure of tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

Wireless support structure: A new or existing structure, such as a monopole, lattice lower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Yard: An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

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.

Yard, Rear: An open, unoccupied space on the same lot with the principal building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters and similar fixtures), extending the full width of the lot and situated between the rear line of the lot and the rear line of the building to the side lines of the lot.

Yard, Side: An open, unoccupied space on the same lot with a principal building (excluding the

outermost three feet of any uncovered porches, steps, eaves, gutters and similar fixtures), situated between a 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.

Zero Lot Line: The location of a building on a lot in such a manner that one of the building's sides rests directly on a lot line.

This page intentionally left blank.

ARTICLE XIII
SIGN REGULATION MAINTENANCE AND ENFORCEMENT

Section 13-1 General Sign Compliance. No type of exterior sign may be erected, posted, reposted, placed, replaced, hung, painted, or repainted in any use district except in accordance with this Article. Signs not specifically authorized by these regulations are prohibited. The Board of Adjustment shall not have the authority to grant ~~variances~~ Variances so as to allow prohibited signs to be installed.

13-1-1 Signs not requiring a permit. The following types of signs are allowed in any use district without a permit:

a) Any sign not exceeding 2 ~~ft2~~ square feet in area and bearing only address numbers, names of occupants or business and professional signs not exceeding 2 ~~ft2~~ square feet in area.

b) Temporary signs advertising the sale, rental or lease of the property on which said signs are located, provided such signs are non-illuminated and do not exceed two signs per lot, do not exceed four feet in height and do not exceed 4 ~~ft2~~ square feet per face for property zoned residential or do not exceed eight feet in height and do not exceed 32 ~~ft2~~ square feet per face for property zoned other than residential. All such signs shall be removed within seven days after the closing of the sale, rental, or lease of the property.

c) Directional signs or information signs of a public or quasi-public nature, not exceeding eight ~~ft2~~ square feet in area, such as community names, place of worship, meeting place of a civic body, or event of public interest. Signs identifying a residential PRDCZD, Planned Residential Development Conditional Zoning District or subdivision may be erected provided that they do not exceed 24 ~~ft2~~ square feet in area, are not greater than five feet in height and are only lighted indirectly.

d) Signs for churches or public buildings (including bulletin boards, lighted or unlighted not to exceed 15 ~~ft2~~ square feet in area. Such signs must meet the yard requirements for the district in which they are located.

e) Signs advertising agricultural products for sale which are produced on the premises, not to exceed 20 ~~ft2~~ square feet in area.

f) Legal notices, identification, information or directional signs required by governmental bodies.

g) Signs not exceeding six ~~ft2~~ square feet in area directing and guiding traffic to parking areas on private property but bearing no advertising material.

h) Other signs and devices including plaques, banners, pennants, streamers and posters for a period of not more than two weeks before and after the opening of a new business or sale. The Zoning Department shall be notified of the posting of such signs and devices in order to track the time period. Portable commercial signs are not included in this provision.

i) One construction sign shall be allowed on a construction site provided such sign does not exceed 32 ~~ft2~~ square feet in area per display face and a maximum of ten feet in height. Construction signs shall not be erected prior to the issuance of a building permit and shall be removed within seven days of the issuance of a certificate of occupancy.

j) Signs which are not visible beyond the boundaries of the lot upon which they are located and/or from any public thoroughfare or right-of-way.

k) Political signs not exceeding three ~~ft2~~ square feet permitted from 60 days prior to three days following the day of the election.

13-1-2 Signs Requiring a Permit. No sign except those listed in 13-1-1 shall be erected in the PRDCZD, PMHCZD, R-40, R-20, R-15, R-10 or R-6 zoning district classifications nor in corresponding conditional zoning districts, if any. No sign except those listed in 13-1-1 shall be erected in the PCDCZD, RCT, C-1, C-2, C-3, C-4, MIC, CMU, I-1, PMDCZD, PIDCZD, GHMU, HMU, UVCZD, URCZD, MSH or CHMU zoning district classifications, nor in corresponding conditional zoning districts, if any, without a permit obtained from the Administrative Officer. Each application for a permit shall be accompanied by plans which show the following:

a) Identify the proposed site by means of the property owner, location and present use;

b) Show location of the sign on the lot in relation to property lines and existing signs or structures;

c) Show complete structural specifications; and

d) Any additional information needed to determine if such sign will be erected in conformance with the Ordinance.

13-1-3 Sign Location

a) No sign when attached to a building shall project closer than 18 inches to the curb line and it shall be at least ten feet above the level of any sidewalk it may overhang. Painted wall advertising signs are not permitted except in association with a previously-existing painted advertising sign.

b) No sign except those erected for governmental purposes shall be permitted on any public property or right-of-way.

c) Double-faced signs shall be permitted only in areas designated in the Ordinance.

13-1-4 Height of Sign

a) Ground signs, including supports, shall not exceed a height of 12 feet in a residential district.

b) No sign attached to a structure shall project more than ten feet above the top of the exterior wall of such structure at the location of the sign.

c) Free-standing signs, including off-premises signs, shall comply with applicable regulations set forth below.

13-1-5 Animated and Illuminated Signs

a) A sign may be illuminated externally if such illumination is confined to or directed to the surface of the sign, or internally. No animated sign shall be permitted except in the C-2, C-3 and I-1 zoning district classifications or in corresponding conditional zoning districts, if any.

b) For externally illuminated signage, the light source of the signs shall be so designed and shielded that it cannot be seen from beyond the property lines on which the sign is located. Signs illuminated internally by fluorescent bulb, light emitting diodes (LED's), fiber optics, plasma or other similar technology, and neon tubes shall be limited to commercial and industrial use districts.*)*

13-1-6 Business Identification Signs. Each business on a development parcel shall be entitled to install one or more business identification signs on the premises where the business is located so long as the total amount of such signage does not exceed the business identification sign allowance for any building housing one or more businesses. The business identification sign allowance for any such building shall be calculated as follows: one ~~ft2~~ square foot for each linear foot of the front facade for that business plus one ~~ft2~~ square foot for each three linear feet of any additional facade which has a door designed and used for public access or 250 ~~ft2~~ square feet, whichever is less. Such signs may be placed on any facade of the building or on awnings, canopies or marquees attached to or closely associated with any such facade. Provided, however, buildings within the Downtown Special Tax District may be determined to have more than one main entrance, as defined herein, in which event the business identification sign allowance for such building shall be one ~~ft2~~ square foot for each linear foot of the front facade for each main entrance. For a building to qualify for the multiple main entrance allowance, the following criteria must apply:

a) The building must front on two or more streets, each of which has a right-of-way of 30 or more feet;

b) Each entrance shall comply with all relevant building code provisions and shall provide significant pedestrian access to the business or businesses being identified; and

c) Each entrance shall be architecturally designed as a front entrance for the building.

Notwithstanding the foregoing, business identification signs on any given building facade shall not exceed one ft2 for each linear foot of the building facade on which it is located or 250 ~~ft2~~ square feet, whichever is less.

13-1-7 Free-Standing Signs. Each development parcel may include no more than one freestanding sign for each thoroughfare on which the parcel has driveway access, which may be either a business identification sign or, where permitted, an off-premises sign. Free-standing signs must be permanently affixed to the site; portable signs are prohibited.

13-1-7.1 Free-standing business identification signs shall not exceed 70 ~~ft2~~ square feet in size and 18 feet in height, measured from street grade, for each thoroughfare on which the site has driveway access. For purposes of this paragraph, a development parcel does not include out parcels associated with shopping centers and other multiple-business development sites.

13-1-7.2 Free-standing off-premises signs shall meet the requirements of Section 13-2, below.

13-1-8 ~~Special Requirements~~ Supplementary Standards for Signs in Downtown Special Tax District. The following ~~special requirements~~ supplementary standards apply to signs in the Downtown Special Tax District.

a) Only one projecting sign per business is allowed.

b) The maximum projection of a sign over the sidewalk shall be no greater than seven feet, but shall not project nearer than 18 inches to the front or side curb line and shall be at least ten feet above the level of any walkway it may overhang.

c) Should lighting be provided, signs shall be lit in such a way as to prevent direct lighting from shining onto streets or adjacent properties. Lighting shall not interfere with the possible residential use of upper floors. No flashing, rotating or intermittent illumination shall be permitted.

d) No permit for a sign shall be issued until it has been reviewed by the, Community Development ~~Assistance~~ Director or a designee following the guidelines set forth in the Section 13-1-9, below. In order to review the design, the applicant shall submit a drawing of the sign indicating materials, color, message and dimensions; a drawing or photograph of the building facade and proposed sign location on the building, and a drawing or photograph of the site and adjoining properties' existing graphics. The Community Development ~~Assistance~~ Director or a designee shall have ten days to review the sign; if it has not been reviewed within this time, then it shall be considered to have been reviewed.

13-1-9 Design Guidelines for Signs in Downtown Special Tax District. The following design guidelines shall guide decisions of the Community Development ~~Assistance~~ Director, or a designee appointed by the Community Development ~~Assistance~~ Director, regarding applications for signs in the Downtown Special Tax District.

a) Signs should be regarded as an integral and complimentary element of the overall architectural and streetscape composition and should be integrated with the buildings and landscape design.

b) Signs should not obscure distinctive architectural features, such as cornices and windows.

c) Signs should be placed so they fit into the originally designated areas on the building, such as above the first floor lintel, or on the transom, or on the wall space above the storefront.

d) Signs projecting out from the building should be hung just above the lintel.

e) Signs should not be so large that they overwhelm the building.

f) Signs on a single building should provide a coherent and harmonious appearance.

g) Signs are encouraged to be at a consistent height along the street, so they respect the existing "sign line" established by signs on adjacent stores.

h) Signs are encouraged to coordinate with neighboring store fronts, so that the sign relates well to its own storefront as well as to other signs and storefronts along the block.

i) The Community Development ~~Assistance~~ Director or a designee shall judge signs according to style, color, location, ornamentation, materials, and the architecture of the building on which it is to be placed. In order to review the design, the applicant shall submit a drawing or photograph of the site and adjoining properties' existing graphics.

13-1-10 Noncommercial Messages. Any sign, display, or device allowed under this Article and which complies with size, lighting, and spacing requirements of this Article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale.

Section 13-2 Advertising Sign Regulations. In addition to the general regulations and standards set forth in Section 13-1, all advertising signs shall comply with the regulations of this section.
[By ordinance #99-0657, adopted 6-17-99, no new outdoor advertising signs shall be permitted within the planning jurisdiction of the City.]

13-2-1 Permits. All outdoor advertising signs shall have a permit from the Administrative Officer prior to any construction, erection, structural alteration or site preparation.

13-2-2 Permitted Use Districts. Outdoor advertising signs shall be permitted only in the C-3 and I-1 us districts.

13-2-3 Spacing. The spacing requirements for advertising signs shall apply to advertising signs located on the same side of the street, road or highway. Advertising signs shall be spaced so that no such sign structure shall be placed closer to the next adjacent advertising sign structure than the minimum distance as herein defined.

The minimum spacing required for any advertising sign adjacent to an advertising sign measuring 300 ~~ft2~~ square feet or larger shall be 500 lineal feet. The minimum spacing required for adjacent advertising signs measuring less than 300 ~~ft2~~ square feet shall be 300 lineal feet. The minimum spacing distance shall be measured horizontally between the closest points of any two such signs. If adjacent signs have different sign face areas on each side of the sign structure, the larger sign face area shall be used in calculating the minimum spacing distance between the signs.

13-2-4 Setbacks. Setbacks for advertising signs shall be measured horizontally from the adjacent edge of the right-of-way to the nearest edge of the sign structure, provided that no part of the sign or sign structure shall encroach upon a public right-of-way. Where property abuts more than one street or road, signs shall be set back an equivalent distance from each roadway no less than minimum setback required for the sign size.

13-2-5 Maximum Sign Height. Maximum sign height shall be measured from the existing street grade to the uppermost point on the sign structure.

13-2-6 Minimum Sign Height. Minimum sign height shall be measured from the existing street grade to the lowest point on the horizontal portion of the sign structure. Minimum sign heights are not required if advertising signs are set back in accordance with Section 13-2-4 and Table 13A.

13-2-7 Number and Arrangement of Signs on a Sign Structure. No sign structure shall be permitted to have more than one sign face per side.

13-2-8 Maintenance and Enforcement. In addition to provisions of this section, all advertising signs shall comply with the provisions of Section 13-3 of this Ordinance.

13-2-9 Sign Size, Height and Setback Requirements. Regulations governing the maximum sign size, setbacks and maximum and minimum heights are shown on Table 13A.

13-2-10 Nonconforming Off-Premise Signs (Amortization). All nonconforming outdoor advertising signs shall be discontinued or made conforming (amortized) within five and one-half (5½) years from the effective date of this section unless explicitly prohibited by state statute. All outdoor advertising signs which are made nonconforming by an amendment to this Article or to the official zoning map, or extension of the areas in which this section is applicable shall be discontinued or made conforming (amortized) within five and one-half (5½) years after the date of such amendment or extension, unless explicitly prohibited by State Statute. *[This section became effective the fourth day of June, 1987.]*

Section 13-3 Maintenance and Enforcement.

13-3-1 Maintenance Requirements. The following maintenance requirements must be observed for all signs visible from all public street or highway within the jurisdiction of this Ordinance:

a) No sign shall be in a state of disrepair where more than 20% of its surface area is covered with disfigured, cracked, ripped or peeling paint or poster paper.

b) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendage struts, or be allowed to stand more than 15 degrees from the perpendicular.

c) No sign shall be allowed to have weeds, trees, vines or other vegetation growing on it or obscuring it from the street or highway from which it is intended to be viewed.

d) No neon or internally illuminated sign shall be allowed to stand with only partial illumination.

13-3-2 Authority of the Administrative Office. To enforce the regulations set forth in this Ordinance, the procedures and penalties outlined in Section 9-6 and 9-7 shall be used.

Section 13-4 Nonconforming Signs.

a) After the effective date of this Ordinance, it shall be unlawful for any person to erect, construct or place any sign which does not conform to the requirements set out herein on any parcel of real property within the jurisdiction of this Ordinance.

b) Any advertising sign or business identification sign which is not specifically prohibited and is permanently affixed to a building, structure or the ground, which is nonconforming because of its height, size, setback or location shall be allowed to continue and shall be maintained as provided for in the preceding sections, but shall not be:

1) Changed to another nonconforming sign;

2) Structurally altered (except to meet safety requirements);

3) Altered so as to increase the degree of non-conformity of the sign;

4) Expanded;

5) Re-established after its discontinuance for 60 days;

6) Continued in use after cessation or change of the business or activity to which the sign pertains; or

7) Re-established after deterioration, damage, destruction or voluntary demolition if the cost of reconstruction exceeds 60% of the replacement cost of a sign of comparable quality.

Regulations for Advertising signs - Table 13A

Permitted Sign Area** (in ft^2)	Streets & Highways Where Outdoor Advertising Signs Are Permitted	Required Setbacks from Streets and Highways **	Maximum Permitted Height of Sign Structure	Minimum Permitted Height of Sign Structure
0 to 72	All streets and highways	10	25	None
73 to 380	All streets and highways	20	35	15

** All setbacks shall be measured from the edge of the right-of-way to the nearest edge of the sign structure.

This page intentionally left blank.

ARTICLE XIV
COMPREHENSIVE PLAN

Section 14-1 Role of the Comprehensive Plan. It is the intent of the City of Hendersonville to administer this Zoning Ordinance in accordance with the City's current, adopted Comprehensive Plan. ~~This means that any decisions made under this Ordinance must comply with the Comprehensive Plan, as it may be amended from time to time.~~ Therefore the City Council shall consider consistency with the Comprehensive Plan whenever considering legislative decisions that are made concerning this Ordinance. As part of its consideration, the City Council shall adopt a Comprehensive Plan consistency statement as required by N.C.G.S. Section 160D-605 when making a legislative zoning decision. The Comprehensive Plan sets forth the goals and policies which serve as the basic policy guide for development in the City of Hendersonville and its extraterritorial jurisdiction. These goals and policies may be amended from time to time to meet the changing requirements of the City and its extraterritorial jurisdiction.

Section 14-2 Amendments to the Comprehensive Plan. Amendments to the Comprehensive Plan may be initiated at any time and shall be made in accordance with the following procedures:

a) An amendment to the Plan may be adopted only by City Council, either on its own initiative or at the request of the Planning Board or any other person or agency.

b) Requests to amend the Comprehensive Plan shall first be reviewed by City Council. If Council is willing to consider the proposed amendment, it will refer the matter to Planning Board which shall make a recommendation thereon to Council.

c) City Council shall hold at least one public hearing on each amendment or group of amendments initiated. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with Section 7-4-9 of this Ordinance. Nothing in this chapter shall be construed as preventing this public hearing from being held at the same meeting as a public hearing for the rezoning of a particular tract or parcel affected by the amendment. In cases where a public hearing on the zoning amendment is to be held at the same time as the public hearing on the amendment to the Comprehensive Plan, the notice of the public hearing shall state that both issues shall be considered at the hearing.

d) Upon receiving the recommendation of the Planning Board, City Council may:

1) Adopt the proposed amendment;

2) Revise and adopt the proposed amendment;

3) Reject the proposed amendment;

4) Refer the matter back to the Planning Board for further consideration or hearing; or

5) Conduct an additional hearing on the proposed amendment.

e) In deciding whether to adopt a proposed amendment to the Plan, the City Council shall consider whether the amendment is necessary or desirable and whether it will promote the health, safety, and welfare of the City of Hendersonville.

f) Notwithstanding the foregoing, as provided in N.C.G.S. Section 160D-605, if a legislative zoning decision is made that is inconsistent with the Comprehensive Plan, the Comprehensive Plan, including the future

land use map, shall be deemed amended as to that parcel(s) of land affected by the legislative zoning decision. Pursuant to N.C.G.S. Section 160D-501, these types of amendments shall be noted in the Plan.

This page intentionally left blank.

ARTICLE XV
BUFFERING, SCREENING & LANDSCAPING

Section 15-1 Purpose and Intent. The City of Hendersonville has an abundant and diverse tree and vegetative cover that contributes to the aesthetic value of the City and provides numerous ecological and economic benefits. The landscaping, buffering and screening standards set forth below require landscaping in certain circumstances and locations in order to:

a) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;

b) Improve the visual quality of the City of Hendersonville and minimize potential negative impacts of development such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor;

c) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;

d) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and preserve the character and value of a property and provide a sense of privacy;

e) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of Hendersonville while allowing flexibility to promote well designed and creative landscape plantings;

f) Require the maintenance of landscaping installed to meet the requirements of these standards to ensure that the landscaping continues to thrive and enhance the visual quality of the City of Hendersonville.

Section 15-2 Landscaping, Buffering and Screening Required. Landscaping, buffering and screening shall be required for developments within the planning jurisdiction of the City of Hendersonville, including its extraterritorial jurisdiction, as set forth herein.

a) The following developments must bring the entire site into full compliance with the requirements of this Article:

1) Any new public or private development with the exception of single or two-family homes;

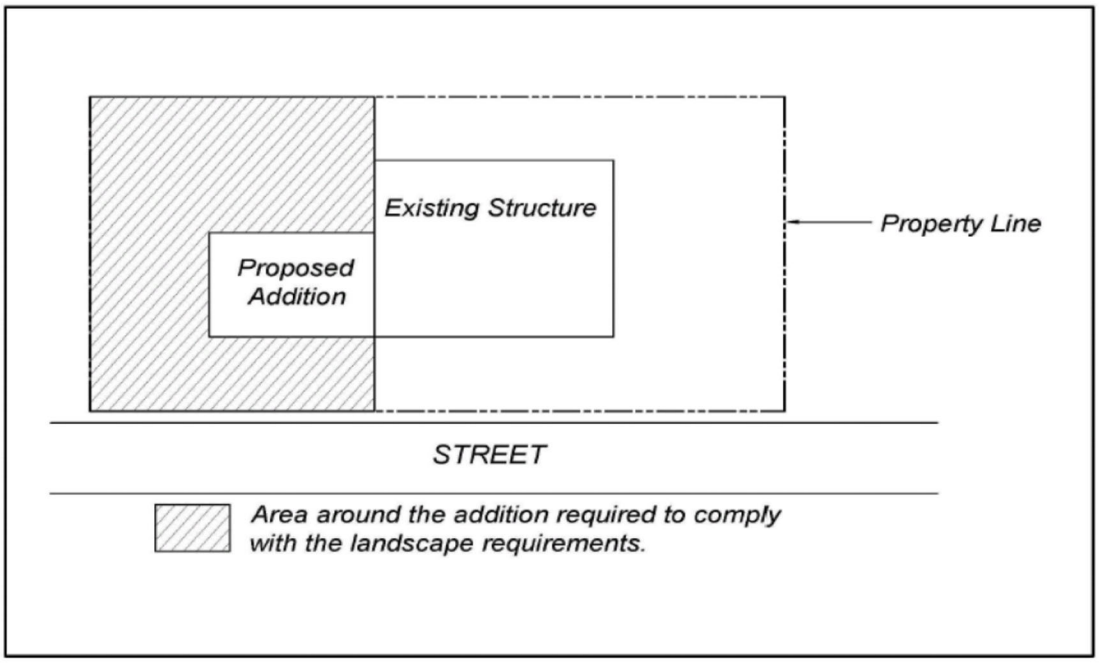
2) A change of use to a higher impact. For purposes of this section, the following list ranks differing uses from lowest to highest impact: residential, mobile home park, institutional & cultural, commercial, industrial;

3) Renovations with a total cost exceeding 50% of the assessed value of the building according to Henderson County tax records or an appraisal by a state licensed appraiser;

4) Expansions exceeding 50% of the pre-expansion floor area or paved surface;

5) Existing unpaved parking lots which are paved over.

b) Expansions or additions that are less than 50% of the pre-expansion floor area and/or pavement surfac must meet the landscaping requirements only in the area around the addition which is parallel to any edge of the expansion area and extending to the property line or street pavement edge.



Section 15-3 Alternative Compliance. The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The reviewing authority, as specified in Article VII, above, may alter the requirements of this section as long as existing or added landscape features of the development site comply with the intent of this article. Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements;

b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood or when developing in an historic district; or

c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of this article and exhibits superior design quality.

Section 15-4 Existing Vegetation.

a) **Preservation of Existing Vegetation.** Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, mitigate the impacts of development on the community, and help minimize opposition to a proposed development. It is recommended that groups of trees be preserved, as well as individual trees. Existing preserved trees and shrubs may be credited towards required buffer trees, street trees, and parking lot trees, in accordance with paragraph b), below.

b) **Credits and Other Incentives to Preserve Vegetation.** Preserved trees may be credited at the following rate:

2 – 6 inch caliper tree = 1 tree
7 – 12 inch caliper tree = 2 trees
13 – 18 inch caliper tree = 3 trees
19 – 24 inch caliper tree = 4 trees
25+ inch caliper tree = 5 trees.

In order to receive credit, preserved vegetation must be in good health and condition. Trees designated to be preserved must be indicated on the site plan and on landscape and grading plans. Protective barriers, if utilized in accordance with paragraph c), below, must also be shown on the landscape and grading plans. A preserved tree shall be replaced with the total number of trees which were credited to the existing tree under the following circumstances: a) when the developer has elected to protect existing trees during construction in accordance with paragraph c), below, if the preserved tree dies within five years of completion of the project; b) when the developer has not elected to protect existing trees in accordance with paragraph c), below, if the preserved tree dies within ten years of completion of the project.

c) **Protection of Existing Trees During Construction.** The regulations contained in this paragraph shall apply in those circumstances when a developer has elected to protect trees during construction and, thus, after the passage of five years, be excused from the requirement to replace preserved trees.

1) No grading or other land-disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet landscaping requirements until protective barriers are installed by the developer and approved by the Community Development ~~Assistance~~ Director or a designee appointed by the Community Development ~~Assistance~~ Director. Trees designated for preservation which are counted toward the landscape requirements must be protected by barriers, while trees designated for preservation which do not count toward the landscape requirements are encouraged to be protected by barriers. The diameter of the preserved trees and the location of protective barriers must be shown on landscape and grading plans with the dimension between the tree trunk and barrier indicated.

Barricades shall be placed around the critical root zone of preserved trees that are within 50 feet of any grading or construction activity. The critical root zone is a circle extending around the tree with a one-foot radius for every one inch of tree diameter. For example, a ten-inch diameter tree would have a barricade surrounding it, erected ten feet away from the trunk. All protective barriers must be maintained throughout the building construction process.

Protective barriers shall consist of either:

A) A fence which is at least three feet high and constructed in a post and rail configuration, using two-by-four posts and one-by-four rails; or

B) A fence with two-by-four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing.

2) All contractors must be made aware of the areas designated for protection. No disturbance can occur within the tree protection areas including the following:

A) Grading;

B) Filling, unless an aeration system, certified by a registered landscape architect, certified arborist, or North Carolina Agricultural Extension Specialist, is installed to protect the tree from suffocation;

C) Parking;

D) Storage of debris or materials, including topsoil;

E) Disposal of hazardous wastes or concrete washout; and

F) Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

If any area within the critical root zone will be disturbed for any reason, a registered landscape architect, certified arborist, or North Carolina Agricultural Extension Specialist must recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

3) The developer should coordinate with utility companies early in the design process to resolve potential conflicts about the placement of utilities and landscape requirements. Utilities must either be placed outside of the tree protection area or, with Planning Department approval, tunneled at least two feet directly below the tree roots, to minimize root damage.

4) If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the critical root zone area.

d) **Trees in Public Rights-of-Way.** Trees located in any public right-of-way cannot be pruned or removed without a permit from the Public Works Department in accordance with the City of Hendersonville Tree Ordinance.

Section 15-5 General Standards. The following general standards shall apply to all landscaping requirements in this article.

a) Unless otherwise specified, the exact placement of required plants and structures shall be the decision of the developer. The type of plants used shall be limited to those on the approved "Species List" which shall be published and revised from time to time by the Planning Director in consultation with the Tree Board. Required landscaping shall be designed in such a manner as to impart its aesthetic character when viewed from any area accessible to the public or from adjacent properties.

b) **Plant Material.** Plant materials used for installation shall conform to the standards established by the American Association of Nurserymen in the "American Standard for Nursery Stock," for each type (i.e., canopy tree, shrub, etc.) with minimum size as appropriate for the minimum caliper size designated in paragraph a), above. Grass sod, when made a part of a buffer, must be healthy, clean and reasonably free of weeds, noxious pests or diseases.

c) **Installation.** All landscaping/screening shall be installed in a sound, workmanlike manner and according to accepted good planting procedures with the quantity and quality of plant materials as described. All elements of landscaping shall be installed so as to meet all other applicable ordinances and code requirements.

d) **Maintenance.** The owner, occupant, tenant and the respective agent of each, if any, shall be jointly and severally responsible for the maintenance of all buffer and landscaping. Buffers and landscaping shall be maintained in a good condition so as to present a healthy, neat and orderly appearance at least equal to the

original installation and shall be kept free from refuse and debris. Dead vegetation and landscaping material shall be promptly replaced with healthy, living plantings. Evergreen hedges shall be trimmed annually or as needed to provide a full visual screen and, in any event, shall not be allowed to exceed eight feet in height without written approval of the Zoning Administrator.

e) **Walls and Fences.** Any walls used for screening or as part of a buffer shall be constructed in a durable fashion of brick, stone, or other masonry materials. When concrete block is utilized, it shall be finished with stucco on both sides. Wood posts and planks or metal or other materials specifically designed as fencing materials may be approved by the Zoning Administrator for use in a Type C Buffer. Other materials may also be considered through the alternative buffer and screening process described in Section 15-3. No more than 10% of the surface of a fence or wall shall be left open and the finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this Article.

f) **Overhead Utilities.** Landscaping plans, including plant spacing and species selection shall be such that landscaping required under this article does not conflict with overhead utilities.

g) **Species Diversity.** When the total number of trees required under the provisions of this article equals 20 or more, then no single tree species shall comprise more than 25% of the trees planted on the development site.

Section 15-6 Bufferyards. Certain land uses may create an adverse impact when developed adjacent to other less intensive land uses. A bufferyard is a permanent unit of land together with plantings and structure(s), if any, which is designed to ameliorate such adverse impacts. Bufferyards, as required in this section, shall be depicted on any site plans reviewed under this ordinance and shall be depicted and described on drawings submitted for the purpose of zoning compliance review. Unless deferred pursuant to a letter of compliance issued under Section 15-8, below, buffers shall be emplaced and approved prior to issuance of any certificate of occupancy for the development.

a) **Location of Buffers.** Buffers shall be located on lot or parcel boundary lines. Buffers shall not be located on any portion of an existing public or private street or right-of-way, whether opened or unopened.

b) **Determination of Buffer Requirements.** To determine a buffer required between two adjacent parcels or between a parcel and a street, the following procedure shall be followed:

1) Identify the proposed land use;

2) Identify the use or, if vacant, the zoning district classification, of land adjacent to the proposed use;

3) Determine the buffer required on each boundary (or segment thereof) of the subject parcel by referring to the following Table of Buffer Requirements. This specifies the buffer required between proposed land uses and existing adjacent land uses or zoning districts.

TABLE OF BUFFER REQUIREMENTS

Proposed Land Use	**Existing Land Use /Zoning District[1]**				
	Residential[2]	Mobile Home Park[3]	Institutional & Cultural[4]	Commercial[5]	Industrial[6]
Residential	X	X	X	X	X
Mobile Home Park	10-foot B	X	8-foot A	10-foot B	X
Institutional & Cultural	10-foot B	8-foot A	X	X	X
Commercial	10-foot B	10-foot B	8-foot A	X	X
Industrial	25-foot C	25-foot C	15-foot B	15-foot B	X

Notes for Table of Buffer Requirements:

1 Buffering is required if adjacent parcel of land is used or zoned for the category noted regardless whether adjacent parcel is located in the City, the City's extraterritorial jurisdiction (ETJ), or the planning jurisdiction of another governmental entity. Existing adjacent land use takes precedence over zoning district. Buffer requirement for the district will be used if adjacent land is vacant.

2 Includes the following use districts: R-40, R-20, R-15, R-10, R-6, RCT, PRD.

3 Includes the PMH district or an existing mobile/manufactured home park.

4 This category includes religious, recreational, child care and educational uses and the following use districts: MIC and PID.

5 Includes the following use districts: C-1, C-2, C-3, C-4, PCD, CMU, GHMU, HMU, UV, UR and CHMU.

6 Includes the following use districts: I-1, PMD.

c) **Buffer Specifications.**

1) The following schedule sets forth the specifications of each of the buffers included in the Table of Buffer Requirements. Unless noted differently, the column entitled Planting Requirements refers to number of individual plants required per 100 linear feet of the buffer. The column entitled Size Requirements refers to the minimum size of individual plants at the time of planting. Unless otherwise noted, dimensions refer to height.

Type of Buffer	Planting Requirements per 100 Linear Feet	Size Requirements
A	3 broadleaf canopy trees 20 evergreen shrubs (4-foot centers 25 flowering shrubs	5-6 feet 18-24 inches 12-18 inches
B	4 broadleaf canopy tree 25 evergreen shrubs (4-foot centers) 33 flowering shrubs	1 1/2 - 1 3/4 inch caliper 18-24 inches 18-24 inches
C	4 broadleaf canopy tree 10 understory trees 33 flowering shrubs berm fence or wall on top of berm	1 3/4 -2 inch caliper 5-6 feet 18-24 inches 6 feet 8 feet
X	No buffer required	Not applicable

2) For type A and B buffers, the developer may, at their option, substitute a masonry wall for the evergreen shrubs. A wooden fence may be incorporated into a buffer but shall not be allowed to substitute for evergreen shrubs.

d) **Use of Buffer.** If approved by the Planning Department, a buffer may be used for passive recreation; however, no plant material may be removed and such use shall not be a nuisance.

e) **Buffers Part of Required Yards.** Where front, side and rear yards are required by this Ordinance, buffers may be established within such required yards.

f) **Buffer Requirements when a Street Separates Incompatible Uses.** If a street with right-of-way of less than 30 feet lies between two land uses which would require a bufferyard between them, a buffer shall be required along the affected side or rear property lines of the developing use. No bufferyard is required along the front property line.

g) **Bufferyards in the Central Business District.** In order to preserve and promote existing development patterns within the Central Business District, the bufferyard requirements of Article XV shall not apply within the Central Business District.

Section 15-7 Screening. These screening requirements shall apply to any development or use other than single-family or two-family residences. A buffer as specified in this Article may be used to meet the requirements of this Section. Where practicable, the following uses must be screened from abutting property and from public view from a public right-of-way or a parking lot:

a) Dumpsters or trash handling areas;

b) Utility structures associated with a building;

c) Loading docks or spaces;

d) Outdoor storage of materials, stock and equipment, which shall not include the display of goods for sale; and

e) Any other uses for which screening is required under this Ordinance.

As far as practicable, any screening used to comply with the provisions of this Section shall consist of a planting area which is at least five feet wide. This area may contain any type screening materials sufficient to separate visually the land uses, provided such materials meet the requirements of this Article. If only a wall or fence is used, then the area devoted to the screen need only be wide enough to accommodate the wall or fence and allow for its maintenance. Where practicable, screening shall be designed and maintained in such a manner as to conceal the use from view from the street, from vehicular use areas, and from adjoining properties.

Section 15-8 Letter of Compliance. It is recognized that land development occurs continuously and that vegetation used in buffers should be planted at certain times of the year to ensure the best chance of survival. In order to ensure compliance with this article and to reduce the potential expense of replacing buffering, landscaping or screening materials which were installed in an untimely or improper fashion, a letter of compliance must be filed with the Zoning Administrator at the time of zoning compliance review. A letter of compliance will allow the issuance of a conditional certificate of occupancy. This letter will acknowledge that the applicant for a certificate of zoning compliance is aware of any buffer, landscaping or screening requirements which may apply to their property and that the applicant will comply with those requirements by a specific date, generally to be within the next planting season, but in no case more than one year after the completion of construction of that portion of the project or building for which the certificate was issued. In no event shall a final certificate of occupancy be issued prior to emplacement and approval of the required buffer, landscaping or screening. Failure to comply with the provisions of this section within the time noted in the letter of compliance will be a violation of the Zoning Ordinance.

Section 15-9 Landscaping for Vehicular Use Areas. Trees and shrubs are required in and around vehicular use areas with more than six spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, reduce glare from vehicular use areas, and to help filter exhaust from vehicles.

a) **Perimeter and Interior Plantings.** Vehicular use areas must be planted with at least one tree and two shrubs for every 4,000 ft2 of vehicular use area, which includes parking spaces, aisles, driveways, and loading areas. Trees shall be spaced so that no parking space is more than 63 feet from a tree. At least 75% of the required parking lot trees must be broadleaf canopy trees. Trees and shrubs must be planted within 20 feet of the vehicular use area to count as parking lot landscaping; provided, however, all street trees required by other provisions of this Zoning Ordinance shall count as parking lot landscaping.

   When a development contains 20 or more parking spaces, 50% of the trees and shrubs required by paragraph a), above, must be planted in islands or medians located within the parking lot. Tree islands shall be evenly distributed throughout the parking lot in order to provide an even tree canopy throughout the lot. At a minimum, such tree islands shall consist of an area at least equal in size to two parking places side-by-side (360 ft2). Parking bays shall be broken up with landscaped islands or medians to avoid long monotonous rows of parking. Planting trees in groups is encouraged to increase the total amount of planting area for roots to grow.

   At the time of planting, trees and shrubs required in this section shall meet the following minimum size requirements:

   1) Broadleaf canopy trees: one and one-half to two-inch caliper;

   2) All other trees: five to six feet in height;

   3) All shrubs: height or spread of 18 to 24 inches.

b) **Planting Strips.** When a vehicular use area lot is located within 100 feet of an abutting property and no bufferyard is required, a planting strip which is a minimum of five feet wide shall be planted between the vehicular use area and the abutting property, except along approved driveway openings which run perpendicular to the planting strip. One large evergreen or deciduous tree and five evergreen or deciduous shrubs shall be planted for every 40 linear feet of property line that parallels the vehicular use area. Fifty percent of these trees and shrubs may be counted toward the parking lot trees and shrubs required in paragraph a), above, if the planting strip is located within 20 feet of the vehicular use area. Adjacent businesses on separate lots which share parking or driveways shall be exempt from this requirement

provided that the required planting strip would interfere with the reasonable use of the shared parking driveway. Vehicular use areas located behind buildings and screened from view from public rights-of-way shall be exempt from this requirement.

c) **Buffering from Street.** Vehicular use areas greater than 4,000 ft2 any portion of which is located within 50 feet of the right-of-way of a street must be buffered from the street. The buffer shall be at least three feet high at maturity and can consist of plant material alone, or berms, fences, walls, or grade changed combined with plant material. A vegetative buffer shall consist of at least one evergreen or deciduous shrub planted for every five linear feet of buffer required. If a fence or wall is used, it must be constructed of wood, brick, stone or other masonry and be architecturally compatible with the proposed structure. Seventy-five percent of the fence or wall must be opaque with any spaces evenly distributed. The finished side of the fence or wall shall face the street. At least one shrub shall be planted on the street side for each eight linear feet of fence or wall. Berms and grade changes must be completely covered with vegetation. All shrubs planted can count toward the parking lot landscaping requirements.

d) **Structured parking facilities.** Structured parking facilities, or parking decks, shall be excused from the parking lot landscaping requirements contained in this section but shall comply with the provisions of this paragraph. In the event that any openings for ventilation, service, or emergency access are located at the first floor level in the building facade, then they shall be an integral part of the overall building design. These openings as well as pedestrian and vehicular entrances shall be designed to minimize visibility of parked cars. The remainder of street level frontage shall be either commercial space or an architecturally articulated facade designed to minimize the visibility of parked cars. All levels of a structured parking facility shall be designed and screened in such a way as to minimize visibility of parked cars. In no instance will rails or cabling alone be sufficient to meet this screening requirement.

The design elements of this paragraph shall only apply to building facades which are visible from a public right-of-way.

e) **Automobile Sales Facilities.** Automobile sales facilities, due to the fact that inventory is typically stored and displayed for sale on vehicular use areas, require separate analysis with regard to the parking lot landscaping requirements in this section. Automobile sales facilities are, accordingly, exempted from the need to comply with interior parking lot landscaping requirements for that portion of an automobile sales facility utilized exclusively for the display of goods for sale. Automobile sales facilities are required to comply with the perimeter and planting strip requirements of this section; provided, however, such facilities shall be permitted one display area, which shall not be required to be screened, for each 100 feet of roadway frontage. Each display area shall extend no more than 50 feet in length.

f) **Effect on Other Regulations.** Areas devoted to meeting the landscaping requirements of this section may count toward the common open space requirements contained in Section 6-16, above. Where site characteristics and development considerations make it prudent and feasible, landscaping proposed to meet the requirements of this section may also contribute toward meeting the buffering and screening requirements contained in this article.

g) **Small lots.** Small lots, defined as lots with less than 100 feet of frontage on a roadway or with less than 100 feet of depth, may have site constraints which make strict compliance with the regulations contained in this section a hardship. In such cases, the approving authority for the City may approve deviations from such regulations so long as the plans of development are consistent with the goals and objectives stated herein.

Section 15-10 Buffer Requirements When a Street Separates Incompatible Uses. If a street with right-of-way of less than 30 feet lies between two land uses which would require a bufferyard between them, a buffer

shall be required along the affected side or rear property lines of the developing use. No bufferyard is requ along the front property line.

Section 15-11 Bufferyards in the Central Business District. In order to preserve and promote existing development patterns the bufferyard requirements of Article XV shall not apply within the C-1 Central Business District.

Section 15-12 Special Provisions Regarding Residential Dwellings in Nonresidential Zoning Designations. Residential uses developed after January 8, 1998 and situated in areas zoned C-2, C-3, C-4 or I-1 shall receive special treatment with regard to these buffering, screening and landscaping regulations. They shall be treated as if they were commercial uses, if located in a commercial designation, or industrial uses, if located in an industrial designation, for the purpose of determining what buffering requirements will be imposed on adjacent uses which develop subsequent to such residential uses.

Section 15-13 Special Provisions Regarding Open Space Landscaping in Mixed Use Districts. In addition to all other landscaping required by this Zoning Ordinance, each development parcel in a mixed use zoning district shall contain a minimum of one tree and five shrubs for every 4,000 ft2 of open space on such development parcel. A minimum of 50% of the trees shall be canopy trees.

At the time of planting, trees and shrubs required in this section shall meet the following minimum size requirements:

(a) Broadleaf canopy trees: one-and-one-half to two-inch caliper;

(b) All other trees: five to six feet in height;

(c) All shrubs: height or spread of 18 to 24 inches.

No landscaped area shall be constructed with more than 10% of the total area of gravel, stone, concrete, asphalt, or other similar material, excepting necessary walks and vehicular use areas.

This page intentionally left blank.

ARTICLE XVI
~~SPECIAL REQUIREMENTS~~ SUPPLEMENTARY STANDARDS FOR CERTAIN USES

Section 16-1 Purpose. This article provides for the regulation of certain land uses which, because of their nature or locational requirements, demand additional unique standards in order to be compatible with other permitted or conditional uses within the relevant zoning district.

Section 16-2 Applicability. These standards apply to a particular use only when it is designated as a ~~conditional~~special use, conditional zoning district or a "permitted use subject to ~~special requirements~~ Supplementary Standards" in any particular zoning classification. They do not apply when a use is a permitted use that is permitted by right. In such a situation, the general development standards contained in Article VI and the applicable district standards will guide development and use. It is important to note this distinction because the same use may be a conditional use or a permitted use subject to ~~special requirements~~ Supplementary Standards in one zoning classification, in which case the standards contained in this article would apply, and a permitted use in another classification in which case they would not.

The standards contained in this article also serve as minimum requirements for developments undergoing rezoning to a conditional zoning district; provided, however, nothing herein shall be construed to limit applicants from proposing, and City Council from approving, plans which exceed these standards.

Section 16-3 Procedures for Applying Standards. This article does not distinguish between standards on the basis of procedural review. Please refer to the appropriate zoning classification to determine if the proposed use is a conditional zoning district, a ~~conditional use~~ Special Use or a permitted use subject to ~~special requirements~~ Supplementary Standards. If it is a ~~conditional use~~ Special Use, then a ~~conditional use permit~~ Special Use Permit must be obtained from the ~~Zoning~~ Board of Adjustment in accordance with Article X, above. If the proposed use is a conditional zoning district or a permitted use subject to ~~special requirements~~ Supplementary Standards, then the standards will be applied during the applicable development review procedure in accordance with Article VII, above.

Section 16-4 Standards. As stated herein, the following standards apply to the indicated use when such use is either a ~~conditional zoning district~~ Conditional Zoning District, ~~a conditional use~~ Special Use or a permitted use subject to ~~special requirements a~~ Supplementary Standards. These standards are in addition to other applicable development standards contained in this ordinance.

16-4-1 Accessory Dwelling Units.

a) Accessory dwelling units may only be situated on a lot on which a principal residential dwelling unit is also situated and shall be clearly incidental or accessory to such principal residential structure.

b) No more than one accessory dwelling unit may be situated on any lot.

c) Accessory dwelling units may not exceed 800 ft2 of floor area.

16-4-2 Adaptive Reuses. This section is intended to allow a means for the development of new uses for a building originally designed for a different use. It is intended to have application in two particular areas. The first is for the reuse of a structure which has been used historically for a use permitted in the zoning district classification but for which there is no longer any reasonable demand for such previous use. Example of this first class include church buildings and schools. The second class involves situations in which structures have been devoted historically to a nonconforming use, the owner of the property no longer desires to devote the property to that use or the use has ceased, and there is no reasonable likelihood that the property will revert to a use permitted in the Zoning District Classification.

Adaptive reuses may only be authorized by means of a rezoning to a conditional zoning district processed through the conditional zoning district requirements of Article VII, above. In addition to the standards set forth therein, adaptive reuses must also meet the following special requirements:

a) The developer proposes the reuse of a structure or structures used historically for a use permitted in the zoning district classification but for which there is no longer any reasonable demand for such previous use, or the developer proposes the reuse of a structure or structures used historically as nonconforming use and there is no reasonable likelihood that the property will revert to a use permitted in the zoning district classification.

b) The developer shall state the precise nature of the proposed adaptive reuse, which shall be compatible with neighboring residential uses. If a ~~special use permit~~ Special Use Permit is granted for the adaptive reuse, future use of the property shall be limited to the specified use unless 1) the use is changed to another use permitted in the zoning classification or 2) a new adaptive reuse is approved.

c) The adaptive reuse shall be housed in an existing structure or structures.

d) Such structures may be modified or expanded so long as the gross floor area is not increased by more than 10% and so long as the appearance of the modification is in harmony with the neighboring residential uses.

e) Off-street parking meeting the requirements of Section 6-5, above, shall be provided. Such off-street parking shall be screened so that it is not readily visible from the street or from adjoining residential uses.

f) The adaptive reuse may have one sign not exceeding four ~~ft2~~ square feet in area.

g) The developer shall propose, install and maintain landscaping which will assist in giving it a residential appearance.

h) The adaptive reuse shall provide open space which shall be not less than 60% of the total area of the development parcel.

i) Lighting for the adaptive reuse shall be no more than is necessary for safe use of the facility, and shall be designed and installed so that it is directed away from the roadway and any adjacent properties.

j) Traffic generated by the adaptive reuse shall not be expected to cause an inconvenience to residents of the neighborhood.

k) The developer shall propose hours of operation for the adaptive reuse which are designed to be compatible with neighboring residential uses. Such hours of operation shall become a condition of the ~~special use permit~~ Special Use Permit, violation of which shall be grounds for revocation of the permit.

16-4-3 Adult Establishments.

a) It shall be unlawful to develop or operate an adult establishment within the planning jurisdiction of the City of Hendersonville without a ~~conditional~~special use permit issued by the Board of Adjustment as provided herein.

b) The standards for issuance of a ~~conditional~~special use permit are as follows:

1) The owner/operator of the adult establishment must have a current, valid permit to operate an adu establishment issued pursuant to Article V, Chapter 5, City Code.

2) No portion of the premises on which the adult establishment is located shall be situated within 300 feet of any of the following zoning districts: R-40 Estate Residential, R-20 Low Density Residential, R-15 Medium Density Residential, R-10 Medium Density Residential, R-6 High Density Residential, PRD Planned Residential Development, PMH Planned Manufactured Housing, MIC Medical Institutional Cultural, RCT Residential Commercial Transition.

3) No portion of the premises on which the adult establishment is located shall be situated within 750 feet of a lot line of a primary or secondary school or a public park.

4) No portion of the premises on which the adult establishment is located shall be situated within 1000 feet of a lot line of another adult establishment or of any enterprise engaged in the retail sale or distribution of alcoholic beverages.

5) There shall be no more than one adult establishment business in the same building, structure, or portion thereof. No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any adult establishment business.

6) The structure in which the adult establishment is located shall contain no sleeping quarters.

7) The adult establishment shall not be open for business between the hours of 12 Midnight and 12 Noon.

8) If dancers are employed as a feature of the adult establishment, the performing areas for such dancers shall be separated from patrons by at least ten feet.

9) If viewing booths are provided, such are to be designed so as to allow the person of occupants to be completely visible from a portion of the premises open and available to the public.

10) The applicant shall propose and implement a site-lighting plan adequate to ensure public safety.

11) An adult establishment may be advertised by one sign on the premises which is not greater than 70 ft2 in size and which is illuminated by not more than one 150-watt bulb. No printed material, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.

12) No off-site advertising (billboard) signs shall be allowed on the site of an adult establishment.

13) No alcoholic beverage as defined by NCGS § 18B-101.4 or any successor statute shall be served, possessed or consumed on the premises. No person who is under the influence of an impairing substance or alcohol or who has an alcohol concentration of 0.08 or more shall be or remain upon the premises of any adult establishment.

c) A ~~conditional use permit~~ Special Use Permit issued pursuant to this section shall function as an operating permit and shall have a term of one year. The operator of an adult establishment must reapply each year and be issued a new conditional use permit in order to continue in operation. Such conditional use permit shall be issued so long as the operator demonstrates compliance with the standards set forth in paragraph b), above, and so long as the establishment has not violated any of the grounds for revocation contained in paragraph e), below.

d) Anyone desiring to operate an adult establishment shall make application for a conditional use permit, shall pay a fee therefor as established by resolution of City Council, and shall demonstrate compliance with the standards contained in paragraph b), above. Such application shall include the names, including aliases, and addresses of the owners, operators, and employees of such adult establishment.

e) Notwithstanding any of the foregoing, a conditional use permit issued to operate an adult establishment may be revoked by the Board of Adjustment, after notice and hearing, upon one or more of the following grounds:

1) Failure to maintain the premises in such a way as to comply with the standards for issuance of a conditional use permit contained in paragraph b), above;

2) Employment of any person under the age of 18;

3) Operating an establishment disruptive of peace and good order as evidenced by three convictions, in any one year period, of criminal offenses, a material element of which occurred on the premises of the adult establishment;

4) Ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal or illegal operation of sexually oriented businesses.

16-4-4 Animal Boarding Facilities. The standards in this section shall apply to facilities, such as animal kennels and animal shelters, where the primary purpose is the boarding of household pets. It shall not apply to boarding facilities incidental to the operation of an animal hospital or clinic or to pet stores.

a) No animal boarding facility shall be operated without all necessary licensure, certification or other form of permission from the state and any other governmental agency with jurisdiction over its operation. Loss of such permission shall be grounds for revocation of any conditional use permit or conditional zoning district authorizing an animal boarding facility.

b) No animal boarding facility shall be located within 500 feet of the nearest lot line of a residential use or a residential zoning district.

c) Animal boarding facilities shall be adequately buffered to prevent sounds from constituting a nuisance to neighboring properties.

d) Housing facilities for animals shall be structurally sound and shall be maintained in good repair, shall be designed so as to protect the animals from injury, shall contain the animals, and shall restrict the entrance of other animals.

e) Electric power shall be supplied in conformance with the state electrical codes adequate to supply lighting and heat as may be required by this section. Water shall be supplied at sufficient pressure and quantity to clean indoor housing facilities and primary enclosures of debris and excreta.

f) Food and bedding shall be stored at facilities adequate to provide protection against infestation or contamination by insects or rodents. Refrigeration shall be provided for the protection of perishable foods.

g) The applicant shall establish procedures for the safe and sanitary removal and disposal of animal and food waste, bedding, dead animals and debris and shall abide by such procedures. Disposal facilities shall

be maintained in a sanitary condition, free from the infestation or contamination of insects or roden disease, and from obnoxious or foul odors.

h) Washroom facilities, including sinks and toilets, shall be provided for animal caretakers.

i) Indoor housing facilities shall be adequately ventilated to provide for the health of animals contained therein and to assist in the removal of foul and obnoxious odors. Provision shall be made so that the volume of air within any enclosed indoor facility shall be changed three times or more each hour. This may be accomplished through the location and periodic opening of doors and windows. If fans or ventilating equipment are used, they shall be constructed in conformance with current standards of good engineering practice with respect to noise and minimization of drafts.

j) Indoor housing facilities for animals shall have sufficient natural or artificial lighting to permit routine inspection and cleaning at any time of day. In addition, sufficient natural or artificial lighting shall be supplied in the area of sinks and toilets to provide for the hygiene of animal caretakers.

k) Interior wall, ceiling and floor surfaces of indoor housing facilities shall be constructed of materials which are resistant to the absorption of moisture and odors, or such surfaces shall be treated with a sealant or with paint when such materials are not originally resistant to moisture or odors. Floor surfaces shall not be unsealed wood. In addition, interior walls shall be constructed so that the interface with floor surfaces is sealed from the flow or accumulation of moisture or debris.

l) Indoor housing facilities shall contain a drainage system which shall be connected to a sanitary sewer or septic tank system which conforms to the standards of the state building code and shall be designed to rapidly remove water and excreta in the cleaning of such indoor housing facility under any condition or weather or temperature.

m) Outdoor facilities shall be constructed to provide shelter from excessive sunlight, rain, snow, wind or other elements. In addition, such facilities shall be constructed to provide sufficient space for the exercise and movement of each animal contained therein.

n) All outdoor facilities shall be constructed to provide drainage and to prevent the accumulation of water, mud, debris, excreta or other materials, and shall be designed so that all animal and food wastes are directed into an approved sanitary sewer system or septic tank.

o) All outdoor facilities shall be constructed with adequate walls or fences to contain the animals kept therein and to prevent entrance of other animals.

p) Primary enclosures for animals shall be constructed and maintained so as to provide sufficient space to allow each animal to turn about freely and to easily stand, sit and lie in a comfortably normal position.

q) Facilities shall be operated in compliance with regulations adopted pursuant to the Animal Welfare Act, N.C.G.S. §19A-20, et seq., as it may be amended from time to time.

r) No animal boarding facility shall be operated at any time after it has been designated by a public health official pursuant to city, state or federal statues or regulations concerning health, as being infested with insects, rodents or disease which may endanger the public health, until the health officer having jurisdiction shall have certified that the condition has been corrected and the premises then comply with applicable health standards and regulations.

16-4-5 Bed and Breakfast Facilities.

a) The facility shall be located in a structure originally constructed as a single-family dwelling or as an inn.

b) The facility shall be limited in the number of guest rooms it contains. Bed and breakfast facilities in residential districts shall contain no more than six guest rooms. Bed and breakfast facilities in other zoning districts shall contain no more than eight guest rooms.

c) The owner of the bed and breakfast or a resident manager shall live on the premises.

d) There shall be no exterior advertising except a sign not to exceed four ft2 in area in a residential district. Bed and breakfasts in other districts shall conform with the sign requirements for the district in which they are located.

e) The facility shall meet all building and fire codes, as well as all applicable requirements, including any regulations adopted under authority of the NCGS.

f) There shall be a buffer strip meeting the specifications of Article XV of the Zoning Ordinance along any property adjoining a residential use or district.

g) No cooking facilities shall be allowed in the lodging units.

h) Off-street parking meeting the requirements of Section 6-5, above, shall be provided. Parking area(s) in or adjacent to residential use districts shall be screened by vegetation, fencing or walls so that vehicles are not visible from the street or from adjacent properties. The applicant shall submit a site plan which shall indicate where the parking is to be located and the manner in which it is to be screened.

16-4-6 Bus Stations.

a) The facility shall provide one off-street loading and unloading space for each bus reasonably expected to utilize the facility at any one time.

b) Off-street parking meeting the requirements of Section 6-5, above, shall be provided.

16-4-7 Cemeteries.

a) Tombstones, crypts, monuments, mausoleums, and other structures associated with cemeteries must be located at least 25 feet from any side or rear lot line which adjoins lots in a residential district and at least 10 feet from any side or rear lot line which adjoins lots in nonresidential districts. In any case, they must be at least 40 feet from any street right-of-way.

b) Buildings for the maintenance, management, rent and/or sale of cemetery lots must be located at least 100 feet from any lot lines which adjoin lots in any residential district. Otherwise any such buildings must conform to the requirements for principal uses in the district where they are located.

c) Crematory services may be provided for human corpses as an accessory use within cemeteries situated on a site containing at least 30 acres, subject to the following special requirements:

1) All applicable local, state, and federal laws and regulations shall be complied with.

2) The crematory shall be enclosed within a building meeting Building and Fire Code requirements.

3) The placement of crematory facilities within property in any residential district shall be 100 feet o more from any exterior property line.

16-4-8 Child Care Centers.

a) Play space must be provided in accordance with the regulations of the ~~NC Department of Human Resources~~ NC Department of Health and Human Services (DHSS). Any required outdoor play space must be fenced or otherwise enclosed on all sides and may not include driveways, parking areas or land otherwise unsuited for children's play space and may not be in the required setback.

b) Setback, yard and height requirements will be the minimum required for the district in which it is located.

c) Parking shall be provided as specified in Section 6-5.

d) No outdoor play shall be permitted after sundown.

16-4-9 Civic Clubs & Fraternal Organizations.

a) All buildings, off-street parking and service areas will be separated by a buffer meeting the requirements of Article XV from any abutting residential use or residential district.

b) The use will be located on a lot that fronts a minor or major thoroughfare and primary vehicular access will be provided by means of such minor or major thoroughfare.

16-4-10 Congregate Care Facilities.

a) Such facilities may only be situated on a site which contains no less than three acres.

b) A minimum of 65% of the project tract shall be designated as open space.

c) Maximum density for congregate care facilities shall be 20 people per acre in all districts. City Council shall have the right to determine a lower density applying as criteria the following: site constraints including but not limited to slopes over 20%, poor soils, presence of floodplain or other factors such as the traffic-bearing capability of existing roads that would pose a threat to public health, safety or welfare, or violate any of the review standards contained in this Article.

d) Density under this subsection shall be calculated according to the following formula:

1) Studio apartments shall be assumed to house one person.

2) One-bedroom apartments shall be assumed to house 1.5 persons.

3) Two-bedroom apartments shall be assumed to house two persons.

16-4-11 Cultural Arts Buildings.

a) The provision of off-street parking in accordance with the standard for places of public assembly contained in Section 6-5.

b) When the facility is to be located adjacent to either a residential district or existing residential uses, [illegible] boundaries adjoining such residential district or use shall contain a 10-foot B-type buffer consistent with the requirements of Article XV, above.

c) Any structures associated with the cultural arts building shall be set back from any adjoining residential use or district a minimum of 100 feet.

16-4-12 Day Center.

a) The parcel on which a day center is situated shall not be closer than 1,500 feet to any parcel on which another day center is situated.

b) The parcel on which a day center is situated shall not be adjacent to a residential use. For purposes of this paragraph, parcels situated across a street right-of-way from a proposed day center shall be deemed to be adjacent.

c) The parcel on which a day center is situated shall not be within 200 feet of a residential district.

d) Permissible hours of operations shall be limited to the hours between 6:00 a.m. and 6:00 p.m.

16-4-13 Food Pantries.

a) The parcel on which a food pantry is situated shall not be closer than 1,500 feet to any parcel on which another food pantry is situated.

b) Storage of items for distribution shall be located entirely within the building.

16-4-14 Golf Driving Ranges.

a) Lighting, if any, shall be designed and installed so that it is directed away from the roadway and adjacent residentially-zoned or used properties and does not interfere with the safe use of public rights-of-way.

b) Adequate assurance shall be provided, by means of separation, fencing or other means, that the operation of such facility shall not constitute a danger to person or property.

c) Total signage on the property shall not exceed 32 ft2. One freestanding sign may be installed provided it does not exceed eight feet in height. Signs shall not be illuminated except by means of one light bulb per sign face not exceeding 150 watts.

16-4-15 Microbreweries.

a) Shall include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other uses incidental to the brewery and open and accessible to the public.

b) Storage of materials used in the manufacturing, processing and for distribution shall be located entirely within the building.

c) Shall be designed such that all newly constructed loading and unloading facilities are internal to the site, in service alleys or at the back of the building.

d) The sides and rear yard or setback requirement shall be increased to 25 feet for the C-2 Secondary Business, C-3 Highway Business, GHMU Greenville Highway Mixed Use and HMU Highway Mixed Use Zoning District Classifications.

16-4-16 Mini-Warehouses.

a) One way interior travel lanes shall have a minimum width of 15 feet in addition to a ten foot wide parking lane. All two-way interior travel lanes serving storage units shall have two 12- foot wide travel lanes and be provided with a ten foot wide parking lane. All portions of the site shall be readily accessible by police and fire equipment and personnel.

b) Storage units shall be designed for individual storage. They shall contain no facilities for utility service. They shall not be used for sales or service or for habitation by humans or animals.

c) No outside storage shall be permitted when the proposed use is situated in a zoning district classification other than I-1.

16-4-17 Mobile Food Vendor.

a) Zoning Compliance Permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually.

b) Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the Health Department. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the application. No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces.

c) There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.

d) Mobile food vendors shall follow the dimensional requirements of the zoning district classification in which they are located. If there are no dimensional requirements in zoning district classification, at a minimum, food vendors shall be situated at least ten feet from all property lines and any road right-of-way. Mobile food vendors shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. Additionally, mobile food vendors must be:

1) Located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.

2) Situated at least 25 feet from any permanent structure. The Community Development ~~Assistance~~ Director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.

3) Not located within 250 feet from any restaurant, and not within 100 feet from any residential structure or residential zoning district lot line.

4) Set back a minimum of 10 feet in all directions from fire hydrants.

5) Situated at least 20 feet from one another.

e) Mobile food vendors on vacant sites shall adhere to Article XV Buffering, Screening, & Landscaping general requirements, including any overlay district landscaping requirements.

f) Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.

g) Vendors must vacate the site each day unless the vendor owns the site.

h) Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, City trash receptacles shall not be used for food truck waste.

i) Mobile food vendors shall be limited to the following signage: one wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet and one small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer to display daily specials, menus, or other similar information. Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

16-4-18 Nursing Homes.

a) Such facilities may only be situated on a site which contains no less than three acres.

b) A minimum of 65% of the project tract shall be designated as open space.

c) Maximum density for nursing homes shall be 26 people per acre. In determining the number of people per acre, it is assumed that each room where ambulatory assistance or skilled nursing care is given contains one person per bed in the room. City Council shall have the right to determine a lower density applying as criteria the following: site constraints including but not limited to slopes over 20%, poor soils, presence of floodplain, or other factors such as the traffic-bearing capability of existing roads that would pose a threat to public health, safety or welfare, or violate any of the review standards contained in this Article.

d) No application for a conditional zoning district for a nursing home facility shall be considered unless a certificate of need has been issued. The certificate of need shall accompany the application.

16-4-19 Pet-Sitting.

a) No person other than members of the family residing on the premises shall be engaged in pet-sitting.

b) There shall be no change in the outside appearance of the building or premises, or other visible evidence of pet-sitting other than one sign, not exceeding 4 ft2 in area, non-illuminated.

c) At no time are animals permitted to be outdoors unsupervised.

d) No more than six animals total may be boarded for a fee at one time.

e) All animals must be over the age of six months.

f) No outdoor storage of materials or equipment or outdoor facilities, accessory structures, outdoor kennels, or similar devises are permitted in connection with pet-sitting.

g) Animals boarded are restricted to domestic dogs and/or cats.

h) Facilities shall be kept clean, sanitary, and free from accumulations of animal waste.

i) Pet-sitting facilities are subject to all applicable City ordinances including, but not limited to, the Noise Control Ordinance.

j) Facilities shall be operated in compliance with regulation adopted pursuant to the Animal Welfare Act, N.C.G.S. §19A-20, et seq., as it may be amended from time to time.

k) No pet-sitting facility shall be operated without all necessary licensure, certification or other form of permission from the state and any other governmental agency with jurisdiction over its operation. Loss of such permission shall be grounds for revocation of any conditional use or zoning compliance permit authorizing pet-sitting.

16-4-20 Private Clubs.

a) No private club shall be located within a 600-foot radius of another private club.

b) The parking lot for such facility shall be adequately lighted to provide security for its patrons and to otherwise comply with Section 6-13, above.

16-4-21 Progressive Care Facilities.

a) Such facilities may only be situated on a site which contains no less than three acres.

b) A minimum of 65% of the project tract shall be designated as open space.

c) The facility shall provide housing for retirees or the elderly.

d) The facility shall be owned and operated as one facility and shall have two or more of the following uses, which may or may not be contained under one roof:

1) Independent dwelling units constructed as detached or attached units;

2) Apartments, where care and assistance in bathing, dressing, house cleaning and other activities may or may not be provided. Complete or partial kitchen facilities shall be provided, in addition to common dining facilities for residents;

3) Rooms where ambulatory assistance is given in addition to all meals and a more intensive level of care by semi-skilled nursing staff;

4) Rooms where skilled nursing care and life support systems are available.

e) Maximum density for progressive care facilities shall be 23 people per acre. In determining the number of people per acre, the formula given above for nursing and rest homes and the formula given above for congregate care facilities shall be combined based on the actual plans for the facility to be constructed. City Council shall have the right to determine a lower density applying as criteria the following: site constraints including but not limited to slopes over 20%, poor soils, presence of floodplain, or other

factors such as the traffic-bearing capability of existing roads that would pose a threat to public hea safety or welfare, or violate any of the review standards contained in this Article.

16-4-22 Public Utility Facilities.

a) Lots must conform to minimum setback and yard requirements of the district in which they are located. Unstaffed utility structures with internal floor space of less than 600 ft2 are exempted from the minimum lot size requirement.

b) Electric and gas substations and sewage treatment plants will be separated by a ten-foot B type buffer meeting the specifications of Article XV from the street and any abutting residential use or any property located in a residential zoning district.

c) Control houses, pump and lift stations, and other similar uses shall be screened from the street and any abutting residential use or any property located in a residential zoning district.

d) A fence not easily climbable or comparable safety devices must be installed and maintained in order to deter access to the facility.

e) The design of buildings, structures and facilities on a site should conform as closely as possible to the character of the area or neighborhood.

f) The facility's lighting shall be shielded to prevent light and glare spill-over on to any adjacent residential properties, if such exist.

g) The Board of Adjustment may give relief from these requirements so long as public safety and neighborhood compatibility are protected, if strict adherence would constitute a hardship or is unnecessary.

Section 16-4-23 Residential Care Facilities.

a) The facility shall be situated in an existing residential structure. This structure may be expanded or altered so long as the facility remains residential in scale and appearance.

b) One off-street parking space shall be provided for each six beds in the facility. Such off-street parking shall be screened so that it is not readily visible from the street or from adjoining residential uses.

c) The facility may have one sign not exceeding four ft2 in area. Such sign shall not be illuminated.

d) The facility shall not exceed two stories in height.

e) The facility shall propose, install and maintain landscaping which will assist in giving it a residential appearance.

f) The facility shall propose, develop and maintain common open space for the use of its residents, which shall amount to not less than 15% of the site.

g) Lighting for the facility shall be designed and installed so that it is directed away from the roadway and any adjacent properties.

h) Density for residential care facilities shall not exceed 26 persons per acre.

i) No traffic shall be generated by such facility in greater volumes than would normally be expected in a residential neighborhood.

16-4-24 Residential Dwellings, Multi-Family

a) The property must be within the Seventh Avenue Depot National Register Historic District.

b) Multi-family dwellings may only be permitted on the second floor.

c) There shall be no maximum density other than the minimum dwelling size is 400 square feet.

d) Multi-family dwellings must be occupied by three or more families living independently of each other.

16-4-25 Rest Homes.

a) Such facilities may only be situated on a site which contains no less than three acres.

b) A minimum of 65% of the project tract shall be designated as open space.

c) Maximum Density for rest homes shall be 26 people per acre in all zoning district classifications. In determining the number of people per acre, it is assumed that each room where ambulatory assistance or skilled nursing care is given contains one person per bed in the room. City Council shall have the right to determine a lower density applying as criteria the following: site constraints including but not limited to slopes over 20%, poor soils, presence of floodplain, or other factors such as the traffic-bearing capability of existing roads that would pose a threat to public health, safety or welfare, or violate any of the review standards contained in this Article.

16-4-26 Restaurants.

a) The use must be located on, and have primary access from, a major or minor thoroughfare.

b) All outside storage areas including dumpsters must be:

1) Sited to the rear of the building;

2) In compliance with the setback requirements for the zoning district classification within which it is located; and

3) Made unnoticeable from both residential adjacent properties and public rights-of-way through installation of screening meeting the specifications of Article XV.

c) The use shall be limited to no more than 40 seats.

d) Permissible hours of operation shall be limited to the hours between 7:00 a.m. and 11:00 p.m.

16-4-27 Schools, primary & secondary.

a) The following standards shall be used to govern the establishment or development of new public and private schools:

1) No structure or parking shall be placed within 50 feet of a property line.

2) Off-street parking meeting the requirements of Section 6-5 shall be provided.

3) The use will be on a lot which may be accessed by means of a collector, minor thoroughfare or major thoroughfare for elementary schools and junior high schools, and by means of a minor thoroughfare or major thoroughfare for senior high schools; provided, however, the Board of Adjustment may waive this requirement to accommodate a public need so long as traffic shall not be increased on residential streets to an unacceptable level.

b) The foregoing standards shall serve as guidelines for the expansion or redevelopment of existing schools; however, the ~~Zoning~~ Board of Adjustment shall waive any such guidelines when their application would constitute a hardship.

16-4-28 Shelter Facilities.

a) The parcel on which a shelter facility is situated shall not be closer than 1,500 feet to any parcel on which another shelter facility is situated.

b) The parcel on which a shelter facility is situated shall not be within 200 feet of a residential zoning district.

16-4-29 Telecommunications Towers and Antennas. Special application requirements, procedures, and permitting standards, as set forth herein, apply to telecommunication towers and antennas.

16-4-29.1 Application Requirements. Anyone desiring to construct or install a telecommunications tower shall submit an application for a permit and shall pay a fee which shall be established by resolution of City Council. The fee established for applications requiring a rezoning to a conditional zoning district shall include a reasonable amount to enable the City to employ technical assistance in determining the issue of feasibility as required by Section 16-4-29.4, below. The application shall contain the following:

a) **Site Development Plan.** A site development plan prepared by a North Carolina Registered Land Surveyor, Registered Landscape Architect or Registered Professional Engineer containing the following:

1) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates;

2) The name, address, signature and seal of the professional preparing the site development plan;

3) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area;

4) The tax parcel identification number of all property abutting the subject property and the names and addresses of the owners of such properties;

5) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities;

6) All existing towers on the property or any towers whose fall area encroaches onto the property;

7) The proposed tower's location, the proposed fall area and the location of all support structures a guy line anchors;

8) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.

b) **Preliminary Tower Design Plan.** A preliminary tower design plan prepared by a North Carolina Registered Professional Engineer containing the following:

1) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number;

2) The name, address, signature and seal of the engineer preparing the preliminary tower design plan;

3) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings, and any other proposed improvements, including access roads and utility connections within and to the proposed site;

4) A tower elevation drawing showing the proposed lighting and all proposed antennas;

5) The proposed tower design loads.

c) **Search Area.** A propagation study or similar documentation showing the search area(s) for the proposed tower's antenna(s).

d) **Proof of Regulatory Compliance.** Written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.

e) **Collocation Alternatives.** Identification of all other possible alternatives considered within the service area for the proposed tower's antenna(s) and an explanation why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission tower) cannot accommodate the proposed antenna(s).

f) **Variances.** Identification of any ~~variance(s)~~ Variance(s) to the ordinance, the reason(s) for seeking the ~~variance(s)~~ Variance(s) and any measures that are proposed to mitigate possible adverse effects of the proposed ~~variance(s)~~ Variance(s)

g) **Feasible Alternatives.** Towers to be sited in zoning districts requiring rezoning to a conditional zoning district shall demonstrate the lack of a feasible alternative as required by Paragraph 16-4-29.4, below.

16-4-29.2 Standards for Siting Telecommunications Antennas and Wireless Facilities. The following standards shall regulate the siting of telecommunications antennas and wireless facilities:

a) No antenna shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in the regulations of the Federal Communications Commission.

b) All antennas shall comply with FCC and FAA guidelines. The antenna owner shall provide the City each year with a copy of any FCC and FAA license issued.

c) Antennas shall be restricted to the minimum standards of lighting required by the FAA. All antennas that require flashing lights by the FAA shall utilize a dual lighting system consisting of a white strobe light for daytime lighting and a red flashing light for nighttime lighting.

d) All antennas placed on structures other than towers, except for those owned by government entities and providing emergency services communications, shall be concealed antennas. Antennas located on top of buildings or other structures shall not exceed 30% of the building height. In no event shall an antenna extend beyond the structure in any direction greater than 25 feet.

e) No antennas, except for those owned by governmental entities and providing emergency services communications, shall be constructed on the property on which a National Register or locally designated historic landmark is located.

f) No antennas shall be located on structures containing residential dwelling units. Antennas may be located in residential zoning districts by placing them on existing water tanks, towers, and similar structures.

g) No antenna shall exceed 25 feet in length.

h) Antennas erected solely for a residential, non-commercial individual use, such as residential television antennas, satellite dishes, or ham radio antennas are exempt from these requirements.

i) Applications for collocation of antennas and/or wireless facilities are entitled to streamlined processing if the addition of the additional antenna and/or wireless facility does not exceed the number of antenna and/or wireless facilities previously approved for the telecommunication tower on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to telecommunication towers which are approved on or after December 1, 2007 and shall meet the following:

1) Applications shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.

2) A collocation application entitled to streamlined processing shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete.

3) The city shall issue a written decision approving or denying a collocation application entitled to streamlined processing within 45 days.

j) The streamlined process set forth in subsection (i) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing, that meet the following requirements:

1) The collocation does not increase the overall height and width of the telecommunication tower or wireless support structure to which the antenna and/or wireless facilities are to be attached.

2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.

3) The antenna and/or wireless facility in the proposed collocation complies with applicable regula restrictions, or conditions, if any, applied to the initial wireless facilities placed on the telecommunication tower or other wireless support structure.

4) The additional antenna and/or wireless facilities comply with all federal, state and local safety requirements.

5) The collocation does not exceed the applicable weight limits for the wireless support structure.

16-4-29.3 Basic Standards for Siting Telecommunications Towers. The following basic standards shall regulate the siting of telecommunications towers:

a) **Fall Area.** Telecommunication towers shall be sited to contain all ice-fall and debris from tower failure. The applicant must present proof of either fee simple ownership, a recorded leasehold interest, or an easement from the record owner of all property within the engineer-certified fall radius of the proposed tower. If the applicant does not submit an engineer's certification as to the fall radius of the proposed tower, this requirement shall be a radius equal to the height of the tower. The area included within the fall radius may include NCDOT right-of-way if the applicant provides written consent to that effect from the Division Engineer.

b) **Lighting.** Telecommunication towers and antennas shall be restricted to the minimum standards of lighting required by the FAA. Strobe lights shall be red at night and may be either red or white during daylight unless otherwise required by Federal or State regulations.

c) **Signs.** A single sign, two ft2 in size, shall be displayed in a visible location near a telecommunication tower. The purpose of the sign is for use by law enforcement departments to contact the company operating the equipment in the event of an emergency. The sign shall contain a number to be assigned to the company and a telephone number for 24-hour emergency contact. No other signs shall be permitted on the facility.

d) **Collocation.** The applicant must prove that reasonable attempts to collocate antennas on an existing tower or other suitable structure have been exhausted so as to require the erection of a new tower. Such evidence shall indicate that alternative towers, buildings or other structures are not available at fair market value within the vicinity of the proposed tower which can provide coverage to the proposed service area and which are structurally capable of supporting the intended equipment or which meet the necessary height criteria, and which do not cause interference between the existing and proposed frequencies. The applicant shall provide written documentation that no existing or approved telecommunications tower with a top elevation similar to the proposed tower is able to share space for a new antenna. For purposes of this section an elevation similar to the proposed tower shall include all towers with a top elevation within 10% of the total height of the proposed tower.

The applicant shall assess whether existing towers could accommodate the antenna to be attached to the proposed tower without causing structural instability or electromagnetic interference. If the antenna to be attached to the proposed tower cannot be accommodated on an existing tower, the applicant shall assess, as to each existing tower, whether such tower could be structurally strengthened or whether the antennas, transmitters and related equipment could be protected from electromagnetic interference. The applicant shall also generally describe the means and projected cost of shared use of existing tower which is capable of being used for co-location.

A proposed telecommunications tower shall be designed and constructed to permit the capability for collocation of at least one telecommunication use if the tower is taller than 75 feet. If a new tower is

approved, the owner shall provide written authorization that the tower and its accessories will be available for sharing by other telecommunication facilities at fair market value. The owner shall record in the Office of the Register of Deeds a letter evidencing such intent prior to the issuance of a permit. The letter of intent shall bind all subsequent owners of the approved telecommunications tower.

e) **Public Use.** The applicant shall allow public entities use of a telecommunications tower at fair market value on a non-interfering basis if a request is made for such use within 30 days of the filing of the permit application. If it is determined that the proposed tower is situated in a location that will benefit the telecommunication system of either the City or Henderson County, the tower shall be engineered and constructed to accommodate the additional telecommunication equipment beneficial to the public system.

f) **Noise.** If a telecommunications tower or equipment on the site is of a type which will emit a continuous or frequent noise, the applicant must prove that sufficient actions are being taken to prevent such noise from being audible to surrounding residents and businesses.

g) **Regulatory Compliance.** The applicant shall be required to provide documentation satisfactory to the City of compliance with all applicable Federal and State regulations.

h) **Maximum Height.** No telecommunication tower shall exceed 200 feet in height; provided, however, towers may be permitted up to 220 feet in height if they accommodate an additional antenna and up to 240 feet in height if they accommodate two additional antennas. No telecommunication towers shall be located on top of buildings. Antennas located on top of buildings or other structures shall not exceed 25 feet or 30% of the structure's height, whichever is less. For purposes of this paragraph, the term "structures" shall be deemed to refer to structures other than telecommunication towers.

i) **Cessation of Use.** Whenever a tower has not been used for a continuous period of one year, the property owner shall cause such tower to be removed within 120 days of the end of such one-year period.

j) **Setbacks.** A tower shall be separated from other on-site and off-site towers and supporting structures such that one tower will not strike another tower or its support structure if it falls. In districts in which telecommunications towers are permitted uses, they shall be set back from property lines in accordance with the setback requirements for the district or 10% of the tower height, whichever is greater. Additionally, telecommunications towers must set back from any residential districts or uses a distance equivalent to the fall radius of the tower being erected or 200 feet, whichever is greater. Notwithstanding any provision of this ordinance, telecommunications towers erected on property owned by the United States of America, the State of North Carolina, or any county or municipality, which towers are used at least in part for the purpose of accommodating emergency services communications antennas, shall be set back from any residential districts or uses a distance equivalent to the fall radius of the tower being erected or 100 feet, whichever is greater.

k) **Replacement Towers.** Provided it does not exceed the height of an existing tower by more than 20%, no permit shall be required for the erection of a replacement tower which is located at the same site and within 300 feet of the tower being replaced. To qualify as a replacement tower, the replacement shall not be closer to existing residences within a radius equal to the height of the replacement tower and shall comply with the basic standards for siting telecommunications towers contained in this section with the following exception: the requirement contained in the last sentence of paragraph (j) is modified so that the replacement tower must be set back from residential uses or districts a distance not less than the engineer-certified fall radius of the replacement tower.

The tower being replaced shall be removed within 90 days of activation of the replacement tower.

l) **Fencing.** The base of the telecommunications tower along with any individual guy wires shall be enclosed by a commercial grade chain link fence (or some other fence of equal or greater quality) a minimum of eight feet in height.

m) **Signal Interference.** No telecommunications tower or antenna shall interfere with usual and customary radio and television reception excepting broadcast facilities as provided for in regulations of the Federal Communications Commission.

n) **Historic Properties.** No telecommunication towers shall be constructed in a designated historic district or on property on which a designated historic landmark is located. In addition, telecommunications towers shall not be constructed within 500 feet of a designated historic district. For purposes of this paragraph, the term "historic" shall refer to districts or landmarks which have been nominated to the National Register of Historic Places or designated pursuant to Chapter 28 of the City Code.

o) **Insurance.** Telecommunications towers shall not be constructed unless the company erecting the tower has general liability coverage of at least $1,000,000. The owner of a telecommunications tower shall provide the City with a certificate of insurance showing evidence that it has general liability coverage of at least $1,000,000, and the certificate shall contain a requirement that the insurance company notify the City 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.

p) **Bufferyard.** A buffer conforming to the requirements of Article XV, if necessary.

q) **Timeline.** The City may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

16-4-29.4 Additional Standards for Siting Telecommunications Towers Pursuant to Conditional Zoning Districts. The following standards shall supplement the Basic Standards for Siting Telecommunications Towers contained in Subsection 16-4-29.3 when an application requires rezoning to a conditional zoning district.

a) **Setbacks.** The tower shall be set back from property lines abutting any residential district or use a distance equal to the tower height or 200 feet, whichever is greater. Notwithstanding any provision of this ordinance, telecommunications towers erected on property owned by the United States of America, the State of North Carolina, or any county or municipality, which towers are used at least in part for the purpose of accommodating emergency services communications antennas, shall be set back from any residential districts or uses a distance equivalent to the fall radius of the tower being erected or 100 feet, whichever is greater.

b) **Screening.** The purpose of this standard is to establish control for the visual quality of telecommunications facilities from ground level. The screening requirement specified in this paragraph applies to the tower and the land and everything within the required security fencing including any other building and equipment. The screen shall be a minimum of ten feet of land supporting an appropriate vegetative screen which shall surround the security fence except for one service access. The vegetative screen shall consist of two staggered rows of evergreen shrubs on 5-foot centers, six feet tall at time of planting, unless existing vegetation or topography is determined to provide a screen which is at least as effective as the planted screen. If the applicant elects to leave additional areas outside the fence, that is, in addition to the required screen, such areas shall either be landscaped in a manner which is compatible with neighboring properties or shall be left in a natural wooded condition.

c) **Feasibility.** No rezoning to a conditional zoning district shall be approved for a telecommunications tower unless the applicant proves that there is no feasible alternative in order to meet the applicant's minimal service level as required by the Federal Communications Commission. In demonstrating "no feasible alternative" the applicant shall show that collocation of an antenna or antennas or location of a tower or towers on property which is either unzoned or on which telecommunications towers are permitted uses will not enable it to meet its minimum service levels. The fact that property which is unzoned or zoned in a classification in which telecommunications towers are permitted uses costs more than property for which a conditional zoning district is required shall be immaterial as to the issue of feasibility. So long as suitable property is available for purchase or lease, it shall constitute a feasible alternative. The City may, in its discretion, employ a communications expert to assess the applicant's proof of compliance with this standard.

d) **Concealment.** Only concealed towers as defined in this ordinance or towers which, due to existing topography, vegetation, or other site conditions, would not be readily visible from adjoining properties, shall be granted conditional zoning district approval.

e) **Noise.** The tower shall be designed in such a manner that it is not reasonably likely that wind noise associated with the tower would be audible on adjoining properties.

f) **Height.** The maximum height for a telecommunications tower requiring a conditional zoning district shall be 100 feet; provided, however, telecommunications towers erected on property owned by the United States of America, the State of North Carolina, or any county or municipality and used at least in part for the purpose of accommodating emergency services communications antennas shall be entitled to a maximum tower height in accordance with the Basic Standards for Siting Telecommunications Towers as set forth in Paragraph 16-4-29.3(h), above.

g) **Planned Development District Exception.** Telecommunications towers proposed as part of a PCDCZD Planned Commercial Development Conditional Zoning District or a PMDCZD Planned Manufacturing Development Conditional Zoning District need only comply with the Basic Standards contained in Section 16-4-29.3, above. Notwithstanding the fact that development in such districts requires a rezoning to a conditional zoning district, such towers are not required to comply with the Additional Standards contained in this section. The applicant may, however, at its option, propose a tower design which incorporates some or all of these standards.

16-4-29.5 Annual Report. The holder of a permit for a telecommunications tower shall file an annual report on forms prescribed by the Planning Department which shall demonstrate continuing compliance with the requirements of this Section.

16-4-29.6 Violations. Violations of these requirements or the terms or conditions of any permit shall constitute a violation of the Zoning Ordinance and shall subject the violator to the penalties provided in Article IX, above.

This page intentionally left blank.

ARTICLE XVII
NATURAL RESOURCE PROTECTION STANDARDS

Section 17-1 Purpose. Recognizing that protection of the natural resources of the City of Hendersonville represents prudent stewardship and good business, this article is created to establish standards intended to accomplish the following:

a) To preserve and enhance the quality of the water in creeks, streams, ponds and lakes that flow into and out of the City;

b) To minimize future flooding problems by guiding development away from flood prone areas;

c) To preserve the water carrying capacity of watercourses and the natural water storage capacity of the special flood hazard area;

d) To protect land and watercourses from pollutants, sedimentation and erosion;

e) To retain open spaces in order to protect their environmentally-sensitive character; and

f) To protect and conserve significant natural resources from degradation due to urbanization.

Section 17-2 Floodplain Protection Standards. The primary objective of floodplain protection standards is to preserve and maintain the natural floodplain in an undisturbed vegetated state in order to maintain flood storage capacity, control stormwater, improve water quality and conserve plant and wildlife habitat.

17-2-1 Development Prohibited in the Floodway and Special Flood Hazard Area. Development within the floodway and special flood hazard area, as defined in Section 12-2, above, shall be prohibited, except as provided in this article. For purposes of this article the term development means 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.

17-2-2 Development Allowed in the Floodway and Special Flood Hazard Area.

a) Land in the floodway and special flood hazard area may be used for the following purposes, provided that such uses are designed and constructed to minimize clearing, grading, erosion and water quality degradation:

1) Crossings by streets, driveways, culverts and railroads;

2) Active and passive recreational activities authorized in the zoning district in which the property is situated;

3) Intakes, docks, utilities (including water and wastewater treatment, stormwater control and sedimentation and erosion control facilities), bridges, other public facilities and water-dependent structures;

4) Wetlands constructed or restored for mitigation purposes;

5) Redevelopment pursuant to Section 17-2-4, below; and

6) Land within the floodway and special flood hazard area can serve to meet minimum lot size requirements if there is sufficient buildable area remaining on the tract.

b) Land in the special flood hazard area may be used for up to 25% of the parking required for the development on the tract; provided, there is no increase in the elevation of the land resulting in a loss of flood storage. Furthermore, no more than one-third of the special flood hazard area on any development tract shall be used for parking. Parking in the special flood hazard area shall undergo development review in accordance with Article VII, above. In considering the application for development approval, the City shall consider whether the proposed parking on the site is designed and arranged to minimize adverse environmental impact from placement of parking in the special flood hazard area and whether the proposed development would result in significant degradation of water quality, loss of significant wetlands, increase in sedimentation and erosion, increase in stormwater runoff, loss of significant plant and wildlife habitat or would otherwise constitute a threat to public safety. Where feasible, the proposed parking shall be designed making maximum use of pervious materials.

c) Streets and driveways may run generally within special flood hazard area and parallel to the stream only where no other access to the property is feasible. Such streets and driveways shall be designed to minimize loss of flood storage.

d) In order to allow design flexibility to achieve high quality site design and better utilization of land adjacent to the special flood hazard area, a property owner or developer may fill and/or use for development up to 10% of the special flood hazard area contained within the boundaries of any development site upon satisfactorily demonstrating the following:

1) The proposed fill and/or development provides for a higher quality site design and better utilization of land adjacent to the special flood hazard area than would be possible without the intrusion necessary to achieve the high quality design; and

2) The proposed fill and/or development represents the minimum amount of special flood hazard area intrusion necessary to achieve the high quality design.

Public and private roads and sidewalks shall not count toward the allowable 10% of the special flood hazard area on a tract that can be filled and/or used for development in accordance with Section 17-2-2(d).

A property owner or developer may fill and/or use for development more than 10% of the special flood hazard area when such would be necessary so that the property to be developed, including both the special flood hazard area and land adjacent thereto, equals one-half acre.

e) Notwithstanding the foregoing, for parcels existing prior to the effective date of this ordinance situated entirely within the 100-year flood plain as depicted on the most recent Flood Insurance Rate Map, a property owner or developer may fill and/or use for development up to one-half acre or 10% of such property, whichever is greater. Provided, however, in order to develop such lands, the property owner or developer must comply with all applicable regulations of the Federal Emergency Management Administration including obtaining a “no-rise” certificate, if necessary.

Furthermore, in order to qualify for the exception contained in this paragraph, proposed developme shall be situated and designed in such a way as to be consistent with the purposes of this article as set forth in Section 17-1, above.

f) It is intended that this ordinance be congruous with the City of Hendersonville Flood Damage Prevention Ordinance. Therefore, any uses, development or land disturbing activity allowed by Section 17-2 shall be conducted in accordance with the requirements of the Flood Damage Prevention Ordinance, including, without limitation, the requirement to obtain a "no-rise" certificate for activities within the floodway.

17-2-3 Density Credits. The amount of land in the special flood hazard area may be credited for residential density on land adjacent to the special flood hazard area at a rate of 100% of that allowed by the zoning.

17-2-4 Redevelopment in the Floodway and Special Flood Hazard Area. Historically, some areas of the City's planning jurisdiction were developed despite the fact that they lie within the 100-year floodplain. In order to address concerns about urban blight, this section allows redevelopment to occur on existing developed sites which no longer function as natural flood plain and when such redevelopment will not result in any further loss of flood-plain functionality. Where feasible, redevelopment proposals should demonstrate an improvement in the site's functionality as a flood plain. In light of this intent, redevelopment of existing developed sites shall be permitted within the floodway and special flood hazard area only when the applicant has satisfactorily demonstrated the following:

a) The proposal is to redevelop an existing developed site as of the date of this ordinance evidenced by substantial coverage of the site by buildings, fill, gravel or paved drives or parking areas or other impervious surfaces.

b) There shall be no loss of flood storage capacity on the site as a result of the redevelopment.

c) The applicant, utilizing best management practices, shall reduce the post-redevelopment rate of stormwater runoff from the pre-redevelopment rate of runoff, if feasible. In any event, the post-redevelopment rate of runoff shall not be greater than the pre-redevelopment rate.

d) The project design, including any best management practices (BMPs) will result in a project which is consistent with the purposes of the Natural Resources Protection Ordinance as stated in Section 17-1, above. In this regard, the applicant shall demonstrate the following:

1) The project shall not degrade the quality of the water in creeks, streams, ponds and lakes that flow into and out of the City.

2) The project shall not contribute to future flooding problems.

3) The project preserves the water carrying capacity of watercourses and the natural water storage of the special flood hazard area.

4) The project protects land and watercourses from pollutants, sedimentation and erosion.

5) The project retains open spaces in order to protect their environmentally-sensitive character; and

6) The project protects and conserves significant natural resources from degradation due to urbaniza

e) The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate, if needed.

Section 17-3 Stream Buffer Protection Standards. The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetated state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards contained in this section will further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs.

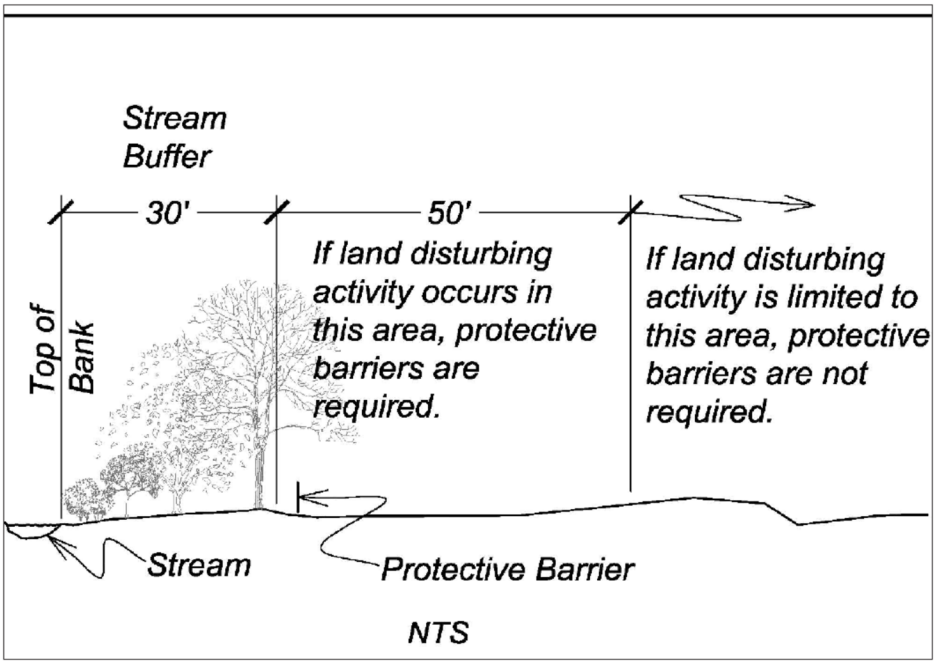
17-3-1 Applicability. Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven-and-one-half minute quadrangle topographic maps covering the City of Hendersonville and its area of extraterritorial jurisdiction. Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

17-3-2 Stream Buffer Size. Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

17-3-3 Prohibition Against Development Within the Stream Buffer. To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in Section 17-3-5. Furthermore, there shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in Section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that Section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

17-3-4 Stream Buffer Protection Measures. To prevent adverse impacts to required stream buffer areas and to assure the stream buffer remains undisturbed and protected during and after land disturbing activities and development, adequate protections shall be in place prior to and after land disturbing activities and development commences.

a) When land disturbing activity or development is to take place within 50 feet of the outside edge of the stream buffer, temporary stream buffer protective barriers shall be in place prior to the land disturbing activity or development work commencing.



b) Prior to commencing any land disturbing activity or development on a site, the Planning Director or the Director's designee shall inspect and approve the installation of stream buffer protective barriers.

c) Stream buffer protective barriers shall consist of:

1) A fence which is at least three feet high and constructed in a post and rail configuration, using two-by-four posts and one-by-four rails;

2) A fence with two-by-four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or

3) Certain erosion and sedimentation control devices such as silt fencing may also serve as the stream buffer protective barrier.

d) All contractors shall be made aware of the stream buffer designated for protection. Unless otherwise provided by ordinance, no disturbance shall occur within the stream buffer, including the following:

1) Clear-cutting of trees and other vegetation;

2) Selective cutting of trees and/or the clearing of other vegetation;

3) Removal or disturbance of existing vegetation;

4) Grading;

5) Filling;

6) Storage, parking or operating motorized vehicles;

7) Storage of debris or materials, including topsoil;

8) Use, storage or application of herbicides and/or pesticides;

9) Draining the stream buffer area by ditching, underdrains or other systems.

e) Stream buffer protective barriers shall be maintained throughout the developer's activities.

f) For planned developments and commercial uses, permanent boundary markers, in the form of signage approved by the Planning Department, shall be installed once the land disturbing activity or development is complete. Clearly visible stream buffer boundary markers shall be placed along the outside edge of the stream buffer and spaced at a maximum every 100 feet.

g) Prior to issuing a certificate of occupancy for Planned Developments, documentation shall be in place to inform property owners of the stream buffer presence and location along with management and maintenance requirements. Documentation shall be in a form that will run with the property such as inclusion in covenants, conditions and restriction documents or deed reference.

17-3-5 Exceptions. Subject to prior written authorization by the Planning Director, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the Zoning Ordinance:

a) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossings with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.

b) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.

c) Clearing and revegetating the stream buffer pursuant to a plan approved by the Planning Director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.

d) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:

1) The property owner or applicant demonstrates to the satisfaction of the Planning Director that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.

2) Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.

3) A vegetated buffer of a width approved by the Planning Director shall be required around the stormwater control structures.

4) Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the Planning Director.

e) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:

1) The property owner or applicant demonstrates in writing to the satisfaction of the Director of Water & Sewer that the sanitary sewer lines cannot be practicably located outside of the stream buffer;

2) Design and construction specifications minimize damage to the stream and the possibility of line leakage;

3) The sewer line is located at least 15 feet from the top of the stream bank; and

4) The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the Director of Water & Sewer.

f) Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is no more than is necessary considering the design capacity of the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this Section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvements related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

g) Selective removal of invasive exotic species in accordance with a plan approved by the Planning Director.

h) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the Planning Director.

Site plan approval by the Planning Director shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the Zoning Ordinance, the Director of Public Works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

17-3-6 Minimum Lot Size Requirements. Land within the stream buffer can serve to meet minimum lot size and setback requirements if there is sufficient buildable area remaining on the lot.

17-3-7 Diffuse Flow Requirement. Diffuse flow of runoff shall be maintained in the stream buffer dispersing concentrated flow and reestablishing vegetation.

a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the 20-foot setback area defined in Section 17-3-3, above.

b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

17-3-8 Special Provisions Pertaining to Certain Residential Uses. For certain residential uses as prescribed herein, the stream buffer shall be reduced to fifteen feet and the transitional area described in Section 17-3-3 shall be reduced to fifteen feet. To qualify for these special provisions, a proposed development must meet the following criteria:

a) The lot on which the development is to occur must be a lot of record in the Henderson County Registry as of 6 September 2001.

b) Use of the lot must be limited to a one- or two-family residential dwelling.

c) The lot may not exceed one acre in area.

d) The amount of impervious surface allowed on the lot shall not exceed 25% of the lot or 3,000 ft2, whichever is greater.

Section 17-4 Exemption When Existing Uses Are Present and Ongoing. The regulations contained in this Article shall not apply to portions of the stream buffer, the floodway or the special flood hazard area where a use was existing and ongoing on the effective date of this ordinance.

a) Existing uses shall include, but not be limited to agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on site sanitary sewage systems. Only the portion of the stream buffer, floodway, or special flood hazard area that contains the footprint of the existing use is exempt from this Article. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within the stream buffer, floodway or special flood hazard area where it did not previously exist as of the effective date of this ordinance, and existing diffuse flow is maintained.

b) A use shall be considered as existing if projects or proposed development meet at least one of the following criteria:

1) Project requires a 401 Certification / 404 Permit, and these were issued prior to the effective date of this ordinance;

2) Projects which require a state permit, such as landfills, NPDES wastewater discharges, and road construction activities, which have begun construction or are under contract to begin construction, and which have received all required state permits prior to the effective date of this ordinance; or

3) Projects that have been determined to have a vested right pursuant to ~~Sections~~Chapter 40~~-46, et seq.,~~ of the Code of Ordinances of the City of Hendersonville.

Section 17-5 Other Laws and Regulations. Compliance with this Article does not preclude the requirement to comply with all federal, state and ~~state~~local laws and regulations.

Section 17-6 Varying Requirements When There Is an Increase in Functionality. Occasionally, development sites will contain flood plain and/or stream buffers which, due to previous clearing or development, diking, erosion, or other reasons, are of limited functionality. This ordinance seeks to encourage landowners and developers to find creative means to improve these existing conditions. Accordingly, the entity with the authority to grant development authorization pursuant to Article VII, above, may vary the requirements of this Article when the applicant for development authorization demonstrates the proposed development, along with any management practices, will result in an increase of functionality of any regulated natural resources on the

development site. Any mitigation proposed to offset loss of a natural resource regulated herein must take p
on the development site itself or on neighboring properties pursuant to a recorded easement authorizing such activities.

Section 17-7 Remedies for Violations of the Natural Resources Protection Ordinance. In addition to any other remedies provided in this Ordinance or elsewhere, the Zoning Administrator is authorized to require restoration of any natural resources damaged or destroyed in violation of the provisions of this section.

This page intentionally left blank.

ARTICLE XVIII
MIXED USE ZONING

Section 18-1 Legislative Intent. The mixed use zoning district classifications are intended to provide for the coordinated development of office, commercial, and residential uses and their necessary support functions. They are intended to encourage design which emphasizes livable, people-oriented environments within compatible and visually appealing developments. Mixed use districts are intended to provide areas where moderate scale mixed use centers can locate with an emphasis on development of a balance of residential, office and commercial uses, and public spaces.

It is further intended that mixed use districts shall encourage development within which mutually supporting residential, commercial and office uses are scaled, balanced and located to reduce general traffic congestion by providing housing close to principal destinations, and convenient pedestrian circulation systems and mass transit to further reduce the need for automobile usage. Mixed use districts are intended to encourage development that allows multiple destinations to be achieved with a single trip.

When such districts adjoin residential development or residential zoning districts, it is intended that arrangement of buildings, uses, open space, and vehicular or pedestrian access shall be such as to provide appropriate transition and reduce potentially adverse effects.

Section 18-2 Mixed Use Design Requirements. Mixed use zoning districts require special attention to design because of the intermixing of land uses in close proximity. Applications for development authorization for projects located within one of the mixed use zoning districts shall, in addition to site layout, address building and site design, as well as the functional integration of residential and commercial uses. In addition to meeting the requirements for site plan review contained in Section 7-3, above, applications for development authorization within a mixed use zoning district shall also demonstrate that the design of the project meets the goals and intent of the mixed use zoning district classifications. Applicants shall demonstrate design sufficiency in one of two ways: (1) by complying with the design standards for the mixed use zoning district classification in which the property is located; or (2) by means of alternative design which conforms to the general design considerations contained in Section 18-6, below, and which will result in a project design which is as good as, or better than, that resulting from the design standards in furthering the legislative intent stated in Section 18-1, above.

Section 18-3 Processing of Applications for Development Authorization within the Mixed Use Zoning District Classifications. Except as modified in this section, applications for development authorization for projects situated within the mixed-use zoning district classifications shall be processed in accordance with Article VII, above. Applicants may choose whether to proceed with preliminary or final site plan review regardless of the size of their projects.

18-3-1 Preliminary Plan Review. The applicant may choose whether to have preliminary review of the site plan only or of both the site plan and the design concept. Preliminary plan review shall be conducted pursuant to the provisions of Section 7-3, above, except as modified herein.

18-3-1.1 Site Plan Review Only. If the applicant chooses to undergo site plan review only, it shall submit a preliminary site plan meeting the requirements of Section 7-3-3.2. Preliminary site plan approval shall entitle the applicant to final site plan approval to develop the property in accordance with the approved preliminary site plan as provided in Section 7-3-4.2, above. Preliminary site plan approval pursuant to this section does not relieve the applicant of demonstrating design compliance at the time of final plan review.

18-3-1.2 Joint Site Plan and Design Review. If the applicant chooses to undergo joint site plan and d review, it shall submit, in addition to the preliminary site plan, a design concept meeting the requirements of Section 18-3-3, below. The preliminary site plan and the design concept shall undergo a threshold review by the Planning Director to determine whether they demonstrate compliance with the design standards for the zoning district in which the property is situated. If the Planning Director determines the plans are compliant with the applicable design standards, the Planning Director shall refer the application to the reviewing authority for preliminary review. If the Planning Director determines the plans are not compliant, the Planning Director shall refer the application to the Alternative Design Committee. The Alternative Design Committee shall review the application at one or more meetings at which the applicant is entitled to be present and shall make a recommendation to the applicable reviewing authority as to whether the preliminary site plan and the design concept demonstrate compliance with the requirements of this Article. The decision as to compliance shall be that of the reviewing authority and shall be subject to review in accordance with Article VII, above. Joint preliminary site plan and design approval shall entitle the applicant to final approval to develop the property in accordance with the approved preliminary site plan so long as final plans, including the final design concept, do not deviate substantially therefrom.

18-3-2 Final Plan Review. Final plan review is processed in one of two ways: compliant or alternative. Compliant final plan review means that the final design plans comply with either (1) approved preliminary design plans or (2) with all the design standards contained in Section 18-6, below. Alternative final plan review is necessary for all other projects.

To initiate final plan review, the applicant shall submit a final site plan meeting the requirements of Section 7-3-4.3 along with a final design plan meeting the requirements of Section 18-3-3.

18-3-2.1 Compliant Final Plan Review. The reviewing authority for compliant final plan review is the Planning Director. If the Planning Director determines the final plans demonstrate compliance with approved preliminary plans and with all other provisions of the Zoning Ordinance, including either the design standards contained in Section 18-6, below, or an approved preliminary design, the Planning Director shall direct that a zoning compliance permit be issued to the applicant.

18-3-2.2 Alternative Final Plan Review. The reviewing authority for alternative final plan review is the Planning Board. If the final design plans for a project deviate from either approved preliminary design plans or from the design standards contained in Section 18-6, below, the applicant shall undergo alternative final plan review. The final site plan and final design plan shall be reviewed by the Alternative Design Committee at one or more meetings at which the applicant is entitled to be present. The Alternative Design Committee shall make a recommendation to the Planning Board as to whether the final design plan meets the requirements of this Article. If the Planning Board determines the final plans demonstrate compliance with approved preliminary plans and with all other provisions of the Zoning Ordinance, including the design requirements contained in this Article, it shall order that a zoning compliance permit be issued to the applicant.

18-3-3 Design Submittal Requirements. In addition to plans and documentation required under Article VII of this Ordinance, applicants for development authorization for projects within one of the mixed use zoning districts shall submit, as a part of their application, design plans containing the following:

a) Title Block containing the following: sheet title, graphic and numerical scale, date, name of project, name, address and telephone number of person preparing the plans, and property address.

b) Floor plans;

c) Elevations of all façades, including existing structures to remain. Elevations shall be drawn to a reasonable scale which shall be not less than 1/8 inch = one foot;

d) Design, including materials and colors, of the following project components:

1) Stairs, ramps and railings;
2) Refuse, storage and pickup areas;
3) Utility and mechanical equipment, and their proposed screening;
4) Chimneys and exhaust fans;
5) Canopies, awnings sunshades, louvers;
6) Balconies and decks;
7) Antennas;
8) Fences and walls;
9) Type of roof, wall and trim materials to be used;
10) Existing and proposed signs;
11) Lighting standards and fixtures;
12) Roof overhangs.

e) Typical cross-sections as necessary to determine compliance with the design requirements and considerations contained in this article.

The Planning Director has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical. The Planning Director, Planning Board or City Council may require additional information where such is necessary to enable a fully informed decision on the matter.

Section 18-4 Appeals. Decisions rendered hereunder may be appealed to City Council in accordance with the provisions of Section 7-3-4.4, above.

Section 18-5 Alternative Design. It is the intention of this article to provide a means for creative design approaches to development within the mixed use corridors so long as the design of a project advances the goals of this Article.

18-5-1 Design Choices. Applicants who choose not to comply with the design standards for any mixed use zoning district classification are free to develop their projects in an alternative fashion so long as the proposed design of the project meets the general design consideration contained in Section 18-6, below, and will result in a project design which is as good as, or better than, that resulting from the design standards.

18-5-2 Alternative Design Committee. There shall be an ad hoc alternative design committee, composed of not less than three nor more than five persons.

18-5-2.1 Function of the Committee. The Committee shall serve as a resource to the Planning Director and to the Planning Board. The Committee shall meet as necessary to review alternative design proposals and to make a recommendation as to whether a proposed alternative design meets the standard stated in Section 18-5-1, above. The Committee shall also assist the Planning Director, as needed, in administering the provisions of this Article.

18-5-2.2 Membership of the Committee. The membership of the Alternative Design Committee shall be appointed by the Mayor to serve on an as-needed basis. The members shall be chosen from the membership of the Planning Board, the Historic Preservation Commission and/or the general public residing within the city limits or the extraterritorial jurisdiction, and if possible, shall contain one or more of the following professions: 1) architect, 2) landscape architect, 3) builder or developer.

Section 18-6 General Design Considerations. NOTE: "Building design element" sub-sections noted below are not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)

Mixed use zoning districts require special attention to design because of the intermixing of land uses in close proximity. Functional integration of residential and commercial uses shall be considered during project design. This section seeks to set forth the design philosophy for the mixed use zoning districts and is intended to provide guidance to design professionals. It is also intended to provide standards for reviewing projects undergoing alternative design review pursuant to Section 18-3, above.

18-6-1 General Site Arrangement. Structures shall be placed and arranged so as not to adversely affect adjacent property. Adverse effects shall include, but are not limited to, the removal of lateral support on adjacent property, the creation of hazard, nuisance, danger, or inconvenience, or unreasonable loss of privacy. Development shall be arranged so as to be visually harmonious within the development site and, where appropriate, in relation to adjacent developments. Site design elements of the development shall be integrated to the degree of their compatibility with each other and shall be separated to the degree of their incompatibility. Insofar as is practicable, developments shall be arranged so as to preserve or enhance vistas.

18-6-2 Physical Integration of Uses. All mixed use developments shall be designed and developed to provide an appropriate interrelationship between the various uses and structures within the development. Residential and commercial uses may be located within the same or adjoining structures.

18-6-3 Preservation of Natural Features and Open Space. Permitted flexibility in lot sizes, setbacks, street alignments and widths, and landscaping shall be utilized to preserve natural features and drainage patterns and to provide open space.

18-6-4 Building and Project Design Compatibility. The mixed-use districts are proposed for corridors where there is considerable existing development, much of which is not consistent with the purpose and goals of this article. To the degree existing development is consistent with these purpose and goals, new development should be designed to be compatible with such existing development. However, where there is a conflict between the design of existing development and the purpose and goals of this article, the purpose and goals of this article shall prevail. The following elements shall be addressed to ensure compatibility.

18-6-4.1 Architectural Character. NOTE: Sec. 18-6-4.1 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b).
(added a block paragraph space between regulatory NOTE and original text below)

The rich architectural vocabulary of the City of Hendersonville presents a wide variety of development opportunities using traditional forms while avoiding any perception of monotony. Each building proposed for the mixed use districts shall have a well-proportioned form consistent with the building use, and its construction materials and methods. Massing of the building(s) shall create a building envelope that reflects simple, clearly articulated building volumes. Such straight-forward building massing is distinguished from additive or collective forms which generally are not allowed unless clearly related to specific functions and uses of the building.

Assuming they are consistent with the purpose and goals of this article, as well as the general architectural standards stated above, new developments in or adjacent to existing developed areas shall be compatible with the established architectural character of such areas by using a design that is complementary. Compatibility may be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed infill development.

18-6-4.2 Building Orientation. It is preferred that primary façades face the adjacent street or significant public space. A main entrance shall face a connecting walkway with a direct, safe, pedestrian connection to the street. Where the main entrance does not face the adjacent street, buildings shall nonetheless be designed to provide an attractive streetside façade.

18-6-4.3 Building Placement. Buildings shall be situated with regard to pedestrian and vehicular connectivity. It is preferred that they be located close to the pedestrian street with offstreet parking behind and/or beside the building. Important mountain vistas and/or views of significant historic sites shall be protected and accentuated to the extent practicable.

18-6-4.4 Privacy Considerations. Elements of the development plan shall be arranged to maximize the opportunity for privacy by the residents of the project and minimize infringement on the privacy of adjoining land uses. Additionally, the development plan shall create opportunities for interactions among neighbors.

18-6-4.5 Architectural Details. NOTE: Sec. 18-6-4.5 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Architectural elements like openings, sill details, bulkheads, posts, and other architectural features shall be used to establish human scale at the street level. On corner lots, the applicant is encouraged to provide a building entry, additional building mass, and distinctive architectural elements at the corner of buildings. Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically aligned wherever practical. The appearance of all exposed façades (not just the streetside façade) is important and shall be addressed in development design.

18-6-4.6 Circulation and Access. Street designs shall permit the comfortable use of the street by cars, bicyclists, and pedestrians. Pavement widths, design speeds, and the number of vehicle lanes should be minimized without compromising safety. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the City's street network. This Ordinance encourages the development of a network of interconnecting streets that work to disperse traffic while connecting and integrating neighborhoods with the existing urban fabric of the City. Equally as important, the Ordinance encourages the development of a network of sidewalks and bicycle lanes that provide an attractive and safe mode of travel for pedestrians and cyclists.

Minor variations and exceptions to street cross-sections may be permitted with approval of the Administrative Officer and the City Engineer. Such exceptions include variations to the pavement width, size and location of on-street parking, tree planting areas, street grade, and centerline radii in accordance with principles below. Right-of-way widths should be preserved for continuity.

Streets shall interconnect within a development and shall be designed with due regard to designated corridors shown on the City Transportation Plan. Streets shall be designed as the main public space of the City and shall be scaled to the pedestrian. Applicants are encouraged to design streets so that they interconnect with adjacent properties.

Sidewalks shall be required along streets adjacent to proposed developments. They shall form a logical, safe, and convenient system for pedestrian access to all dwelling units and commercial establishments within the development and shall be required along such streets, drives and parking areas as is necessary to accomplish this. Pedestrian / bicycle pathways may be substituted for sidewalks, if appropriate.

18-6-4.7 Building Walls. NOTE: Sec. 18-6-4.7 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Buildings shall avoid long, monotonous, uninterrupted walls or roof planes on their visible façades. It is preferred that this design goal be achieved by means of building wall offsets, including projections, recesses, and changes in floor level, and roofline offsets. Such offsets add architectural interest and variety and can assist in creating human size proportions. Parapets shall be designed as integral to the mass of the building. When multiple wall materials are combined on one façade, the designer is encouraged to place the heavier material(s) below.

18-6-4.8 Building Materials. NOTE: Sec. 18-6-4.8 is not required for One and Two-Family Dwellings; property owners/developers may voluntarily consent to these standards per NCGS 160D-702 (b). (added a block paragraph space between regulatory NOTE and original text below)
Building materials shall either be similar to the materials already being used in the neighborhood or, if dissimilar materials are being proposed, other characteristics such as scale and proportions, form, architectural detailing, color and texture, shall be utilized to ensure that enough similarity exists for the building to be compatible, despite the differences in materials.
Building materials shall not create excessive glare. Highly reflective building materials, such as aluminum, unpainted metal and reflective glass, have a high potential for glare, and designs utilizing such materials shall be evaluated to determine whether or not the glare would create a significant adverse impact on the adjacent property owners, neighborhood or community in terms of vehicular safety, outdoor activities and enjoyment of views.

~~*[This Ordinance was retyped on January 5, 2018 and incorporates all amendments made through that date.]*~~

Ordinance #___-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND THE SUBDIVISION ORDINANCE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, the Session Laws 2019-111, 2020-3 and 2020-25 were signed into law in order to adopt a new Chapter 160D of the North Carolina General Statutes entitled "LOCAL PLANNING AND DEVELOPMENT REGULATION," hereinafter "Chapter 160D"; and

WHEREAS, Chapter 160D consolidates and updates the statutory authority and requirements for land development regulation within the City and its extraterritorial jurisdiction; and

WHEREAS, City Council desires to amend the Subdivision Ordinance of the City of Hendersonville, North Carolina, sometimes hereinafter referred to as the "Subdivision Ordinance," for conformance with Chapter 160D, including both prior law brought forward as part of Chapter 160D and the changes or clarifications made with the adoption of Chapter 160D;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina as follows:

SUBPART A: The readoption and amendment of the Subdivision Ordinance of the City of Hendersonville, North Carolina:

The Subdivision Ordinance of the City of Hendersonville, North Carolina, is hereby readopted and amended to read as shown on Attachment A to this Ordinance, Attachment A being incorporated herein by reference as if fully set forth in this Subpart A.

SUBPART B: General Provisions:

1. The provisions of the Subdivision Ordinance, readopted and amended in Subpart A of this Ordinance, are hereby declared to be severable. If the provisions of the Subdivision Ordinance as readopted and amended by this Ordinance, or the application thereof, to any person or circumstances, is held invalid, such invalidity shall not affect any other provisions or applications of the readopted and amended provisions of the Subdivision Ordinance which can be given effect without the invalid provisions or application.

2. All actions taken by or on behalf of the City of Hendersonville, prior to the effective date of this Ordinance, in the administration and enforcement of the Subdivision Ordinance are hereby ratified.

3. The adoption of this Ordinance shall not invalidate any pending enforcement actions, nor shall this Ordinance prohibit the enforcement of the Subdivision Ordinance, as amended by this Ordinance, with respect any existing Subdivision Ordinance violations.

4. This Ordinance shall be effective upon its adoption. All prior provisions of the Subdivision Ordinance which are in conflict with this Ordinance, are hereby repealed.

5. City staff and the codifier shall have the authority to make technical corrections to the Subdivision Ordinance to correct typographical errors, insert omitted words where insertion of such words will not change the substance of the Subdivision Ordinance, and correct statutory references.

This Ordinance is adopted by the City Council of the City of Hendersonville, North Carolina on this 2nd day of July 2021.

Attest:

_____
Barbara G. Volk, Mayor, City of Hendersonville

_____
Angela L. Reece, City Clerk

Approved as to form:

_____
Angela S. Beeker, City Attorney

Attachment A

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND THE SUBDIVISION ORDINANCE OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER 160D

CITY OF HENDERSONVILLE

SUBDIVISION ORDINANCE

Effective: March 5, 2020

ACKNOWLEDGEMENTS

CITY COUNCIL

Barbara Volk, Mayor
Jerry Smith, Mayor Pro Tem
Jeff Miller
Dr. Jennifer Hensley
Lyndsey Simpson

PLANNING BOARD

Steven Orr, Chairman
Jon Blatt
John Coker
Peter Hanley
Robert Hogan
Steve Johnson
Hunter Jones
Ben Pace
James Robertson
James Thorndike

~~CITY STAFF~~

John Connet, City Manager
Brian Pahle, Assistant City Manager
~~Samuel Fritschner~~Angela S. Beeker, City Attorney
~~Susan Frady,~~Lew Holloway, ~~Development Assistance~~Community Development Director
Matthew Manley, Planning Manager
Brent Detwiler, City Engineer
Lee Smith, Utilities Director
Tom Wooten, Public Works Director
James Miller, Interim Fire Chief
~~Daniel Heyman, Planner II~~

CONSULTANT (Original Adoption)

CodeWright Planners, LLC
9 Blue Bottle Lane
Durham, NC 27705
www.codewright.info

© City of Hendersonville, 2020

TABLE OF AMENDMENTS

TABLE OF AMENDMENTS				
ORD#.	TITLE	DESCRIPTION	AFFECTED SECTIONS	DATE ADOPTED
		Amendments to Conform with Chapter 160D of the North Carolina General Statutes	Multiple	July 1, 2021

TABLE OF CONTENTS

ARTICLE 1: GENERAL PROVISIONS 1-1

Section 1.01. Title 1-1

Section 1.02. Effective Date 1-1

Section 1.03. Authority 1-1

A. General Authority 1-1
B. References to State Law 1-1

Section 1.04. Purpose and Intent 1-1

Section 1.05. Applicability 1-2

A. General Applicability 1-2
B. Application to Governmental Units 1-2
C. Application to Bona Fide Farms 1-2
D. No Development until Compliance With All Applicable Law 1-2
E. Minimum Requirements 1-3
F. No Abrogation of Existing Subdivisions 1-3

Section 1.06. Exemption from this Ordinance 1-3

Section 1.07. Relationship to Other Laws and Policies 1-3

A. Adopted Policy Guidance 1-3
B. Adopted Ordinances 1-3
C. Covenants and Deed Restrictions 1-3

Section 1.08. Conflict 1-3

A. Conflicts with State or Federal Law 1-3
B. Conflicts with Other City Codes or Laws 1-3
C. Conflicts between the Standards in this Ordinance 1-3
D. Determination of the More Restrictive Standard 1-4

Section 1.09. Transitional Provisions 1-4

A. Prior Violations 1-4
B. Existing Nonconforming Lots 1-4
C. Prior Development Approvals 1-4
D. Pending Applications 1-4

Section 1.10. Vested Rights 1-4

A. Building Permit 1-5
B. Common Law Vesting 1-5
C. Statutory Vesting 1-5
D. Site Specific Development Plan 1-5
E. Prior Vesting 1-5

Section 1.11. Severability 1-5

ARTICLE 2: PROCEDURES 2-1

Section 2.01. How to Use this Section 2-1

TABLE OF CONTENTS

A. Article Organization 2-1
B. Steps in the Review Process 2-1

Section 2.02. Summary Table 2-2

Section 2.03. Application Processing 2-3

A. Purpose and Intent 2-3
B. Conflict with Specific Procedures 2-3
C. Pre-application Conference 2-3
D. Application Filing and Acceptance 2-3
E. Staff Review and Action 2-4
F. Public Notification 2-4
G. Public Meeting and Hearing 2-5
H. Effect 2-7
I. Continuance or Withdrawal 2-7

Section 2.04. Review Procedures 2-8

A. How to Use this Section 2-8
B. Administrative Adjustment 2-9
C. Appeal 2-11
D. Conservation Subdivision 2-13
E. Exempt Subdivision 2-16
F. Expedited Subdivision 2-18
G. Final Plat 2-21
H. Major Subdivision 2-24
I. Minor Subdivision 2-27
J. Subdivision Variance 2-30

Section 2.05. Performance Guarantees 2-33

A. Purpose and Intent 2-33
B. Applicability 2-33
C. Ineligible Facilities 2-33
D. Maximum Term of Guarantee 2-33
E. Form of Guarantee 2-33
F. Amount of Guarantees 2-34
G. Release or Reduction of Guarantee 2-34
H. Improper Release of Financial Guarantees 2-35
I. Forfeiture of Guarantee 2-35
J. As-Built Plans Required 2-35

Section 2.06. Fee-in-Lieu 2-36

A. Purpose 2-36
B. Procedure 2-36
C. Amount 2-37
D. Review Standards for Fee-in-Lieu 2-37

ARTICLE 3: CONFIGURATION 3-1

Section 3.01. Purpose and Intent 3-1

Section 3.02. Land Suitability 3-1

Section 3.03. Lots 3-1

A. Dimensional Requirements 3-1
B. Side Lot Lines 3-2
C. Flag Lots 3-2
D. Double or Reverse Frontage Lots 3-2

TABLE OF CONTENTS

E. Corner Lots 3-3
F. Drainage and Flood Prevention 3-3

Section 3.04. Access to Lots 3-4

A. Every Lot Must Maintain Access 3-4
B. Access on Lots Abutting Expressway or Boulevard Streets 3-4
C. Marginal Access Streets 3-5
D. Driveway Consolidation Along Expressway, Boulevard, and Thoroughfare Streets 3-5

Section 3.05. Monuments 3-6

Section 3.06. Easements 3-7

A. Locations 3-7
B. Utilities 3-7
C. Width 3-7
D. Easement Upsizing 3-8
E. Maintenance 3-8
F. Identification 3-8

Section 3.07. Subdivision Names 3-9

Section 3.08. Cluster Mailbox Units 3-9

Section 3.09. Dedication of Public Land 3-10

A. Dedication of Land for Public Parks 3-10

ARTICLE 4: INFRASTRUCTURE 4-1

Section 4.01. Purpose and Intent 4-1

Section 4.02. General Requirements 4-1

A. Reasonable Relationship 4-1
B. Consistency with Adjacent Development 4-1
C. Within Special Flood Hazard Areas 4-1
D. As-built Plans Required 4-1
E. Maintenance Required 4-1
F. Dedication and Acceptance 4-1

Section 4.03. Streets 4-3

A. Generally 4-3
B. Street Design 4-5
C. Street Configuration 4-7
D. Street Features 4-12

Section 4.04. Sidewalks 4-14

A. Location 4-14
B. Cluster Mailbox Units 4-14
C. Responsibility for Sidewalk Provision 4-14
D. Configuration 4-14
E. Credit for Trails 4-15

Section 4.05. Greenways 4-16

A. Required Greenway Dedication and Construction 4-16
B. Greenway Configuration 4-16

TABLE OF CONTENTS

C. Density Credits 4-16
D. Open Space Set-Aside Credits 4-16
E. Park Land Dedication Credits 4-16
F. Payment in-lieu of Providing Greenways 4-16

Section 4.06. Potable Water 4-17

A. Water Supply System Required 4-17
B. Connection to City Water Supply System 4-17
C. Dedication and Acceptance 4-17
D. Oversizing of Water Supply System-Related Improvements 4-17

Section 4.07. Sanitary Sewer 4-18

A. Sewage System Required 4-18
B. Connection to Public Sewer 4-18
C. Dedication and Acceptance 4-18

Section 4.08. Fire Protection 4-19

A. Fire Hydrants 4-19

ARTICLE 5: ENVIRONMENT 5-1

Section 5.01. Stormwater Management 5-1

A. Purpose and Intent 5-1
B. Applicability 5-1

Section 5.02. Sedimentation and Erosion Control 5-2

A. Erosion and Sedimentation Control Plan Required 5-2
B. Exemptions 5-2
C. Timing of Review 5-2

Section 5.03. Steep Slopes 5-3

A. Purpose 5-3
B. Applicability 5-3
C. Standards 5-3

Section 5.04. Open Space Standards 5-5

ARTICLE 6: OWNER ASSOCIATIONS 6-1

Section 6.01. Purpose 6-1

Section 6.02. Applicability 6-1

Section 6.03. Creation Required 6-1

Section 6.05. Procedure for Association Establishment 6-1

Section 6.06. Documentation Requirements 6-2

Section 6.07. Membership Requirements 6-2

Section 6.08. Transfer of Maintenance Responsibility 6-2

TABLE OF CONTENTS

Section 6.09. Failure to Maintain Is a Violation 6-3

ARTICLE 7: ENFORCEMENT 7-1

Section 7.01. Purpose 7-1

Section 7.02. Compliance Required 7-1

Section 7.03. Statute of Limitations 7-1

Section 7.04. Violations 7-1

A. Subdivide in Violation 7-1
B. Development without Authorization 7-1
C. Violation by Act or Omission 7-1
D. Violation of Environmental Regulations 7-1

Section 7.05. Responsible Persons 7-1

A. General 7-1
B. Failure by City Does Not Relieve Individual 7-1

Section 7.06. Enforcement Responsibilities 7-2

A. Investigations 7-2
B. Inspections 7-2
C. Supporting Documentation 7-2

Section 7.07. Enforcement Procedure 7-2

A. Written Notice of Violation 7-2
B. Delivery of Written Notice 7-2
C. Remedy upon Notice 7-2
D. Failure to Comply With Order 7-3
E. Each Day a Separate Violation 7-3

Section 7.08. Remedies 7-3

A. Civil Penalties 7-3
B. Denial of Plat or Certificate 7-3
C. Stop Work Orders 7-3
D. Revocation of Permits 7-3
E. Criminal Penalties 7-4
F. Injunctive or Other Equitable Relief 7-4
G. State and Common Law Remedies 7-4
H. Previous Enforcement 7-4
I. Remedies; Cumulative and Continuous 7-4

A. Responsible Parties 7-5
B. Notice 7-5
C. Continuing Violation 7-5
D. Demand for Payment 7-5
E. Nonpayment 7-5
F. Penalties 7-5

ARTICLE 8: MEASUREMENT 8-1

Section 8.01. Rules of Language Construction 8-1

TABLE OF CONTENTS

A. Meanings and Intent 8-1
B. Headings, Illustrations, and Text 8-1
C. Lists and Examples 8-1
D. Computation of Time 8-1
E. Time-Related Language 8-1
F. References to this Ordinance 8-1
G. References to Other Regulations or Publications 8-2
H. References to North Carolina General Statutes 8-2
I. Delegation of Authority 8-2
J. Joint Authority 8-2
K. Technical and Non-Technical Terms 8-2
L. Public Officials and Agencies 8-2
M. Mandatory and Discretionary Terms 8-2
N. Conjunctions 8-2
O. Tenses, Plurals, and Gender of Words 8-2
P. Oath 8-3
Q. Term not Defined 8-3

Section 8.02. Rules of Measurement 8-4

A. Purpose 8-4
B. Measurements, Generally 8-4
C. Lot Dimensions 8-4
D. Setbacks 8-5
E. Lot Coverage 8-5
F. Slope and Elevation 8-6

ARTICLE 9: DEFINITIONS 9-1

Section 9.01. Definitions 9-1

ARTICLE 1: GENERAL PROVISIONS

SECTION 1.01. TITLE

This Ordinance shall be officially known as the "Subdivision Ordinance of the City of Hendersonville, North Carolina" and may be referred to herein as "the Subdivision Ordinance," or "this Ordinance."

SECTION 1.02. EFFECTIVE DATE

This Ordinance shall be in full force and effect on March 5, 2020, and repeals and replaces the Subdivision Ordinance for the City of Hendersonville, as originally adopted on May 5, 1977, and subsequently amended. An amendments shall be effective as of the date of their adoption unless a different effective date is specified in the ordinance adopting the amendment.

SECTION 1.03. AUTHORITY

A. GENERAL AUTHORITY

This Ordinance controls the subdivision and re-subdivision of land within the City's planning jurisdiction, in accordance with the following:

1. The North Carolina General Statutes, including, but not limited to:

a. Chapter 160A, Article 8 (Police Powers);

b. Chapter 160A, Article 15 (Streets, Traffic, and Parking);

c. Chapter ~~160A~~ 160D, ~~Article 19 (Planning and Regulation of Development)~~ (including but not limited to Article 8 Subdivision Regulation);

d. Chapter 143, Article 21 (Water and Air Resources);

e. Chapter 113A, Article 4 (Sedimentation and Pollution Control);

2. The Hendersonville City Charter;

3. Other relevant laws, including but not limited to:

a. All other relevant laws of the State of North Carolina; and

b. Any special legislation applicable to the City of Hendersonville, as enacted by the North Carolina General Assembly.

B. REFERENCES TO STATE LAW

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes, the North Carolina Administrative Code, the State Building Code, or any other adopted State law, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

SECTION 1.04. PURPOSE AND INTENT

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the landowners and residents of Hendersonville, and to ensure that all subdivision or re-subdivision of land within the City's planning jurisdiction is generally consistent with the following goals and objectives:

A. Foster convenient, compatible, and efficient relationships among land uses;

B. Support orderly growth and development within the City's planning jurisdiction;

C. Better manage and lessen congestion in the streets;

D. Coordinate the development of streets with other public infrastructure;

E. Ensure the provision of adequate open space between uses for light, air, and fire safety;

F. Secure the safety of landowners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible;

G. Facilitate the adequate and economic provision of transportation, potable water, sanitary sewage, stormwater management, schools, parks, and other public services;

H. Protect open space, wildlife habitat, natural resources, cultural resources, and historic and rural character, where appropriate;

I. Improve city-wide and regional connectivity through greenways, trails, bicycle lanes and paths, and sidewalks;

J. Address the dedication and reservation of areas for recreation;

K. Ensure the dedication and reservation of sufficient land for public rights-of-way and utilities; and

L. Implement the City's adopted policy guidance.

SECTION 1.05. APPLICABILITY

A. GENERAL APPLICABILITY

1. The provisions of this Ordinance shall apply to the subdivision or re-subdivision of all land within the City's planning jurisdiction, unless expressly exempted by a specific section of this Ordinance.
2. The City's planning jurisdiction includes all land within the corporate limits of the City of Hendersonville along with the City's extra-territorial jurisdiction (ETJ) identified on the map entitled "Official Zoning Map, City of Hendersonville," which is incorporated by reference herein and made available for inspection in the offices of the ~~Development Assistance~~ Community Development Department.

B. APPLICATION TO GOVERNMENTAL UNITS

Unless expressly exempted, this Ordinance shall apply to:

1. THE CITY OF HENDERSONVILLE

   Subdivision of land by the City or its agencies or departments.

2. COUNTY AND STATE GOVERNMENT

   Subdivision of land by a State or county agency or department, public college or university, or other political subdivision of the State to the full extent permitted by Styate law.~~, in accordance with the standards in Section 160A-392 160D-913 of the North Carolina General Statutes.~~

3. THE FEDERAL GOVERNMENT

   Subdivision of land owned by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the Federal government exempted from these regulations, compliance is strongly encouraged.

C. APPLICATION TO BONA FIDE FARMS

Unless exempted in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes, the standards and requirements in this Ordinance shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

D. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAW

1. NO USE OR OCCUPANCY

   No person shall use, occupy, or divide any land or authorize or permit the use, occupancy, or division of land under their control, except in accordance with this Ordinance and all other applicable City, State, and federal regulations.

2. NO SALE OR TRANSFER

   No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met and the plat has been recorded in the Henderson County Register of Deeds Office, except as authorized by Section ~~160A-375~~ 160D-807 of the North Carolina General Statutes. Building permits may be denied for lots that have been illegally subdivided.

3. NO RECORDING WITHOUT PRIOR APPROVAL

   No subdivision plat subject to this Ordinance shall be filed or recorded by the Register of Deeds of Henderson County until it has been approved in accordance with this Ordinance, and evidence of such approval is entered on the plat by the City.

4. NO BUILDING PERMIT OR UTILITIES WITHOUT PRIOR APPROVAL

   No building permits shall be issued for development, nor shall public utilities or services be extended to serve land in a subdivision that is subject to these standards until a plat has been approved in accordance with this Ordinance.

5. NO DOUBLE COUNTING OF REQUIRED AREAS

No land area or other required space counted as part of a required yard, setback, lot area, or similar feature of one lot may be counted towards the requirements of another lot.

E. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

F. NO ABROGATION OF EXISTING SUBDIVISIONS

This Ordinance shall not repeal, abrogate, annul, impair, or interfere with any lawfully established subdivisions plats recorded in the Office of the Register of Deeds of Henderson County prior to March 5, 2020.

SECTION 1.06. EXEMPTION FROM THIS ORDINANCE

~~The division of land into parcels as part of a probated will or in accordance with the intestate succession provisions of Chapter 29 of the North Carolina General Statutes shall be exempted from this Ordinance.~~Subdivisions of land excluded from subdivision authority pursuant to N.C.G.S. Section 60D-802()(1)-(5) are exempt from the requirements of this Ordinance. (Ref Section 2.04E Exempt Subdivision)

SECTION 1.07. RELATIONSHIP TO OTHER LAWS AND POLICIES

A. ADOPTED POLICY GUIDANCE

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the City's adopted policy guidance. The City's adopted policy guidance includes, but is not limited to:

1. The 2030 Comprehensive Plan;
2. The Parks and Greenspace Plan;
3. The Pedestrian Plan;
4. The Bicycle Plan; and
5. Any other applicable City-adopted policy language.

B. ADOPTED ORDINANCES

These regulations shall be administered in accordance with the City's adopted Code of Ordinances, including the Zoning Ordinance.

C. COVENANTS AND DEED RESTRICTIONS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements; however such private agreements shall not be effective to abrogate or lessen any standards or requirements of this Ordinance.

D. Vested Rights. This Ordinance, and any amendments to this Ordinance, are not intended to repeal, supersede, annual, impair, or interfere with any ~~or~~ vested rights established by operation of common law, the North Carolina General ~~Statutes~~Statutes, or Chapter 40 of the Hendersonville City Code of Ordinances, provided such ~~agreements or~~ vested rights were lawfully established and remain in effect.

SECTION 1.08. CONFLICT

A. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

B. CONFLICTS WITH OTHER CITY CODES OR LAWS

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the City, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise.

C. CONFLICTS BETWEEN THE STANDARDS IN THIS ORDINANCE OR OTHER CODES OR ORDINANCES

1. GENERALLY

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control. Where the terms of this Ordinance conflict with the terms of a provision in any other Code, ordinance, regulation or policy adopted by the City, the more restrictive standard shall control. ~~Section 1.09 Transitional Provisions~~

2. AUTHORIZED DEVIATIONS OR INCENTIVES

Development configured in accordance with an allowable deviation or incentive authorized by this Ordinance or by the City Code of Ordinances shall not be considered to conflict with the standards in this Ordinance.

D. DETERMINATION OF THE MORE RESTRICTIVE STANDARD

The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

SECTION 1.09. TRANSITIONAL PROVISIONS

The standards in this section address existing violations, nonconformities, and applications in process at the time this Ordinance is adopted.

A. PRIOR VIOLATIONS

Violations of the previous subdivision ordinance shall continue to be violations under this Ordinance, unless the development complies with this Ordinance and is no longer considered to be in violation, or the ability to address the violation has lapsed.

B. EXISTING NONCONFORMING LOTS

If any lot legally existed on March 5, 2020, but does not fully comply with the standards of this Ordinance, the lot is considered nonconforming under this Ordinance and shall comply with the applicable requirements for nonconforming lots in the Zoning Ordinance.

C. PRIOR DEVELOPMENT APPROVALS

1. Any development approvals granted before March 5, 2020 shall remain valid until their expiration date.
2. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the standards in effect at the time of approval, provided the approval is valid and has not expired.
3. If an approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent subdivision of the site shall be applied for in accordance with the procedures and standards of this Ordinance.
4. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required City, State, or federal permits or approvals.
5. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.
6. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the applicable provisions for nonconformities in the Zoning Ordinance.

D. PENDING APPLICATIONS AND PERMIT CHOICE

1. COMPLETE APPLICATIONS

a. Applications accepted as complete prior to March 5, 2020 may be decided in accordance with either the regulations in ~~affect~~ effect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant.

b. Applications accepted as complete prior to an amendment to this Ordinance may be decided in accordance with either the regulations in effect at the time the application was determined

complete or this Ordinance as amended, as requested by the Applicant.

c. For purposes of this Ordinance, if an Applicant has submitted any other complete application for a development permit under any land development regulation (State or local) within the eighteen (18) months prior to the submission of a complete application for approval under this Ordinance, the Applicant may choose to proceed under the terms of this Ordinance in effect as of the date of the submission of the completed application for such other land development regulation or this Ordinance as amended, at the request of the Applicant.

d. For the avoidance of doubt, the terms of N.C.G.S. Section 143-755 and Section 160D Section 108 shall govern permit choice for all pending applications, whether completed or not. To the extent that anything herein conflicts with either of the North Carolina General Statutes, the North Carolina General Statutes shall control.

2. SUBMITTED, BUT NOT COMPLETE APPLICATIONS

a. Applications that have been submitted prior to March 5, 2020 but not determined to be complete by the ~~Development Assistance~~Community Development Department as of that date shall be reviewed and decided in accordance with this Ordinance.

b. Applications that have been submitted prior to the effective date of an amendment to this Ordinance but which have not been determined to be complete by the Community Development Department as of the effective date of the amendment shall be reviewed and decided in accordance with this Ordinance as amended.

SECTION 1.10. VESTED RIGHTS

Vested rights under this Ordinance shall be established only in accordance with Chapter 40 of the City Code of Ordinances ~~Section 1.11 Severability~~

~~A. BUILDING PERMIT~~

~~The issuance of a building permit establishes a vested right to development in accordance with Sections 160A-385.1 160D-102; 108; 108.1 of the North Carolina General Statutes, as long as the building permit complies with the terms and conditions of approval of that building permit.~~

~~B. COMMON LAW VESTING~~

~~A common law vested right is established only when the following can be demonstrated by the landowner:~~

~~1. There is an affirmative governmental act by the City in the form of an approval of a permit or development approval under this Ordinance; and~~

~~2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and~~

~~3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.~~

~~C. STATUTORY VESTING~~

~~A statutory vested right is the right to complete a development project in accordance with the rules in place at the time the application was approved. Development approvals, other than building permits, site-specific development plans, and multi-phase development plans are statutorily vested for a period of one year after their approval.~~

~~D. SITE SPECIFIC DEVELOPMENT PLAN~~

~~1. A site-specific development plan is automatically vested for a period of two years after its approval, but may be subject to a maximum vesting period of up to five years. When deciding an application for a site-specific development plan, the review authority may make a determination on the vesting period. In the event the approval does not specifically grant a vesting period for longer than two years, the default vesting period shall be a two years from the date of the approval.~~

~~2. For the purposes of this Ordinance, a major subdivision~~ Major Subdivision ~~shall be considered a~~

~~site-specific development plan.~~

~~**3.** Only those development approvals subject to an approved master plan as part of the initial approval may take advantage of the seven-year vesting period associated with a multi-phase development plan.~~

~~E. PRIOR VESTING~~

~~Amendments, supplements, repeals, or other changes in subdivision regulations shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits, multi-phased development approvals, or vested rights certificates have been issued (pursuant to State law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, or approval remain valid and unexpired.~~

SECTION 1.11. SEVERABILITY

A. The legislative intent of the City Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the City as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and residents of Hendersonville. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

B. The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

SECTION 1.12. ADMINISTRATIVE DECISIONS

It is the intent of the City Council that all determinations and development approvals made pursuant to this Ordinance by City Staff and by the Planning Board be ~~a~~Administrative ~~d~~Decisions. Where the application of standards or requirements in this Ordinance as part of a development approval (excluding variances or decisions made pursuant to an appeal) require a level of discretion that requires their consideration in a quasi-judicial proceeding, governed by N.C.G.S. Section 160D-406, as required by N.C.G.S. Section 160D-1403 or Section 160D-102(28), then the application shall be forwarded to the City Council to hold an ~~e~~Evidentiary ~~h~~Hearing. The ~~e~~Evidentiary ~~h~~Hearing before City Council shall be limited to a determination of whether the application meets the discretionary standards and requirements only. The ~~e~~Evidentiary ~~h~~Hearing by City Council shall be held in the manner and in accordance with the requirements of a Subdivision Variance found in Section 2.04 J. Following the ~~e~~Evidentiary ~~h~~Hearing by City Council, the application shall proceed in accordance with the procedure specified herein for the determination of compliance with the remainder of the standards and requirements by City staff or the Planning Board, as appropriate.

ARTICLE 2: PROCEDURES

SECTION 2.01. HOW TO USE THIS SECTION

A. ARTICLE ORGANIZATION

1. This article includes all the subdivision application review provisions, and is comprised of the following sections:

a. A section setting out the summary table of subdivision review procedures;

b. A section explaining how subdivision applications are processed under this Ordinance;

c. A section that describes the specific review procedures and the criteria used in evaluating applications submitted under this Ordinance;

d. A section that addresses performance guarantees in cases where an applicant seeks to transfer land or obtain a building permit before completing all required steps in the subdivision process; and

e. A section addressing payment of a fee in-lieu of providing required development features.

2. The summary table in Section 2.02, Summary Table, describes all the specific development application review procedures in this Ordinance and the review authorities who decide them.

3. Section 2.03, Application Processing, describes the common procedures, or the set of common development review procedures that apply to every type of development application. For example, the pre-application conference, application submittal, application completeness determination, staff review and report, public notification, public meeting or hearing procedures, and notification of decision steps are essentially identical for each type of development application, and as such, are listed only once in this Ordinance. In some cases, there are minor deviations from the common procedures for some types of development review applications. These deviations are noted in the specific review procedures section.

4. Section 2.04, Review Procedures, describes the steps in each type of application review process, the review criteria specific to that type of procedure, and any other provisions that apply in addition to or instead of the common procedures.

B. STEPS IN THE REVIEW PROCESS

An applicant seeking development approval under this Ordinance should first consult the summary table of subdivision review procedures to determine which review authorities are involved with the application. Then, an applicant should review the application processing section to understand the steps in the application process. Finally, an applicant should review the individual specific procedure related to their application type.

SECTION 2.02. SUMMARY TABLE

Table 2.02, Summary Table, lists each of the review procedures under this Ordinance and the review authority (ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in rows down the side. Cells in the middle show actions taken by a particular review authority as part of the review process. Blank cells ("·") indicate that a particular review authority has no role in the particular procedure.

TABLE 2.02: SUMMARY TABLE

Type of Action: A=Appeal; D=Decision; R= Recommendation
Pre-Application Conference: M=Mandatory; O=Optional; N/A=Not Applicable
Type of Hearing: / /= Public Meeting; { }=Quasi-judicial Public Hearing

PROCEDURE	SECTION #	PRE-APP. CONFERENCE	REVIEW AUTHORITIES				
			CITY MANAGER [1]	DRC [2]	PLANNING BOARD	CITY COUNCIL	BOA[3 Or SC][5]
Administrative Adjustment	Section 2.04.B	O	D	·	·	·	{A} [3]
Appeal	Section 2.04.C	O	·	·	·	·	{AD}[3] [5]
Conservation Subdivision	Section 2.04.D	M	D [4]	·	·	·	{A} [3] [5]
Exempt Subdivision	Section 2.04.E	N/A	D	·	·	·	{A} [3]
Expedited Subdivision	Section 2.04.F	N/A	D	·	·	·	{A} [3]
Final Plat	Section 2.04.G	N/A	D	·	·	·	{A} [3]
Major Subdivision	Section 2.04.H	M	·	R	/D/	·	[53]
Minor Subdivision	Section 2.04.I	O	D	·	·	·	{A} [3]
Subdivision Variance	Section 2.04.J	M	·	·	·	·	{D} [5]

NOTES:

[1] The City Manager may delegate any task or duty to a professional-level City staff member in accordance with Section 8.01.I, Delegation of Authority.

[2] DRC = Development Review Committee.

[3] BOA = Appeals from staff determinations shall be decided by the Board of Adjustment, or alternatively may be decided by the ~~Henderson County~~ Superior Court for ~~-~~Henderson County pursuant to legal action if allowed by N.C.G.S. Section 160D-1403.1.

[4] Follows the procedure for a ~~major subdivision~~ Major Subdivision following approval of a conservation and development plan by theCity Manager.

[5] A~~Appeals of a~~Administrative ~~decision~~ Decision by ~~a City review authority~~the Planning Board shall be subject to review by the ~~made to the~~ Superior Court for Henderson County inaccordance with ~~all applicable state laws.~~N.C.G.S. Sections 160D-808 and 160D-1403. Appeals from decisions made by the BOA shall be decided by the Superior Court for Henderson County pursuant to N.C.G.S. Section 160D-1402, or a legal action may be filed pursuant to N.C.G.S. Section 160D-1403.1, as applicable.

SECTION 2.03. APPLICATION PROCESSING

A. PURPOSE AND INTENT

This section establishes the rules used by the City for processing subdivision applications. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, City residents, City staff, and elected and appointed officials during the review of subdivision applications.

B. CONFLICT WITH SPECIFIC PROCEDURES

In instances where there are conflicts between the standards in this section and the standards in Section 2.04, Review Procedures, the standards in Section 2.04, Review Procedures, shall control.

C. PRE-APPLICATION CONFERENCE

1. PURPOSE

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular application prior to undertaking its preparation. A pre-application conference is also an opportunity for City staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

2. APPLICABILITY

a. PRE-APPLICATION CONFERENCE REQUIRED

A pre-application conference between the applicant and City staff is required before submittal of applications subject to a mandatory pre-application conference as identified in Table 2.02, Summary Table.

b. PRE-APPLICATION CONFERENCE OPTIONAL

A pre-application conference is recommended but not required before submittal of applications subject to an optional pre-application conference as identified in Table 2.02, Summary Table.

c. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the City and do not constitute submittal or review of an application.

3. SCHEDULING

Applicants shall contact the ~~Development Assistance~~ Community Development Department to schedule a pre-application conference.

4. FEES

a. The initial pre-application conference is free of charge.

b. Any subsequent pre-application conferences associated with the same application require payment of a pre-application fee in accordance with the City's fee schedule.

D. APPLICATION FILING AND ACCEPTANCE

1. AUTHORITY TO FILE APPLICATIONS

Unless expressly stated otherwise in this Ordinance, applications for development approvals reviewed under this Ordinance ~~shall~~ may be filed by the landowner(s), a lessee, or person holding an option or contract to purchase or lease land, or ~~other person having a recognized property interest in the land proposed for subdivision~~an authorized agent of the landowner(s). An easement holder may also apply for development approval if authorized by easement. Applications by any person other than the landowner(s) shall require the written consent of the landowner(s). The form of such written consent shall be approved by the City Attorney.

2. APPLICATION FORMS

Application forms are maintained by the ~~Development Assistance~~ Community Development Department.

3. APPLICATION FEES

The City Council shall establish application fees, which shall be identified in the City's adopted fee schedule.

~~1.~~4. FILING AND REVIEW SCHEDULE

Applications shall be filed in accordance with the City's application review schedule.

~~2.~~5. COMPLETENESS DETERMINATION

a. On receiving a development application, the City Manager shall determine, within seven days from the date of filing, whether the application is complete or incomplete. The City Manager shall send a written notice to the applicant(s), and to the landowner(s) if the applicant is not the landowner(s), confirming the date that the application is complete. Such notice may be delivered by electronic mail, regular US Mail, or by personal delivery.

b. A complete application is one that:

i. Contains all information and materials required for submittal of the particular type of application;
ii. Is in the form and number of copies required by the City;
iii. Is legible and printed to scale (where appropriate);
iv. Is signed by the person(s) with the authority to file the application;
v. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
vi. Is accompanied by the fee established for the particular type of application; and
vii. Does not precede a pre-application conference, if one is required.

c. Only applications determined to be complete shall be considered submitted.

~~3.~~6. APPLICATION INCOMPLETE

If the application is incomplete, the City Manager shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Section 2.03.D.5, Completeness Determination.

~~4.~~7. APPLICATION SUBMITTED

On determining that the application is submitted, the City shall commence review in accordance with the procedures and standards of this Ordinance.

~~F.~~E. STAFF REVIEW AND ACTION

1. STAFF REVIEW

a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.

b. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, in accordance with City policy.

c. In considering the application, the designated review authority shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.

d. If deficiencies in complying with applicable standards of this Ordinance are identified, the designated review authority shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

2. APPLICATIONS SUBJECT TO DECISION BY CITY STAFF

a. In cases where an application is decided by the City Manager, the City Manager shall approve or disapprove the application based on the review standards set forth in this Ordinance.

b. Decisions on applications made by City staff shall be provided within a reasonable timeframe.

3. CONFLICTS OF INTEREST FOR CITY STAFF

a. No staff member shall make a final decision on an ~~a~~Administrative ~~d~~Decision if the outcome or that decision would have a ~~direct~~direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a

staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.

b. No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.

c. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.

d. For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

~~G.~~F. PUBLIC NOTIFICATION

1. PUBLIC MEETINGS

All public meetings of the Planning Board or the Zoning Board of Adjustment shall comply with the notice requirements of the North Carolina Open Meetings Law, in addition to the notice requirements imposed by Chapter 160D of the North Carolina General Statutes or this Ordinance for an administrative or eEvidentiary ~~h~~Hearing contained in Section 2.03.F.3, below, Public Notification..

~~1.~~2. PUBLIC HEARING SCHEDULING AND NOTIFICATION (PRE-HEARING)

When an application is subject to an administrative public hearing by the planning board, or an eEvidentiary ~~h~~Hearing by the Zoning Board of Adjustment, the ~~designated review authority shall ensure that the~~ public hearing shall be held at a~~is scheduled for a~~ regular public meeting or a public meeting specially called for that purpose by the appropriate review authority.

~~2.~~3. PUBLIC NOTIFICATION

Public notification of a~~All applications subject to public notification requirements by State law shall comply with the~~ll A~~a~~dministrative ~~h~~Hearings of the Planning Board shall comply with the standards in Section ~~160A-364~~ 160D-601 for published notice, ~~160A-384(a)~~ 160D-602 for mailed notice~~,~~ and ~~160A-~~

a. ~~384(c) for~~ posted notice in the North Carolina General Statutes. ~~In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.~~

b. Public notification of all ~~e~~Evidentiary ~~h~~Hearings by the Zoning Board of Adjustment shall comply with N.C.G.S. Section 160D-406.

c. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

d. The person(s) mailing, advertising, and/or posting the notices shall provide a certification to the reviewing authority that the requirements of this Section 2.03.F.3, Public Notification, were complied with.

~~3.~~4. NOTICE CONTENT

Unless expressly indicated otherwise, all notices by mail or publication shall:

a. Identify the date, time, and place of the public hearing;

b. Describe the land involved by county parcel identification number (PIN), street address, or by its relationship to a fronting street and the nearest cross street (if applicable);

c. Describe the nature and scope of the proposed development or action; and

d. Identify the means to contact a City official for further information.

~~4.~~5. CONSTRUCTIVE NOTICE

a. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:

i. Errors such as landowner name, title, or address existing in the county tax listing; or

ii. Typographical or grammatical errors that do not impede communication of the notice to affected parties.

b. Failure of a party to receive mailed written notice shall not invalidate subsequent action provided the notice was duly deposited in the United States Mail. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.

~~H.~~G. PUBLIC MEETING AND HEARING

The standards in this section set out the procedures for public meetings to conduct an ~~a~~Administrative ~~h~~Hearing or a ~~and~~ quasi-judicial ~~public~~evidentiary Evidentiary ~~hearings~~Hearings.

1. PUBLIC MEETINGS FOR ADMINISRATIVE HEARINGS

Table 2.02, Summary Table, identifies the kinds of applications decided following a public meeting, which shall be conducted in accordance with the following requirements:

a. PROCEDURE

i. Public meetings ~~do not require public notification in accordance with Section 2.03.F, Public Notification. The City may provide some form of public notification, but is not legally bound to do so. Failure of the City to provide public notification for a public meeting shall not invalidate the proceedings or decision.~~shall comply with the notice requirements of Section 2.03.F., above.

ii. A public meeting shall be open to the public and shall be conducted in accordance with the Planning Board's adopted rules of procedure for ~~public meetings~~a~~a~~Administrative ~~h~~Hearings.~~.~~

iii. There is no requirement to allow general public comments ~~or testimony during~~ during a public meeting, though it may be allowed by the Chair or other presiding officer. However public input and comment shall be allowed as required by applicable laws, the standards of this Ordinance, and the Planning Board's adopted rules of procedure. ~~, though it may be allowed by the Chair or other presiding officer.~~

b. VOTING

i. A decision of the Planning Board on an application shall be decided by a simple majority of the Planning Board, excluding any members who are recused from voting due to a

conflict of interest.

ii. A Planning Board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them or ~~a member of their immediate family~~the applicant or other person subject to the decision is a person with whom the Planning Board member has a close familial, business, or other associational relationship, in accordance with Section ~~160A-381(d)~~ 160D-109(c) of the North Carolina General Statutes.

~~ii.~~

c. APPLICATION REVISION

i. An applicant may revise an application during a public meeting in response to recommendations or suggestions of the Planning Board.

The Planning Board may approve an application modified during a public hearing provided that all changes are properly identified in the motion of approval.~~.~~

ii.

~~Section 2.03 Application Processing~~

~~ii.~~iii. In cases where an application has been modified during a public meeting, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

i. A recording may be made of all public meetings and the recordings shall be maintained in accordance with City policy.

ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

2. PUBLIC MEETINGS FOR QUASI-JUDICIAL ~~PUBLIC~~ EVIDENTIARY HEARINGS

Table 2.02, Summary Table, identifies the kinds of applications decided following a quasi-judicial ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~Hearing, which shall be conducted in accordance with State law, the Board of Adjustment'srules of procedure, and the following requirements:

a. PROCEDURE~~NOTICE REQUIRED~~

i. Public meetings shall comply with the notice requirements of Section 2.03.F., above.

ii. A public meeting shall be open to the public and shall be conducted in accordance with the Zoning Board of Adjustment's adopted rules of procedure for eEvidentiary ~~h~~Hearings.

iii. Public participation in the eEvidentiary ~~h~~Hearings shall be governed by the requirements of N.C.G.S. Section 160D-406.

~~Quasi-judicial public evidentiary hearings shall not be conducted until after provision of required publicnotification in accordance with Section 2.03.F, Public Notification.~~

b. VOTING

I. GENERALLY

The Board of Adjustment shall consider the application, relevant support materials, staff report, evidence, any recommendations, and ~~public comments~~testimony received. After the conclusion of the ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~Hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section 2.04, Review Procedures.

II. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision. A written decision shall be prepared and approved by the Zoning Board of Adjustment in accordance with the requirements of N.C.G.S. Section 160D-406.

III. CONFLICTS OF INTEREST

A Board of Adjustment 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 maker. Impermissible violations of due process 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 family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

c. APPLICATION REVISION

i. An applicant may revise an application during an ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing in response to recommendations or suggestions of the Board of Adjustment.

ii. The Board of Adjustment may approve an application modified prior to or during a ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing provided all changes are properly identified in the motion of approval by the review authority.

iii. In cases where an application has been modified during a ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~Hearing, the applicant shall submit any necessary plats or other documents

depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

d. RECORD

i. A recording ~~may~~ shall be made of all ~~public~~ ~~evidentiary~~ Evidentiary ~~hearings~~ Hearings and the recordings shall be maintained in accordance with City policy.

~~Section 2.03 Application Processing~~

ii. Accurate minutes summarizing the testimony and evidence received shall also be kept of all proceedings, but a transcript need not be made.

~~I.~~H. EFFECT

1. APPROVAL LIMITED

Approval of an application in accordance with this Ordinance authorizes only the specific activity approved.

2. PERMIT PREREQUISITE

In the event an approval is a prerequisite to another permit or approval (e.g., ~~administrative adjustment~~ Administrative Adjustment or ~~variance~~ Variance approval prior to a ~~major subdivision~~ Major Subdivision approval), development may not take place until all prerequisite approvals are obtained. Approval of one application does not guarantee approval of any subsequent applications.

~~J.~~I. CONTINUANCE OR WITHDRAWAL

An applicant may request that a review authority's consideration of an application be continued, postponed, or withdrawn by submitting a written request to the appropriate review authority.

1. PROCEDURE FOR APPLICATIONS SUBJECT TO A PUBLIC MEETING OR EVIDENTIARY HEARING

a. In cases where an applicant seeks a continuance of an application subject to a public meeting or ~~evidentiary~~ Evidentiary ~~hearing~~Hearing, but public notification of the meeting or ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing has not yet been provided, the designated review authority processing the application shall consider anddecide the request.

b. If public notification of the pending public meeting or ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing has been provided in accordance with this Ordinance prior to the request for the continuance of an application. The request for continuance shall be placed on the agenda and be considered by the review authority. Additional public notification shall not be required.

c. A request for continuance may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the City's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

2. WITHDRAWAL

An applicant may withdraw an application at any time.

J. NOTIFICATION OF DECISIONS, APPROVALS, AND DETERMINATIONS

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

1. ADMINISTRATIVE DECISIONS, DEVELOPMENT APPROVALS AND DETERMINATIONS BY STAFF

Written notice of ~~a~~Administrative ~~d~~Decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the ~~A~~administrative ~~D~~decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the ~~a~~Administrative ~~d~~Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

2. ADMINISTRATIVE DECISIONS, DEVELOPMENT APPROVALS AND DETERMINATIONS BY THE PLANNING BOARD

Written notice of ~~a~~Administrative ~~d~~Decisions, development approvals and determinations made by the Planning Board shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b) as required by N.C.G.S. Section 160D-1403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the ~~a~~Administrative ~~d~~Decision, development approvals and determinations made by the Planning Board shall not be required, but is recommended in order to provide constructive notice to the public of the ~~a~~Administrative ~~d~~Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing

that the required notices were given.

3. DECISIONS REGARDING EVIDENTIARY HEARINGS BY THE ZONING BOARD OF ADJUSTMENT

A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment following an ~~e~~Evidentiary ~~h~~Hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

SECTION 2.04. REVIEW PROCEDURES

A. HOW TO USE THIS SECTION

1. GENERALLY

This section sets out the standards and related procedural information for each of the specific development application types listed in Table 2.02, Summary Table. Section 2.03, Application Processing, establishes the generic steps in the application process used for all application types. Applicants should review both sections - application processing in its entirety, and the relevant review procedure in this section in order to understand all the applicable requirements.

2. STRUCTURE OF REVIEW PROCEDURES

a. The review procedures in this section are listed in alphabetical order.

b. Each review procedure follows a standardized format, comprised of the following subsections:

i. Purpose for the procedure;
ii. Applicability and any types of development exempted from the procedure;
iii. The steps in the review process;
iv. The review standards;
v. How the approved application may be amended (if applicable);
vi. How the approval may expire; and
vii. How decisions on an application are appealed.

c. In addition to the standard subsections described above, a review procedure may also include additional standards or requirements unique to the particular application type.

3. PROCEDURAL FLOWCHART

a. The steps in the process for each review procedure are set out in the procedural flowchart associated with the procedure. The procedural flowchart uses a numbered block for each step in the process with text inside the block describing the step in greater detail. Some blocks may include cross references to other parts of the Ordinance.

b. The procedural flowchart is color coded to depict differing responsibilities. For example, white blocks indicate actions or responsibilities of the applicant. Blocks surrounded by dashed lines show optional steps an applicant may choose to undertake. Light grey blocks indicate actions of City staff. Dark grey blocks show the portion of the process where the decision is made.

c. Applicants seeking greater detail on the steps in the review process should conduct a pre-application conference or consult with the ~~Development Assistance~~ Community Development Department.

B. ADMINISTRATIVE ADJUSTMENT

1. PURPOSE

The purpose for the ~~administrative adjustment~~ Administrative Adjustment procedure is to establish a clear procedure and measurable review criteria for the consideration of requests for minor deviations to numeric standards inthis Ordinance. The intent of the procedure is to provide minor relief without a ~~variance~~ Variance where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance. It is the intent of this procedure that an ~~administrative adjustment~~ Administrative Adjustment request only be granted in cases where the adjustment allows the proposed development to maintain compatibility with its surroundings or where the approval does not result in development that substantially deviates the City's adopted policy guidance.

Figure 2.04.B: Administrative Adjustment Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE APPLICATION** Filed with Development Assistance Department - May be a standalone application or submitted along with another application
3	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination
4	**CITY MANAGER REVIEW AND DECISION** Decision shall be made in writing
5	**~~NOTIFICATION OF DECISION~~** Delivered via personal service, electronic mail, or 1st class mail
6	**~~PROCESS RELATED~~ APPLICATIONS** As appropriate

2. APPLICABILITY

a. Except where otherwise prohibited, an ~~administrative adjustment~~ Administrative Adjustment may be requested for a modification or deviation to any numeric requirement in this Ordinance.

b. In no instance shall an ~~administrative adjustment~~ Administrative Adjustment application seek to reduce any of the following:

- **i.** The required minimum lot area in a zoning district;
- **ii.** The maximum allowable residential density on a lot;
- **iii.** Riparian buffer requirements;
- **iv.** Standards associated with flood damage prevention;
- **v.** Requirements associated with stormwater control; or
- **vi.** Standards associated with erosion control.

c. ~~Administrative adjustments~~ Administrative Adjustments are not required for conservation subdivisions, provided that the conservation subdivision complies with all applicable requirements in this Ordinance.

3. ADMINISTRATIVE ADJUSTMENT AMOUNT

An ~~administrative adjustment~~ Administrative Adjustment may allow a deviation from a numeric standard by up to 10 percentunless a different amount is explicitly stated elsewhere in this Ordinance.

4. ADMINISTRATIVE ADJUSTMENT PROCEDURE

a. APPLICATION TIMING

- **i.** An administrative adjustment may be requested either as a stand-alone application, or in combination with another review procedure except for a subdivision ~~variance~~ Variance.
- **ii.** In cases when submitted with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

b. PRE-APPLICATION CONFERENCE

Optional (see Section 2.03.C, Pre-application Conference).

c. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
ii. In cases where a pre-application conference is conducted, the application shall include the date it was conducted.

d. STAFF REVIEW AND ACTION

i. Applicable (see Section 2.03.E, Staff Review and Action).
ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with Section 2.04.B.5, Administrative Adjustment Review Standards.

5. ADMINISTRATIVE ADJUSTMENT REVIEW STANDARDS

An administrative adjustment may be approved if the applicant demonstrates all of the following:

a. The ~~administrative adjustment~~ Administrative Adjustment is consistent with the type and thresholds for an ~~administrative adjustment~~ Administrative Adjustment established in this section;

b. The development, following application of an ~~administrative adjustment~~ Administrative Adjustment, is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;

c. The ~~administrative adjustment~~ Administrative Adjustment:
i. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
ii. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
iii. Is necessary to allow for proper functioning of infrastructure; or
iv. Saves healthy existing trees; or
v. Preserves environmentally sensitive lands; or
vi. Will not result in development that is contrary to the City's adopted policy guidance, in the sole discretion of the City Manager;

d. The ~~administrative adjustment~~ Administrative Adjustment will not pose a danger to the public health or safety;

e. Adverse impacts resulting from the ~~administrative adjustment~~ Administrative Adjustment will be fully mitigated; and

f. The development standard being adjusted is not the subject of a previously approved ~~administrative adjustment~~ Administrative Adjustment or condition of approval on the same site.

6. EFFECT

Approval of an ~~administrative adjustment~~ Administrative Adjustment application allows consideration of any concurrent and related applications.

7. AMENDMENT

Amendment of an ~~administrative adjustment~~ Administrative Adjustment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

If an ~~administrative adjustment~~ Administrative Adjustment is associated with another permit or development approval, the expiration of the administrative adjustment shall be the same as the permit or development approval with which it is associated.

9. APPEAL

Appeal of a decision on an ~~administrative adjustment~~ Administrative Adjustment shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section 2.04.C, Appeal.

C. APPEAL

1. PURPOSE

This appeal procedure is proposed to establish a clear and predictable procedure for persons with standing to appeal a decision or interpretation of this Ordinance by a review authority.

2. APPLICABILITY

a. This section sets out the procedure and standards for appealing certain decisions or interpretations by the City Manager and City staff as identified in Table 2.02, Summary Table in accordance with N.C.G.S. Section 160D-405 and Section 160D-406. To the extent that this section conflicts with or omits requirements of Section 160D-405 or 160D-406, Section 160D-405 and Section 160D-406 shall control.

b. Appeals of decisions made by the ~~City Council~~Planning Board, or BOA, and some decisions by City officials shall be to the Superior Court for Henderson County, in accordance with Table 2.02, Summary Table, and applicable State law, including but not limited to N.C.G.S. Sections 160D-808, 160D-1402, 160D-1403, and 160D-1403.1.

3. INITIATION

a. An appeal of a an ~~a~~Administrative ~~d~~Decision, development approval or determination rendered by the City Manager or other City staff by the applicant or landowner(s) (if different from the applicant)shall be initiated by filing a written noticeof appeal with the ~~City Manager~~Community Development Director within 30 days of ~~the~~date the decision being appealed is filed in the office of thereceipt of the written notice of determination from the ~~Development Assistance~~ Community Development Department, required pursuant to .Section 2.03.K.1.

b. An appeal of a an ~~a~~Administrative ~~d~~Decision, development approval or determination rendered by the City Manager or other City staff by someone with standing, other than the applicant or landowner(s) (if different from the applicant) shall be initiated by filing a written notice of appeal with the Community Development Director within 30 days of receipt of any sort of actual of constructive notice of determination from the~~Development Assistance~~ Community Development Department.

c. Notice given by first class mail shall be

Figure 2.04.C: Appeal Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE NOTICE OF APPEAL** Filed with ~~Development Assistance~~ Community Development Department
3	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination Application shall include - Error/decision being appealed - Date of error/decision - Grounds for appeal - All related support material
4	**STAFF REVIEW**
5	**PUBLIC NOTICE** See Section 2.03.F, Public Notification
6	**BOA REVIEW AND DECISION** Quasi-judicial ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~Hearing - Decision shall be made in writing
	NOTIFICATION OF DECISION

deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

4. APPEAL PROCEDURE

a. PRE-APPLICATION CONFERENCE

Optional (see Section 2.03.C, Pre-application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. The written notice of appeal shall include a statement of the error or improper decision, the date of the decision or interpretation, the grounds for the appeal, and all related support materials.

c. STAFF REVIEW

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. On accepting a notice of appeal, the ~~City Manager~~Community Development Director shall transmit to the BOA the record of material considered by the decision-maker in making the decision or interpretation as well as the application for the appeal.

d. PUBLIC NOTICE

Applicable (see Section 2.03.F, Public Notification).

e. REVIEW AND DECISION BY BOARD OF ADJUSTMENT

i. The BOA, at the conclusion of a quasi-judicial ~~public~~ ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing conducted in accordance with N.C.G.S. Section 160D-406 (see Section 2.03.G, Public Meeting and Hearing), shall decide the application for the appeal.

ii. The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the ~~quasi-judicial evidentiary~~ Evidentiary ~~hearing~~Hearing, and the standards in Section 2.04.C.5, Appeal Review Standards and N.C.G.S. Section 160D-406.

~~Section 2.04 Review Procedures~~

iii. The decision shall be either affirmation of the decision or interpretation (in whole or in part), modification of the decision or interpretation (in whole or in part), or reversal of the decision or interpretation (in whole or in part).

iv. A ~~vote to reverse or modify a~~ decision or determination of an appeal by the BOA shall require approval of a majority of a quorum present at the hearing excluding any members who have been recused from voting due to a conflict of interest.

v. Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance. The decision shall comply with and be approved in accordance with the requirements of N.C.G.S. Section 160D-1402[i]

vi. The approved written decision shall be signed by the Chair or other duly authorized member of the BOA.

vii. The decision of the BOA shall be effective upon the filing of the written decision with the Clerk to the BOA.~~in theoffice of the appropriate review authority~~. The written decision shall be delivered as required by Section 2.03.K.3, and certification of such delivery shall be made as required by Section 2.03.K.3.

5. APPEAL REVIEW STANDARDS

~~a. The BOA is limited to the following determinations in considering the appeal, which shall be based on:~~

~~**i.** Whether the decision-maker erred in the interpretation of this Ordinance; or~~

~~**ii.**~~**i.** ~~Whether the decision-maker erred in determining whether a standard of this Ordinance was met.~~Issues to be decided by the BOA shall be as set out in the Notice of Appeal, or as otherwise raised at the eEvidentiary hHearing by the appellant as allowed by N.C.G.S. Section 160D-406.

b. The BOA shall not hear any evidence or make any decision based on hardships or special conditions except as part of an application for a ~~variance~~ Variance.

6. EFFECT

a. An appeal stays all ~~proceedings~~ enforcement of ~~in furtherance of~~ the action appealed, unless the City Manager certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the City Manager's opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance.

b. If certification by the City Manager is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.

c. If the appeal is not stayed, the appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the request is filed.

~~d. The filing of an appeal prevents the filing of an application for a rezoning or special use permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.~~

7. AMENDMENT

A decision on an appeal shall not be amended.

8. EXPIRATION

A decision on an appeal shall not expire; however such decision shall not operate to extend any development approval granted beyond the stay pending the appeal (if there is a stay) together with validity period provided by this Ordinance and applicable law.

9. APPEAL

a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ 160D-1-2; 1402 of the North Carolina General Statutes or may be challenged as otherwise allowed by applicable law. ~~.~~

b. Petitions for review or other actions challenging a decision of the BOA must be ~~filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the~~

~~applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~brought in the manner and within the time frames specified by N.C.G.S. Sections 160D-1402 and 160D-1405 and other applicable law.

D. CONSERVATION SUBDIVISION

1. PURPOSE AND INTENT

The purpose and intent of this section is to provide landowners in certain portions of the City's planning jurisdiction a development option that provides additional development flexibility to build on smaller lots when additional open space set-asides are provided, and the development is designed and located in a way that protects rural character, as well as agricultural activities, or sensitive environmental features on the site. This is done in order to:

a. Conserve open land, including those areas containing prime agricultural soils, ridgelines, areas of steep slopes, unique and sensitive natural features such as floodplains, wetlands, river and stream corridors, areas with mature hardwood trees, and watersheds;

b. Promote existing historic and rural character particularly in areas visible from major roadways in the City;

c. Retain and protect existing wildlife habitat and environmental, natural, and cultural resources;

d. Create a linked network of open lands; and

e. Provide reasonable economic use of the land.

Figure 2.04.D: Conservation Subdivision Procedure

STEP	ACTION
1	**FILE SITE ANALYSIS MAP** Filed with Development Assistance Department - Existing conditions on the site and within 500 feet of the site
2	**SITE INSPECTION** Conducted with City staff
3	**CONSERVATION AND DEVELOPMENT PLAN** Includes site analysis map, conservation and development areas map, and preliminary site improvements plan
4	**TECHNICAL REVIEW BY CITY STAFF**
5	**REVIEW AND DECISION BY CITY MANAGER** Decision only approves the proposed conservation and development plan
6	**FILE APPLICATION FOR MAJOR SUBDIVISION** Application shall include the conservation and development Plan

2. APPLICABILITY

a. TYPE OF DEVELOPMENT

This conservation subdivision option shall be limited to development of single-family detached residential dwellings on individual lots in subdivisions of more than three lots. The conservation subdivision option shall not be available for any other form of development or use type.

b. WHERE PERMITTED

Single-family detached residential subdivisions of more than three lots in the R-15, R-20, and R-40 zoning districts may be developed as a conservation subdivision, in accordance with the standards in this section.

c. WHERE PROHIBITED

The conservation subdivision option is not available for use on land in any of the zoning districts other than R-15, R-20, and R-40 districts.

3. CONSERVATION SUBDIVISION PROCEDURE

Development utilizing the conservation subdivision option shall be subject to the requirements for a ~~major subdivision~~ Major Subdivision in accordance with the procedures and standards in Section 2.04.H, Major Subdivision, after approval of a conservation and development plan in accordance with this section.

4. CONSERVATION AND DEVELOPMENT PLAN

Prior to review of a ~~major subdivision~~ Major Subdivision, an applicant shall have a conservation and development plan for the land reviewed and approved, or approved with conditions by the City Manager in

accordance with this the following steps, the standards in Section 2.04.D.5, Conservation Subdivision Review Standards.

a. STEP 1—SITE ANALYSIS MAP

The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development and land within 500 feet of the site, and submit the site analysis map ~~to the City Manager~~to the Community Development Director. It is the intent of this section that the information required to be presented in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

b. STEP 2—SITE INSPECTION

After receipt of the site analysis map, the ~~City Manager~~Community Development Director shall schedule a site inspection of theland with the applicant. The applicant or the applicant's representative shall attend the site inspection with a City staff member. The purpose of this site visit is to:

i. Familiarize the staff with the existing site conditions and features of the site;
ii. Identify potential site development issues, including the best location for the development to minimize its visibility from surrounding areas and adjacent major roadways; and
iii. Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by the staff during the site inspection shall be interpreted as being only suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

c. STEP 3—CONSERVATION AND DEVELOPMENT PLAN

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

i. A site analysis map;
ii. A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and
iii. A preliminary site improvements plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area.

d. STEP 4-REVIEW BY THE DEVELOPMENT REVIEW COMMITTEE

The Development Review Committee shall review the conservation and development plan and prepare a written recommendation on any suggested revisions for consideration based on the standards in Section 2.04.D.5, Conservation Subdivision Review Standards.

e. STEP 5-REVIEW AND DECISION BY THE ~~COUNTY~~CITY MANAGER.

The City Manager shall review and make an ~~a~~Administrative ~~d~~Decision/determination regarding the conservation and development plan based upon the requirements of this Ordinance. Notice of the ~~a~~Administrative ~~d~~Decision/determination shall be given in accordance with Section 2.03.K.1. If approved, such approval shall only be for the purposes of approving the conservation and development plan. If a conservation and development plan is approved by the City Manager, the applicant shall file an application for a Major Subdivision approval. The processing of and decision regarding the Major Subdivision shall be in accordance with Section 2.4.H. Major Subdivision.

5. CONSERVATION SUBDIVISION REVIEW STANDARDS

A conservation subdivision shall comply with the following standards:

a. LOCATION

Conservation subdivisions shall be configured to minimize their visibility from adjacent developed lands and major roadways.

b. MINIMUM PROJECT SIZE

Conservations subdivisions shall be at least two acres in land area.

c. REQUIRED CONSERVATION AREA

The required conservation area shall occupy at least 50 percent of the total acreage of the conservation subdivision site, but nothing shall limit it from occupying more than 50 percent of a conservation subdivision site.

d. MAXIMUM RESIDENTIAL DENSITY

A conservation subdivision may establish a maximum residential density that is twice the maximum residential density for lots in the zoning district where located, but in no instance

shall the density of a conservation subdivision exceed the maximum allowable within a designated water supply watershed.

e. DIMENSIONAL REQUIREMENTS

Lots in a conservation subdivision may deviate from the minimum dimensional requirements for lots in the zoning district where located, provided:

i. No lot frontage is less than 20 feet wide;

ii. Building separation between structures on different lots meets or exceeds the minimum applicable Fire Code provisions; and

iii. All structures shall comply with required setbacks from streets, wetlands/surface waters, or other protected natural areas.

f. LAND USED FOR AGRICULTURE

Nothing shall limit the ability of an owners' association to lease conservation area for the purposes of agriculture.

6. OWNERSHIP OF CONSERVATION AREAS

a. LANDOWNER OR ASSOCIATION

A conservation area shall be owned jointly or in common by the owners of the development or through a recognized homeowners or property owners association, which shall be established in accordance with Article 6, Owner Associations.

b. NONPROFIT ORGANIZATION

The landowners may decide to convey a conservation area to a nonprofit organization such as a land trust or land conservancy for management and maintenance if the City is provided adequate assurance the area will be properly managed and maintained.

c. DEDICATED TO CITY OR OTHER PUBLIC AGENCY

In some cases, certain lands designated as conservation areas, such as greenways, may be dedicated to the City, a nonprofit organization, or other public agency during the development review process, at the landowner's discretion. If offered by the landowner, the City Council shall determine whether that land is appropriate for dedication to the City or other public agency.

7. APPEAL

Appeal of an ~~a~~Administrative ~~d~~Decision or determination by City staff under this Section 2.04.D., Conservation Subdivision shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal.

E. EXEMPT SUBDIVISION

1. PURPOSE AND INTENT

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes. This review is voluntary on the part of the applicant and isprovided by the City as a courtesy.

2. APPLICABILITY

a. Requests for determination of an exempt subdivision by the City in accordance with this section are at the discretion of the landowner proposing the subdivision and shall not be mandated by the City.

b. The following forms of land division are identified in Section ~~160A-376~~ 160D-802 of the North Carolina Statutes as exempt subdivisions:

~~**i.** A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance;~~ The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.

ii. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

~~**iii.** Public acquisition involving the purchase of strips of land for the widening or opening of streets;~~ The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

~~**iv.** Division of a tract of land in single ownership, where the total area of all land in the land division is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance; or~~ The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.

~~**v.** The division of a tract into parcels in accordance with the terms of a probated will or in accordance with Chapter 29 of the North Carolina General Statutes.~~ The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

c. Divisions of land that are not consistent with these criteria shall not be considered exempt subdivisions, and shall be subject to the applicable review procedure and requirements of this

~~Figure 2.04.E: Exempt Subdivision Procedure~~

~~STEP~~	~~ACTION~~
~~1~~	~~**FILE APPLICATION**~~ ~~Filed with Development Assistance Community Development Department~~ ~~Application is voluntary~~
~~2~~	~~**COMPLETENESS DETERMINATION**~~ ~~See Section 2.03.D.5, Completeness Determination~~ ~~Application shall indicate why subdivision should be considered as an exempt subdivision~~
~~3~~	~~**STAFF REVIEW**~~
~~4~~	~~**CITY MANAGER DECISION AND CERTIFICATION**~~ ~~Decision shall be made in writing~~
~~5~~	~~**NOTIFICATION OF DECISION**~~ ~~Delivered via personal service, electronic mail, or 1st class mail~~
~~6~~	~~**RECORDATION**~~ ~~Optional~~

Ordinance.

3. EXEMPT SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Not applicable.

b. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. An application for exempt subdivision determination may be filed by a landowner or a contract purchaser.

c. STAFF REVIEW AND ACTION

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. The City Manager shall review the application in accordance with Section 2.04.E.3, Exempt Subdivision Review Procedure, and make an ~~a~~Administrative ~~d~~Decision/determination as to whether or not ~~certify that~~ the land division qualifies as an exempt subdivision. Notice of the ~~a~~Administrative ~~d~~Decision/determination shall be given in accordance with Section 2.03.K.1.

d. RECORDATION

If an exempt subdivision plat is prepared by the applicant and approved by the City Manager in accordance with this section, it shall be certified by the City Manager, and may be recorded in the office of the Henderson County Register of Deeds.

4. EXEMPT SUBDIVISION REVIEW STANDARDS

A division of land shall be certified as an exempt subdivision only if it:

a. Is excluded from the definition of a subdivision in accordance with Section ~~160A-376~~ 160D-802 of theNorth Carolina General Statutes; and

b. Complies with or exceeds all applicable lot dimensional provisions for the zoning district where it is located in accordance with the Zoning Ordinance; and

c. Complies with all standards or conditions of any applicable permits or development approvals; and

d. Complies with all other applicable requirements in the City Code of Ordinances.

5. EFFECT

a. A division of land determined to be an exempt subdivision shall be exempted from the subdivision standards of this Ordinance, but development of land within an exempt subdivision shall remain subject to any applicable requirements for potable water or wastewater from Henderson County Environmental Health, as well as all applicable standards in the City Code of Ordinances.

b. In the event a division of land does not qualify as an exempt subdivision, it shall be reviewed in accordance with the applicable subdivision procedure and shall be subject to all applicable subdivision standards in this Ordinance.

6. APPEAL

~~a.~~ Appeal of an ~~a~~Administrative ~~decision~~ Decision or determination by staff under this Section 2.04.E., Exemption Subdivision ~~on an exempt subdivision~~ shall be reviewed and decided by the BOA in ~~the nature of certiorari and in~~ accordance with Section 2.04.C, Appeal.

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

F. EXPEDITED SUBDIVISION

1. PURPOSE AND INTENT

The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their small size and limited likelihood to create significant impacts on surrounding lands.

2. APPLICABILITY

a. The standards in this section shall apply to divisions of land meeting all the following criteria:

i. The proposed division of land is not exempted from the subdivision standards of this Ordinance in accordance with Section ~~160A-376(a)~~ 160D-802 of the North Carolina General Statutes; and

ii. The proposed division will not result in more than three lots (including any residual or "parent" parcel); and

iii. The area of land subject to the division shall be comprised of at least five acres under common ownership; and

iv. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years; and

v. The use of all lots is in conformity with the zoning district where located; and

vi. No extension of public streets is proposed.

b. Divisions of land not meeting all these standards shall be reviewed as a ~~minor subdivision~~ Minor Subdivision or ~~major subdivision~~ Major Subdivision, as appropriate.

c. Lots within an expedited subdivision are not exempted from any applicable zoning district dimensional requirements.

Figure 2.04.F: Expedited Subdivision Procedure

STEP	ACTION
1	**FILE APPLICATION** Filed with Development Assistance Department - Required prior to conveyance of lots
2	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	**STAFF REVIEW**
4	**CITY MANAGER DECISION** Decision shall be made in writing
5	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
6	**RECORDATION** With the Henderson County Register of Deeds within 10 days of approval

3. EXPEDITED SUBDIVISION REVIEW PROCEDURE

a. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. Expedited subdivision plats shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. Applications for an expedited subdivision shall include an evaluation from Henderson County Environmental Health indicating that an on-site wastewater system and on-site potable water system may be used on each lot not connected to the public potable water or sanitary sewer systems.

b. STAFF REVIEW AND ACTION

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. The City Manager shall review and make an ~~a~~Administrative ~~d~~Decision/determination regarding ~~decide~~ the application in accordance with Section 2.04.F.4, Expedited Subdivision Review Standards. Notice of the ~~a~~Administrative ~~d~~Decision/determination shall be given in accordance with Section 2.03.K.1.

iii. If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied. Alternatively, the applicant may appeal the City Manager's ~~a~~Administrative ~~d~~Decision or determination to the Zoning Board of

Adjustment in accordance with Section 2.04 F.9. Appeal.

4. EXPEDITED SUBDIVISION REVIEW STANDARDS

a. An expedited subdivision shall be approved if the application complies with the following:
   - **i.** The expedited subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in Henderson County;
   - **ii.** The expedited subdivision plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
   - **iii.** The expedited subdivision plat complies with all applicable standards in this Ordinance and Section 47-30 of the North Carolina General Statutes;
   - **iv.** The expedited subdivision plat includes all required certifications;
   - **v.** The applicant has secured all required State and federal permit approvals;
   - **vi.** All lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use, in cases when the lots are not served by a centralized wastewater system;
   - **vii.** All lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water in cases when the lots are not served by a centralized potable water system;
   - **viii.** All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located;
   - **ix.** The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with City standards; and
   - **x.** No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years.

b. Subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

   "Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

a. Once an expedited subdivision plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The expedited subdivision plat may not be recorded without this and all other required certifications.

~~b. Failure to record the final plat in accordance with Section 2.04.F.8, Expiration, shall render the plat null and void.~~

~~c.~~b. Land may not be conveyed or construction started until the expedited subdivision plat is recorded.

6. EFFECT

a. Approval of the expedited subdivision plat allows the sale or conveyance of lots within the subdivision.

b. Building permits may be issued following recordation of the expedited subdivision plat.

c. Land subject to an expedited subdivision approval shall not be further subdivided as an expedited subdivision within ten years of the date of the prior expedited subdivision approval.

7. AMENDMENT

Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. EXPIRATION

~~An expedited subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 10 days of approval.~~The period of validity for an expedited subdivision plat shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

9. APPEAL

~~a.~~ Appeal of an ~~a~~Administrative ~~d~~Decision or determination by staff under this Section 2.04.F. Expedited Subdivisions, shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal~~Decisions by the City Manager on an expedited subdivision plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 160D-1-2; 1402 of the North Carolina General Statutes.~~

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal~~

~~delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective~~.

G. FINAL PLAT

1. PURPOSE

The purpose for this final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a ~~major subdivision~~ Major Subdivision (as applicable) and all applicable regulations of this Ordinance prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a plat document of sufficient detail and data so as to enable the City or another landowner to readily determine and accurately reproduce the location, bearing, radius (as applicable), and length of the elements of a subdivision. The elements include, but shall not be limited to the following:

a. Every street or private accessway;

b. Aspects of public infrastructure such as potable water supply lines, or sanitary sewer lines;

c. Lot lines;

d. Easement boundaries;

e. Lands or resources dedicated or reserved for use by the general public;

f. Land or resources owned in common by residents of the subdivision; and

g. Unbuildable resource or conservation lands.

2. APPLICABILITY

a. The standards in this section shall apply to subdivisions subject to a major subdivision.

b. A landowner shall not submit an application for final plat review until a major subdivision (see Section 2.04.H, Major Subdivision) is approved and all required improvements serving the subdivision are installed and inspected by the City, or the developer provides a performance guarantee for those required improvements in accordance with Section 2.05, Performance Guarantees.

3. FINAL PLAT REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Not applicable.

b. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. A final plat shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. In cases where a final plat includes only a portion of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

Figure 2.04.G: Final Plat Procedure

STEP	ACTION
1	**FILE APPLICATION** Filed with ~~Development Assistance~~ Community Development Department - Required prior to conveyance of lots - May not be submitted prior to approval of a major subdivision for subdivisions that include public streets, water, or sewer infrastructure
2	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	**STAFF REVIEW AND DECISION** Decision shall be made in writing - Application shall not be decided until all required dedications and easements are complete - Application shall not be decided until all proposed public infrastructure (including storm drains) is installed or subject to a financial guarantee (see Section 2.05, Performance Guarantees)
4	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
5	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

c. STAFF REVIEW AND ACTION

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and make an ~~a~~Administrative ~~d~~Decision/determination regarding the ~~decide the~~ application in accordance with Section 2.04.G.4, Final Plat Review Standards.

iv. If a final plat application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a final plat that has been denied.

~~**iv.**~~**v.** Notice of the ~~a~~Administrative ~~d~~Decision/determination shall be given in accordance with Section 2.03.K.1.

4. FINAL PLAT REVIEW STANDARDS

A final plat shall be approved if it complies with the following:

a. The final plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;

b. The final plat is prepared by a licensed professional authorized by the State to prepare such documents;

c. The final plat complies with the standards in Section 47-30 of the North Carolina General Statutes;

d. The final plat includes all required certifications;

e. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the ~~major subdivision~~ Major Subdivision are installed, inspected, and accepted by the City, or are subject to a performance guarantee (see Section 2.05, Performance Guarantees);

f. All required easements and rights-of-way are properly depicted on the final plat;

g. If no public wastewater service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use;

h. If no public potable water service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water;

i. The final plat is in substantial conformance with the ~~major subdivision~~ Major Subdivision;

j. The applicant has secured all required State, federal, and other applicable City permit approvals;

k. The final plat complies with all standards and conditions of any applicable permits and development approvals; and

l. The final plat complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.

5. RECORDATION

a. Once a final plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The final plat may not be recorded without this and all other required certifications.

b. Following certification, the applicant shall record the final plat and all associated protective covenants and deed restrictions in the office of the Henderson County Register of Deeds.

c. ~~Failure to record the final plat in accordance with Section 2.04.G.9, Expiration, shall render the plat null and void.~~The period of validity of the final plat shall be determined in accordance with Chapter 40 of the Hendersonville City Code of Ordinances.

6. ACCEPTANCE OF PUBLIC INFRASTRUCTURE

a. The approval of a plat shall not be deemed to constitute the acceptance by the City of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.

b. The City Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within the ETJ.

c. Acceptance of dedication of lands or facilities located within the ETJ but outside the corporate limits of the City shall not place on the City any duty to open, operate, repair or maintain any street, utility line, or other land or facility, and the City shall not be held responsible in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

7. EFFECT

a. Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.

b. Development located outside the Hendersonville corporate limits shall comply with all City ordinances and policies related to annexation and the extension of utilities.

8. AMENDMENT

Amendment of a final plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION

~~a. A final plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.~~

~~b.~~a. ~~If a final plat is not recorded within two years of the associated major subdivision~~ Major Subdivision ~~approval, or if there is a lapse of more than two years between the recording of different sections or phases, then the major subdivision~~ Major Subdivision ~~shall expire. In such cases, the City may record a notice of expiration in the office of the Henderson County Register of Deeds.~~The time period for validity of a final plat shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

~~c.~~b. An expired preliminary plat may be resubmitted in accordance with Section 2.04.H, Major Subdivision, and shall be reviewed in accordance with the standards of this Ordinance in effect at the time of resubmission unless a vested right or other right to continue under the standards in effect at the time of the prior approval is established pursuant to Chapter 40 of the Hendersonville City Code of Ordinances.

10. APPEAL

~~a.~~ Appeal of an ~~a~~Administrative ~~d~~Decision or determination by staff under this Section 2.04.G. Final Plat, shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal.~~Decisions by the City Manager on a final plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393~~ 160D-1-2; 1402 ~~of the North Carolina General Statutes.~~

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

H. MAJOR SUBDIVISION

1. PURPOSE

The purpose for this ~~major subdivision~~ Major Subdivision procedure is to establish a fair, consistent, and predictable procedure for the review of requests to divide land into a series of lots for development or sale in ways that promote the health, safety, and welfare of the City of Hendersonville. The intent of these standards is to ensure:

a. Orderly growth and development;

b. Coordination of transportation and utility networks;

c. Preservation of open space for purposes of recreation or natural resource protection;

d. Protection from flooding, damaging sedimentation, and decreased surface water quality; and

e. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

2. APPLICABILITY

Unless exempted by Section ~~160A-376~~ 1.06 of this Ordinance or by Section 160D-802 of the North Carolina General Statutes, all divisions of land involving ~~two~~ eight (8) or more lots; or involve the dedication of a new street or change in existing streets ~~along with the provision of or changes to streets or other public infrastructure (e.g., sewer lines, storm sewer, etc.)~~ shall be considered ~~major subdivision~~ Major Subdivision subject to the standards of this section. Conservation Subdivisions must also be approved under this Section 2.04 H. Major Subdivision.

3. MAJOR SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. A ~~major subdivision~~ Major Subdivision shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. The application shall include a transportation impact analysis for review when the new development meets the requirements for transportation impact analysis in Article 6 of the Zoning Ordinance.

~~c.a.STAFF REVIEW~~

Figure 2.04.J: Minor Subdivision Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** See Section 2.03.C, Pre-application Conference
2	**~~FILE APPLICATION~~** Filed with ~~Development Assistance~~ Community Development Department - Must be professionally prepared - May require a TIA
3	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification statements
4	**STAFF REVIEW AND RECOMMENDATION BY THE DEVELOPMENT REVIEW COMMITTEE**
5	**PLANNING BOARD REVIEW AND DECISION** Decided after public meeting - Decision shall be made in writing
6	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
7	**APPLY FOR OTHER REQUIRED PERMITS** As appropriate

c. STAFF REVIEW

The City Manager shall submit the ~~major subdivision~~ Major Subdivision application to technical staff or to otheroutside agencies, as appropriate, for further technical review, as appropriate.

~~a.~~d. ADMINISTRATIVE DECISION BY PLANNING BOARD

i. Following staff review, the Planning Board, after the conclusion of a public meeting (see Section 2.03.G, Public Meeting and Hearing), shall review and ~~decide the~~make an ~~a~~Administrative ~~d~~Decision regarding the ~~a~~application in accordance with Section 2.04.H.4, Major Subdivision Review Standards. Notice of the ~~a~~Administrative ~~d~~Decision shall be delivered in accordance with Section 2.03.K.2.

ii. The decision shall be either: approval of the ~~major subdivision~~ Major Subdivision as proposed; approval of a revised major subdivision; or denial of the ~~major subdivision~~ Major Subdivision.

iii. The Planning Board shall render a decision on an application for a ~~major subdivision~~ Major Subdivision within 32 days of the date of the first public meeting to consider the application unless a different review schedule is agreed to by the Planning Board, the City, and the applicant.

iv. If a ~~major subdivision~~ Major Subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a ~~major subdivision~~ Major Subdivision that has been denied. Alternatively, an applicant may file an action to challenge the denial in the ~~Henderson County~~ Superior Court for Henderson County seeking appropriate declaratory or equitable relief in the manner of and within the time periods specified by applicable laws.

~~b.~~e. APPROVAL TO PROCEED

Following approval of a ~~major subdivision~~ Major Subdivision by the Planning Board, the applicant may proceed with an application to undertake land disturbing activities, or installation of public infrastructure, as appropriate.

4. MAJOR SUBDIVISION REVIEW STANDARDS

a. An application for a ~~major subdivision~~ Major Subdivision shall be approved, if it complies with the following:

i. The ~~major subdivision~~ Major Subdivision is prepared and sealed by a licensed professional authorized bythe State to prepare such documents;

ii. The ~~major subdivision~~ Major Subdivision complies with the applicable standards in Section 47-30 of theNorth Carolina General Statutes;

iii. The ~~major subdivision~~ Major Subdivision includes all required certifications and other pertinent informationas required by the City;

iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;

v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;

vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;

vii. All standards or conditions of any prior applicable permits and development approvals; and

viii. The ~~major subdivision~~ Major Subdivision complies with all other applicable requirements in this Ordinanceand the City Code of Ordinances.

b. Land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention.

5. EFFECT

a. GENERALLY

i. Approval of a required ~~major subdivision~~ Major Subdivision shall not constitute the approval for recording asubdivision with the Register of Deeds, or approval for the conveyance of lots.

ii. Approval of a required ~~major subdivision~~ Major Subdivision authorizes the submittal of street and utilityconstruction plans, and soil erosion and sedimentation control plans.

b. LANDS OUTSIDE THE CORPORATE LIMITS

~~Major subdivisions~~ Major Subdivisions for development located outside the corporate limits shall comply with any ordinances and City policies related annexation and the extension of utilities.

c. CONSTRUCTION PLANS

i. Construction plans for all public infrastructure associated with the ~~major subdivision~~ Major Subdivision shall be approved prior to street and utility construction and prior to the approval of a final plat in accordance with the applicable standards this Ordinance.

ii. In the case of a multi-phase subdivision, street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

6. PERFORMANCE GUARANTEES

All public infrastructure that have not been installed by the developer, and inspected and accepted by the City shall comply with the requirements in Section 2.05, Performance Guarantees, prior to the recordation of a final plat.

7. AS-BUILT PLANS

As-built plans for all public infrastructure shall be submitted in accordance with Section 2.05.J, As-Built Plans Required.

8. AMENDMENT

Amendment of a ~~major subdivision~~ Major Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

9. EXPIRATION

~~An approved major subdivision Major Subdivision shall be valid for two years from the date of approval. Failure to record a final plat for land subject to an approved major subdivision Major Subdivision within four years of the date the major subdivision Major Subdivision is approved shall render the major subdivision Major Subdivision approval null and void.~~The period of validity for a Major Subdivision approval shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

10. APPEAL

~~a.~~ An applicant, the Landowner(s) if different from the applicant, or any person who can demonstrate standing, may challenge the ~~a~~Administrative ~~d~~Decision made by the Planning Board by filing an action in ~~s~~Superior ~~c~~Court for Henderson County seeking appropriate declaratory or equitable relief in the manner of and within the time periods specified by applicable laws.~~Decisions by the Planning Board on a major subdivision Major Subdivision shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 160D-1-2; 1402 of the North Carolina General Statutes.~~

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

I. MINOR SUBDIVISION

1. PURPOSE AND INTENT

The purpose for this ~~minor subdivision~~ Minor Subdivision review procedure is to allow certain land divisions to be reviewed via an administrative review procedure based on the limited number of new lots and no extension of or changes to existing public streets is required.

2. APPLICABILITY

a. Subdivisions of land that include up to eight lots (including the parent parcel) with no extension of or changes to public streets are ~~minor subdivisions~~ Minor Subdivisions and shall be reviewed in accordance with the standards in this section.

b. All lots shall connect to the public potable water and sanitary sewer systems as part of the establishment of the ~~minor subdivision~~ Minor Subdivision. However, connection to the public water or sewer system shall not require the subdivision to be reviewed as a ~~major subdivision~~ Major Subdivision.

c. No lot within a ~~minor subdivision~~ Minor Subdivision (including the parent parcel) shall be the subject of another ~~minor subdivision~~ Minor Subdivision application for a period of three years from the date the ~~minor subdivision~~ Minor Subdivision is approved.

3. MINOR SUBDIVISION REVIEW PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

b. APPLICATION SUBMITTAL

i. Applicable (see Section 2.03.D, Application Filing and Acceptance).

ii. Applications shall be prepared by a licensed professional authorized by the State to prepare such documents.

iii. In cases where a ~~minor subdivision~~ Minor Subdivision is part of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

c. STAFF REVIEW AND ACTION

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and ~~decide~~ make an ~~a~~Administrative ~~d~~Decision/determination regarding the application in accordance with Section 2.04.I.4, Minor Subdivision Review Standards. Notice of the ~~a~~Administrative ~~d~~Decision or determination shall be given as required by

Figure 2.04.I: Minor Subdivision Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** Optional
2	**FILE APPLICATION** Filed with Development Assistance Department - Required prior to conveyance of lots
3	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
4	**STAFF REVIEW**
5	**CITY MANAGER DECISION** Decision shall be made in writing
6	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
7	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

Section 2.03.K.1.

iv. If a ~~minor subdivision~~ Minor Subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a minor plat that has been denied. Alternatively, the applicant may appeal the denial in accordance with Ssection 2.04.I.9 Appeal, below.

4. MINOR SUBDIVISION REVIEW STANDARDS

a. A ~~minor subdivision~~ Minor Subdivision shall be approved if the application complies with the following:

i. The ~~minor subdivision~~ Minor Subdivision plat is on a sheet or sheets suitable for recording with theHenderson County Register of Deeds;

ii. The ~~minor subdivision~~ Minor Subdivision plat is prepared and sealed by a licensed professional authorizedby the State to prepare such documents;

iii. The ~~minor subdivision~~ Minor Subdivision plat complies with the applicable standards in Section 47-30 of theNorth Carolina General Statutes;

iv. The ~~minor subdivision~~ Minor Subdivision plat includes all required certifications;

v. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;

vi. The applicant has secured all required State, federal, and other applicable permit approvals;

vii. The ~~minor subdivision~~ Minor Subdivision is in substantial conformance with all applicable requirements inthis Ordinance;

viii. All lots in the ~~minor subdivision~~ Minor Subdivision shall maintain minimum lot widths in accordance with therequirements for the zoning district where located;

ix. All required improvements depicted on the ~~minor subdivision~~ Minor Subdivision plat are installed andinspected by the City, or are subject to a performance guarantee (see Section 2.05, Performance Guarantees); and

x. The ~~minor subdivision~~ Minor Subdivision complies with all standards and conditions of any applicablepermits and development approvals.

b. ~~Minor subdivisions~~ Minor Subdivisions of land located within a special flood hazard area shall comply with allapplicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. RECORDATION

a. Once a ~~minor subdivision~~ Minor Subdivision is approved, a signed statement of approval by the City Manager shall be entered on the face of the plat. The ~~minor subdivision~~ Minor Subdivision plat may not be recorded without this certification.

b. A ~~minor subdivision~~ Minor Subdivision plat shall not be recorded until after the City Manager receives confirmation that the proposed subdivision has been approved by the appropriate United States Postmaster, or evidence that the applicant has addressed comments submitted by the Postmaster.

~~c. Failure to record the minor subdivision Minor Subdivision plat in accordance with Section 2.04.I.8, Expiration, shall render the minor subdivision Minor Subdivision plat null and void.~~

6. EFFECT

Approval of a ~~minor subdivision~~ Minor Subdivision allows the sale or conveyance of lots within the subdivision.Building permits may be issued following recordation of the minor subdivision plat.

7. AMENDMENT

Amendment of a ~~minor subdivision~~ Minor Subdivision approval may only be reviewed and considered in accordancewith the procedures and standards established for its original approval.

8. EXPIRATION

~~A minor subdivision Minor Subdivision plat shall be null and void unless it is recorded in the office of the HendersonCounty Register of Deeds within 30 days of approval.~~The period of validity of a Minor Subdivision approval shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

9. APPEAL

~~a.~~ Appeal of an ~~a~~Administrative ~~d~~Decision or determination by staff under this Section 2.04.I. Minor Subdivision, shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal.~~Appeal of a decision on a minor subdivision Minor Subdivision shall be reviewed~~

~~and decided by the BOA in the nature of certiorari and in accordance with Section 2.04.C, Appeal.~~

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person~~

who has submitted a written request for a copy, prior to the date the decision becomes effective.

J. SUBDIVISION VARIANCE

1. PURPOSE

The purpose of this section is to allow deviations from the standards of this Ordinance when the landowner demonstrates that, due to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and that allowing the requested deviation would not be contrary to the public interest.

2. APPLICABILITY

Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.

3. SUBDIVISION VARIANCE PROCEDURE

a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

b. APPLICATION SUBMITTAL

Applicable (see Section 2.03.D, Application Filing and Acceptance).

c. STAFF REVIEW

i. Applicable (see Section 2.03.E, Staff Review and Action).

ii. In cases where a staff report is prepared, the staff report shall not include a recommendation.

d. PUBLIC NOTICE

Applicable (see Section 2.03.F, Public Notification).

e. DECISION BY BOARD OF ADJUSTMENT

i. The BOA, after the conclusion of a ~~quasi-judicial public~~ ~~evidentiary~~ Evidentiary ~~hearing~~ Hearing conducted in accordance with the requirements of N.C.G.S. Section 160D-406 and ~~(see~~ Section 2.03.G, Public Meeting and Hearing~~)~~, shall decide the application for a ~~variance~~ Variance.

ii. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by the arguments presented at the ~~quasi-judicial~~ ~~evidentiary~~ Evidentiary ~~hearing~~Hearing, and the appropriate standards inSection 2.04.J.4, Subdivision Variance Review Standards.

iii. The concurring vote of seven members of the BOA shall be necessary to grant a subdivision ~~variance~~ Variance.

iv. The decision shall be either approval of the ~~variance~~ Variance as proposed, approval of the ~~variance~~ Variance with revisions or conditions, or denial of the ~~variance~~ Variance.

Figure 2.04.J: Variance Procedure

STEP	ACTION
1	**PRE-APPLICATION CONFERENCE** See Section 2.03.C, Pre-application Conference
2	**FILE APPLICATION** Filed with ~~Development Assistance~~ Community Development Department
3	**COMPLETENESS DETERMINATION** See Section 2.03.D.5, Completeness Determination
4	**STAFF REVIEW** Staff report shall not include a recommendation
5	**PUBLIC NOTICE** See Section 2.03.F, Public Notification
6	**BOA REVIEW AND DECISION** Quasi-judicial ~~public~~ ~~evidentiary~~ Evidentiary hearingHearing ~~- Decision shall be made in~~ writing
7	**NOTIFICATION OF DECISION** Delivered via personal service, electronic mail, or 1st class mail
8	**RECORDATION** With the Henderson County Register of Deeds within 30 days of approval

v. Each decision shall be made in writing and reflect the BOA's determination of any contested facts and their application to the standards in this Ordinance. Written decisions shall be made and approved in accordance with the requirements of N.C.G.S. Section 10D-406. A copy(ies) of the written decision shall be delivered in accordance with Section 2.03.K.3.

vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.

vii. The decision of the BOA shall be effective upon the filing of the written decision by the City Manager.

f. RECORDATION

If a ~~variance~~ Variance application is approved, the notice of decision shall be recorded by the City in the office of the Henderson County Register of Deeds.

4. SUBDIVISION VARIANCE REVIEW STANDARDS

a. REQUIRED FINDINGS

A subdivision ~~variance~~ Variance application shall be approved provided on a finding the applicant demonstrates all of the following:

~~**i.** Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~ Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the ~~variance~~ Variance, no reasonable use can be made of the property.

ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a ~~variance~~ Variance. A ~~variance~~ Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

~~**iii.** The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a ~~variance~~ Variance is not a self-created hardship.

iv. The requested ~~variance~~ Variance is consistent with the spirit, purpose, and intent of this Ordinance, such that public safety is secured, and substantial justice is achieved.

v. The ~~variance~~ Variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

b. NOT USED AS A BASIS FOR APPROVAL

None of the following may be used as the basis for approving a ~~variance~~ Variance:

i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;

ii. The fact that land or a structure may be utilized more profitably or be more marketable with a ~~variance~~ Variance; or

iii. Financial hardship.

c. CONDITIONS OF APPROVAL

i. The Board of Adjustment may apply conditions of approval that are reasonably related to the ~~variance~~ Variance.

ii. All conditions shall be identified in the approval, the notice of decision, and on any associated plats.

5. EFFECT

Approval of a subdivision ~~variance~~ Variance authorizes only the particular regulatory relief approved by theBOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the subdivision ~~variance~~ Variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

6. AMENDMENT

Amendment of a subdivision ~~variance~~ Variance may only be reviewed and

considered in ~~Section 2.04 Review Procedures~~ accordance with the procedures and standards established for its original approval. Amendments may only be considered if the amendment is based upon a change in the proposed subdivision, changed conditions, or changes in this Ordinance.

7. EXPIRATION

A subdivision ~~variance~~ Variance shall not expire. However approval of a variance shall not operate to modify the time period of validity of the underlying subdivision approval beyond the period of the stay (if a stay is in effect) plus the time period of validity established in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

8. APPEAL

a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ 160D-1-2; 1402 of the North Carolina General Statutes or may be challenged as otherwise allowed by applicable law.

b. Petitions for review or other actions challenging a decision of the BOA must be brought in the manner and within the time frames specified by N.C.G.S. Section 160D-1402 and Section 160D-1405 and other applicable law.

a. Any decision by the BOA shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 160D-1-2; 1402 ofthe North Carolina General Statutes.

b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

SECTION 2.05. PERFORMANCE GUARANTEES

A. PURPOSE AND INTENT

These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a building permit to commence with development prior to completion of all required infrastructure or site improvements, provided funds have been reserved for completion of these features. These provisions ensure that funds are available for the City's use to complete required public infrastructure or private site features in the event an applicant or developer is unable to do so.

B. APPLICABILITY

1. Performance guarantees shall be configured and managed in accordance with the standards in this section and N.C.G.S. Section 160D-804.1 Performance Guarantees. The City is under no obligation to grant a performance guarantee for any feature or under any circumstance. To the extent this Section 2.05 conflicts with or omits terms provided in N.C.G.S. Section 160D-804.1, Section 804.1 shall control.
2. The following facilities and site features may be eligible for performance guarantees at the discretion of the City:
   a. Sidewalks, multi-use paths, and greenways;
   b. The final lift of asphalt on a street;
   c. Private stormwater management facilities;
   d. Street lights; and
   e. Placement of vegetation, except when required as part of erosion control measures.
3. All other public infrastructure or required site features shall be completed prior to issuance of a certificate of occupancy for the development.

C. INELIGIBLE FACILITIES

The following infrastructure facilities are not eligible for performance guarantees, and shall be completed and dedicated to the City where appropriate, prior to approval of a final plat, conveyance, or issuance of a building permit:

1. Potable water;
2. Sanitary sewer;
3. Functional fire protection infrastructure;
4. The base and initial courses of asphalt on a street;
5. Stormwater drainage facilities associated with a street right-of-way;
6. Curb and gutter; and
7. Street signs and traffic control signals.

D. ~~MAXIMUM T~~TERM OF GUARANTEE

1. Performance guarantees associated with the placement of vegetation ~~shall~~ shallhave an initial term ~~maximum term~~of one year unless the Applicant determines that the scope of work for the required facilities necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the Applicant determines that the scope of work for the required facilities necessitates a longer duration..
2. ~~The applicant may request a term of more than one in year in cases where they believe one year is insufficient.~~

E. FORM OF GUARANTEE

1. The applicant shall determine the form(s) of the performance guarantee, which shall be provided in one or more of the following forms. The guaranty shall use the City's standard form if the City has a standard form that the particular type of guaranee:
   a. CASH OR IRREVOCABLE (EVERGREEN) LETTER OF CREDIT

      The developer shall deposit cash or an irrevocable (or "evergreen") letter of credit, either with the City or in escrow with a North Carolina financial institution. If cash or other instrument is deposited in escrow with a financial institution, an escrow agreement between

the financial institution, ~~and~~ the ~~developer~~ Applicant and the City, in form acceptable to the City, shall be filed with the City guaranteeing the following:

i. That the escrow account shall be held in trust until released by the City and may not be used or pledged by the developer for any other matter during the term of the escrow; and

ii. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.

iii. The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.

b. SURETY BOND

i. The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.

ii. The bond shall be payable to the City and shall be in an amount as required by this subsection.

c. OTHER GUARANTEE

The developer may provide another form of guarantee that provides equivalent security to cash, a surety bond, or letter of credit, as determined by the City Attorney.

2. An applicant may request a consolidated performance guarantee to address required infrastructure and private site improvements, but it shall distinguish between the portion of the guarantee provided for public infrastructure improvements as well as the portion of the guarantee provided for private site improvements, if applicable.

3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the guarantee.

F. AMOUNT OF GUARANTEES

1. GENERALLY

Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.

2. ESTIMATED COSTS

Estimated costs of completing installation of required public improvements, vegetation, or stormwater measures shall be itemized by improvement type and certified by the developer's licensed professional, and is subject to approval by the City Manager.

3. ~~RENEWAL~~EXTENSION OF TERM FOR GUARANTEES

a. An applicant shall demonstrate reasonable, good-faith progress toward completion of the required facilities secured by the performance guarantee or any extension thereof. If the required facilities are not completed in accordance with the specifications required by this Ordinance and all other applicable City, state or federal laws, ordinances, regulations, policies and development standards, then the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension shall only be for a duration necessary to complete the required facilities.

b. If a new performance guarantee is ~~renewed~~issued, the City Manager may require the amount of the performance guarantee be updated to reflect changes in cost over time, but shall only be in an amount equal to 125% of the cost to complete the facilities at that time.

G. RELEASE OR REDUCTION OF GUARANTEE

1. RELEASE REQUESTED

The City Manager shall release or reduce a performance guarantee only after:

a. The owner or developer has submitted to the City a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications,

and as-builts (if applicable);

b. City staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and

c. No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.

2. ACCEPTANCE SHALL BE DOCUMENTED

The City Manager shall provide written notice of the City's final acceptance of the improvements subject to performance guarantees.

H. IMPROPER RELEASE OF FINANCIAL GUARANTEES

If the City releases a performance guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements in accordance with this Ordinance.

I. FORFEITURE OF GUARANTEE

1. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the performance guarantee (as may be extended), the City Manager shall give the owner or developer 30 day's written notice of the scope and degree of the default, by certified mail.

2. CITY COMPLETION OF IMPROVEMENTS

After the 30-day notice period expires, the City may draw on the guarantee and use the funds to perform the work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the performance guarantee, the City shall return any of the unused deposited cash funds or other security.

J. AS-BUILT PLANS REQUIRED

1. PUBLIC IMPROVEMENTS

Upon completion of a public infrastructure project, the developer shall certify to the City Manager that the completed project has been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed.

2. STORMWATER MANAGEMENT FACILITIES

Upon completion of a private stormwater management facility, the developer shall certify to the Stormwater Administrator that the completed project is in accordance with the requirements in Sections 24-131 through 24-163 in the City's Code of Ordinances.

3. INSPECTION REQUIRED

A final inspection and approval by the City Manager shall occur before the release of the performance guarantee.

SECTION 2.06. FEE-IN-LIEU

A. PURPOSE

The purpose for this section is to establish a procedure and standards for instances where an applicant and the City agree that a payment-in-lieu of dedication or construction of infrastructure by the applicant is appropriate and in closer alignment with the City's adopted policy guidance of capital improvement program.

B. PROCEDURE

1. REQUIRED BY CITY

a. In cases where the City Manager determines that installation of a required sidewalk, greenway, bikeway, or other roadway improvement could conflict with another City, State, or federal infrastructure project that is planned or programmed to begin construction within five years, the applicant or developer shall be required to submit a fee-in-lieu of the required infrastructure element(s).

b. Notification of the requirement for provision of a fee-in-lieu shall be in writing, and shall be delivered to the applicant or developer prior to the notice of decision on the associated application.

c. Upon receipt of notification, and applicant shall provide the required fee-in-lieu in accordance with Section 2.06.B.2.d, Acceptance of Fee-in-Lieu.

d. In the event the conflict necessitating the fee-in-lieu is eliminated prior to final approval, the fee-in-lieu shall be refunded and the applicant or developer shall be required to dedicate the required land or perform the required installation. The developer or applicant may request the City retain the funds in accordance with Section 2.06.B.2, Requested by Applicant.

2. REQUESTED BY APPLICANT

In cases where an applicant or developer desires to receive final approval of development under this Ordinance without providing land or infrastructure as required, the process for requesting such approval shall be in accordance with this section.

a. FILE REQUEST

i. An applicant seeking the ability to provide a fee-in-lieu of making a required dedication or constructing required infrastructure shall file a written request with the ~~City Manager~~Community Development Director prior to the rendering of a decision on the associated application by the appropriate review authority (see Section 2.02, Summary Table).

ii. The request shall include the reasons for the request, the rationale why a fee-in-lieu is in closer alignment with the City's adopted policy guidance, and the estimated value of the land that would otherwise be dedicated or the estimated cost of completion of the infrastructure in question, based on current unit prices.

b. STAFF REVIEW

Upon receipt of the request, the ~~City Manager~~Community Development Director shall review the information and notify theapplicant if the information provided is sufficient.

c. DECISION BY CITY MANAGER

i. The City Manager shall consider the request, and shall decide the request in accordance with the City's adopted policy guidance and Section 2.06.D, Review Standards for Fee-in-Lieu.

ii. The decision shall be to either accept the request for provision of fee-in-lieu as offered, accept a modified request for provision of fee-in-lieu, or deny the request for provision of fee-in-lieu.

d. ACCEPTANCE OF FEE-IN-LIEU

i. In cases where a fee-in-lieu is required by the City or a request for provision of a fee-in-lieu is accepted by the City Manager, payment of a fee-in-lieu shall take place prior to the approval of a final plat or issuance of the final approval associated with the subdivision.

i. All fees collected by the City pursuant to this section shall be deposited in City's revolving fund for purchase of recreation land, installation of vegetation, or installation of required infrastructure (whether streets, sidewalks, bikeways, or other infrastructure, as appropriate).

ii. Use of funds collected in accordance with this section shall only take place in the general vicinity of where funds are collected and may only be used for the purchase of in-kind lands or the same type of infrastructure in accordance with all applicable State and federal law.

iii. The ~~City Manager~~Community Development Director shall maintain records of the amounts collected, the timing, and the location, which shall be used by the City as part of its capital facilities program.

C. AMOUNT

1. LAND

a. The fee-in-lieu shall be calculated based upon the total acreage of land required for dedication.

b. The land's assessed value (as determined by the Henderson County Tax Assessor) following subdivision shall be used to arrive at the required payment-in-lieu amount.

2. INFRASTRUCTURE

a. The amount of fee-in-lieu shall be based on an estimate by a licensed professional authorized by the State to prepare such documents.

b. The estimate shall include the cost of all materials and labor based on current unit prices.

c. Nothing shall prevent the City Manager from acquiring an additional estimate for the same infrastructure from another licensed professional.

d. The City Manager, in his or her sole discretion, may select the estimate that will form the basis for the fee-in-lieu payment.

3. VEGETATION

In cases where a fee-in-lieu is proposed for the installation of vegetation, the fee amount shall be based upon the unit price of the vegetation along with all associated labor, transportation, and incidental costs such as ground cover, staking, and fertilizer, but not irrigation.

D. REVIEW STANDARDS FOR FEE-IN-LIEU

Decisions regarding requests for provision of fee-in-lieu shall be made in accordance with the following standards, as applicable:

1. PARK LAND

a. There is sufficient public park land in proximity to the proposed development based on a review of the City's adopted policy guidance and information from City staff;

b. Private common open space resources provided on the subject site will be available for public use and will mitigate park land needs created by the proposed development;

c. Collected funds could be utilized to further improve an existing park facility in a proximate location;

d. The topography or other natural conditions of the site do not provide adequate opportunities for on-site recreation and park areas;

e. The amount of park land to be dedicated is too small to provide adequate recreation and park opportunities or to be efficiently maintained;

f. The intended location of the park land is too far from existing recreation and park areas to be efficiently maintained; or

g. Adequate access is not available to the proposed park land.

2. GREENWAY LAND

a. The conditions on the land make installation or operation of a greenway segment impossible or cost prohibitive for the City;

b. The potential for the connection of a proposed greenway segment to the City's greenway network is unlikely within the foreseeable future, in the opinion of City staff; or

c. There are suitable alternatives to a greenway segment, such as a multi-purpose trail, in close proximity to the proposed site.

3. STREETS

a. The proposed street alignment creates a unacceptable environmental impact; or

b. The proposed street is impossible or impractical to build based on topography, slope, soil conditions, or development patterns on adjacent lands.

4. SIDEWALKS

a. The potential for the connection of a proposed sidewalk segment to the City's sidewalk network is unlikely within the foreseeable future, in the opinion of City staff; or

b. There are suitable alternatives to a sidewalk, such as a greenway, in close proximity to the proposed site.

5. VEGETATION

a. The proposed location of vegetation will not support healthy vegetation due to shading or topographic conditions; or

b. The site where vegetation is proposed is incapable of supporting additional vegetation due to the presence of exiting vegetation, buildings, or impervious surfaces.

~~6. OTHER CRITERIA~~

~~a. When, in the sole opinion of the City Manager, the decision on a fee-in-lieu requires consideration of additional or different criteria, the City Manager shall identify those criteria and describe how the proposal does or not address them.~~

~~b. The applicant has sufficient opportunity to describe how the proposal meets those criteria prior to a decision by the City Manager.~~

ARTICLE 3: CONFIGURATION

SECTION 3.01. PURPOSE AND INTENT

This section sets out the basic configuration standards for subdivisions, including lot shapes, monuments, access to lots, easements for infrastructure, and related provisions.

SECTION 3.02. LAND SUITABILITY

A. Where land to be subdivided is found by the City to be subject to the conditions of flooding, improper drainage, severe erosion, landslides, or to have other characteristics which pose an ascertainable danger to public health, safety, or property sufficiently identified by any source of information listed in Section 3.02.B below, the subdivider shall take measures necessary to correct these conditions in order to eliminate or mitigate any danger.

B. In making a determination about ~~the potential~~ an ascertainable danger to public health, safety, or property, the City ora review authority may take any of the following into consideration:

1. The official FEMA Flood Hazard Boundary Maps;
2. The Henderson County Soil Survey;
3. Recommendations of the Tennessee Valley Authority;
4. Information from the Soil Conservation Service;
5. Information from the USDA; and
6. The Henderson County Board of Health.

C. Nothing herein shall be deemed to grant to the City staff or the Planning Board the authority to make any findings pursuant to this section which would involve a level of discretion requiring a quasi-judicial proceeding. In the event such a level of discretion is required to make a finding under this section, the application shall be referred to the City Council to hold an eEvidentiary hHearing with regards to the proposed findings in this section 3.02 Land Suitability only in accordance with Section 1.10 Administrative Decision. Such eEvidentiary hHearing by City Council shall be held in the manner and in accordance with the requirements of a Subdivision Variance found in Section 2.04 J.

~~C.~~**D.** In cases where a review authority makes findings pursuant to this section, the basis for such findings shall be in writing and recorded in a staff report, meeting minutes, or the written decision, as appropriate.

SECTION 3.03. LOTS

A. DIMENSIONAL REQUIREMENTS

1. GENERALLY

a. The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated to allow the lots to meet the standards contained in this Ordinance.

b. A lot shall have sufficient area, dimensions, and street access to allow a principal building to be erected on it in compliance with the requirements of this Ordinance and the Zoning Ordinance.

c. Lot sizes, shapes, and locations shall be made with due regard to topographic conditions, contemplated use, and the surrounding area in accordance with the standards of this Ordinance.

d. The area of standing bodies of water shall not be included in determining minimum lot area requirements.

2. SINGLE-FAMILY RESIDENTIAL LOTS

a. WITHIN THE CORPORATE LIMITS

Lots intended for single-family residential development within the City's corporate limits shall comply with the minimum dimensional standards for the zoning district where located.

b. OUTSIDE THE CORPORATE LIMITS

i. Lots intended for single-family residential development outside the City's corporate limit that are served by both public water and sewage systems shall comply with the minimum dimensional standards for the zoning district where located.

ii. Lots intended for single-family development outside the City's corporate limits that are not served by public water or by public sewer shall comply with the applicable dimensional standards in the Zoning Ordinance.

3. MULTI-FAMILY RESIDENTIAL LOTS

a. Lots intended for multi-family residential development shall comply with the minimum dimensional standards for the zoning district where located.

b. Prior approval from Henderson County Environmental Health must be obtained for lots containing multi-family development that are not served by both public water and sewer.

4. NONRESIDENTIAL AND MIXED-USE LOTS

Lots intended for non-residential and mixed-use development shall comply with the minimum dimensional standards for the zoning district where located.

B. SIDE LOT LINES

1. Side lines of lots should be at or near right angles or radial to street lines.

2. Where side lot lines intersect at the rear of the lot, the angle of intersection shall not be less than 60 degrees.

C. FLAG LOTS

New flag lots may be established, subject to the following requirements:

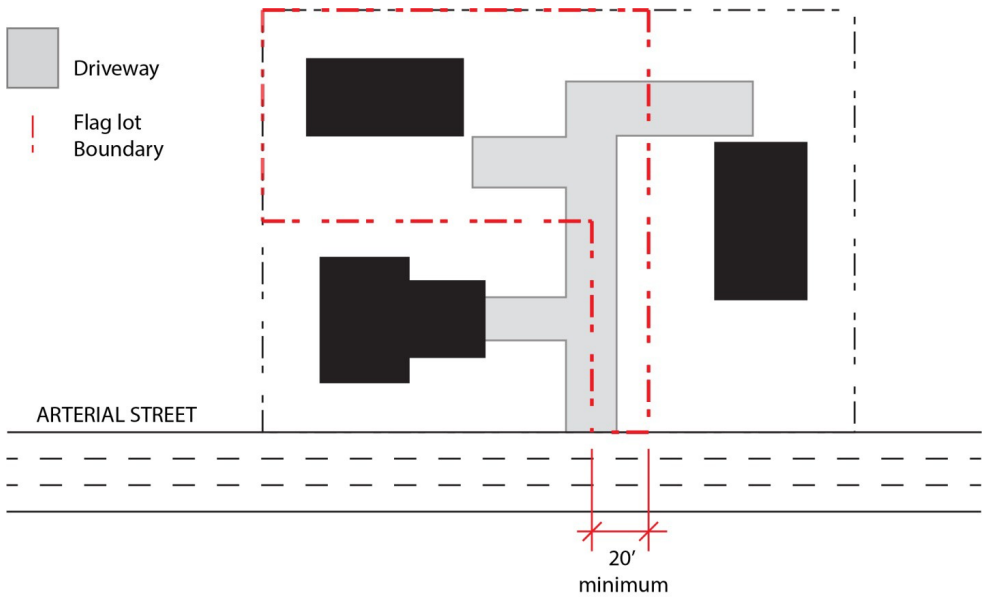
1. Except where topographic conditions or environmental constraints make lot access impractical, no more than five percent of the lots within a subdivision (or individual phase of a subdivision) may be configured as flag lots.

2. New flag lots may be established along an expressway or boulevard street only in cases where access to the street is shared with an adjacent lot (see Figure 3.03.C, Flag Lot Access).

3. The "pole," arm," or "pan handle" portion of a flag lot shall maintain a minimum width of at least 20 feet.

4. Use of a single driveway to serve an adjoining flag lot or to serve a flag lot and an adjoining conventional lot is encouraged. In the case of a driveway shared with a conventional lot, the preferred location for the driveway is on the flagpole portion of the flag lot, with the conventional lot granted an access easement over the flagpole.

FIGURE 3.03.C: FLAG LOT ACCESS



D. DOUBLE OR REVERSE FRONTAGE LOTS

1. Double frontage or reverse frontage lots shall be avoided, except when used in conjunction with the provisions for marginal access streets in Section 3.04.C, Marginal Access Streets.

2. Double frontage or reverse frontage lots shall require a non-access buffer of 25 feet on one side of the lot bounded by a street, in addition to other dimensional requirements.

E. CORNER LOTS

Corner lots shall be of sufficient size to ensure development may be configured to avoid required sight distance triangles.

F. DRAINAGE AND FLOOD PREVENTION

New subdivisions shall comply with all applicable requirements for stormwater management (see Section 5.01, Stormwater Management), drainage (see Section 5.02, Sedimentation and Erosion Control), and all applicable standards for flood damage prevention from Sections 24-31 through 24-117 of the City's Code of Ordinances, when located within a special flood hazard area.

SECTION 3.04. ACCESS TO LOTS

A. EVERY LOT MUST MAINTAIN ACCESS

1. GENERALLY

Except for lots within bona fide farms, exempt subdivisions, or in accordance with Section 3.04.A.2, Street Access Exemptions, all lots intended to contain a building or structure shall abut a street designed, built, and maintained to City or State standards, as applicable.

2. STREET ACCESS EXEMPTIONS

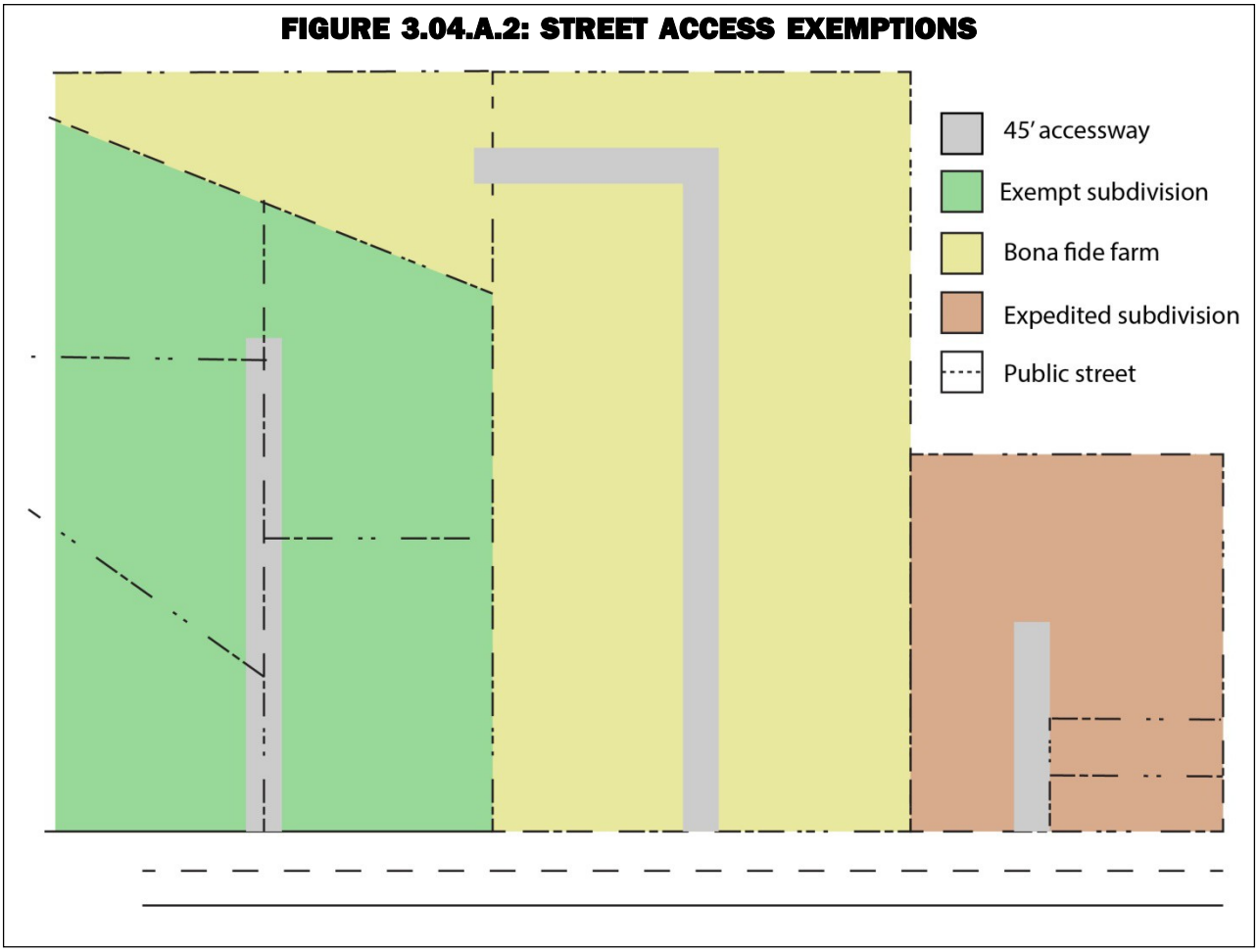
a. Lots in any of the following forms of development are not required to be served by a street meeting City or State standards:

i. Up to three lots in an expedited subdivision; or

ii. Up to three lots without roadway frontage that are served by a single, shared accessway.

b. Any lots not required to abut a street designed, built, and maintained to City or State standards shall maintain an access with a minimum width of 45 feet that is adequately maintained to afford a reasonable means of ingress and egress for emergency vehicles (see Figure 3.04.A.2, Street Access Exemptions).

FIGURE 3.04.A.2: STREET ACCESS EXEMPTIONS



3. ACCESS SERVING MORE THAN THREE LOTS

Accessways serving more than three lots outside a bona fide farm or exempt subdivision shall be designed, built, and maintained to public street standards.

B. ACCESS ON LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS

1. In cases where a tract or site abutting an expressway or boulevard street is proposed for subdivision (whether residential or otherwise), then all lots created shall maintain sufficient frontage on a different street, either pre-existing or created as part of the subdivision, so that direct access to lots need not be provided by an expressway or boulevard street (see Figure 3.04.B, Lots Abutting Expressway or Boulevard Streets).
2. The final plat creating the subdivision shall indicate a notation that driveway access to an expressway or boulevard is limited and shall be provided by a different street.
3. In the event a site or tract is unable to comply with the access limitations in this subsection, an applicant may seek a ~~variance~~ Variance in accordance with Section 2.04.J, Subdivision Variance.

FIGURE 3.04.B: LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS



C. MARGINAL ACCESS STREETS

1. Where a tract of land to be subdivided adjoins an expressway or boulevard street, the subdivider may be required to provide a marginal access street parallel to the expressway or boulevard street or reverse frontage where access is obtained solely by a different street for the lots to be developed adjacent to the expressway or boulevard street.
2. Where reverse frontage is established, private driveways shall not have direct access to the expressway or boulevard street, and a 25-foot-wide non-access buffer zone on the side of the lot abutting the expressway or boulevard street shall be provided.

D. DRIVEWAY CONSOLIDATION ALONG EXPRESSWAY, BOULEVARD, AND THOROUGHFARE STREETS

While a lawfully-established access to an individual lot from an expressway, boulevard, or thoroughfare street created prior to March 5, 2020 may remain, it is the intent of this Ordinance to consolidate or eliminate these driveways to help ensure public safety and to preserve the traffic-carrying capacity of the street. In order to encourage the beneficial removal of existing driveways or shared driveways serving two or more lots, the required side setbacks and any perimeter landscaping buffers required between lots may be reduced ~~or waived~~by up to 10% by the City Manager, ~~subject to~~if all of ~~the~~ the followingrequirements are met:

1. NCDOT confirms the shared access can still achieve a satisfactory level of access control;

2. A cross-access easement between all parties sharing access is approved by the City Manager and recorded with the Henderson County Register of Deeds;
3. All Fire Code regulations are met;
4. Adequate utility and drainage easements are provided, if necessary; and
5. Minimum side setbacks or perimeter landscaping buffer requirements are reduced by the smallest amount necessary to accommodate the shared access.

SECTION 3.05. MONUMENTS

Monuments shall be included as part of any subdivision, and shall be configured in accordance with *The Standards of Practice for Land Surveying in North Carolina*, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, and the following:

A. Prior to the approval of the final plat, permanent reference points shall have been established in accordance with the standards in this section.

B. At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.

C. If a corner is within 2,000 feet of a U.S. Geodetic Survey or NC Grid System coordinated monument, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this monument to an accuracy of at least one to 10,000.

D. When a monument is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object, or structure. However, if in the opinion of City Manager, a subdivision is of a small size, or if there is an existing tie within a reasonable distance of the subdivision, this shall not be required.

E. Within each subdivision, at least two monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments, if required.

F. The location and type of all monuments used shall be indicated on the final plat.

G. All monuments shall be constructed of #4 rebar surrounded by three-inch PVC pipe and filled with concrete.

H. Each monument shall be set 24 inches in the ground unless this requirement is impractical because of unusual conditions.

I. The allowable angular error of closure and the linear error of closure for surveys shall be in accordance with *Standards of Practice for Land Surveying* published by the State Board of Registration for Land Surveyors.

SECTION 3.06. EASEMENTS

Easements for drainage or utilities may be required where necessary, and shall be provided in accordance with the following:

A. LOCATIONS

1. Easements shall center along or be adjacent to a common property line where practicable.
2. Redesign of the lot arrangements may be required to meet extreme conditions.
3. Easements for water and sewer service within a subdivision shall be extended to any lot line shared with vacant land unless the vacant land cannot be served by public water or sewer service due to topographic constraints, public ownership, or other limiting factors as determined under the sole discretion of the City Manager.

B. UTILITIES

1. POWER OR COMMUNICATIONS

Where alleys are not provided, easements (of not less than ten feet in width) shall be provided adjacent to public rights-of-way or in such other locations as ~~may be directed by the City Manager for~~required for the installation of poles, wires, or conduits for electrical utilities, natural gas service, or telephone services in accordance with the standards of those utility providers.

2. POTABLE WATER

Easements shall be provided for public potable water supply systems in locations ~~as may be directed by the City Manager for~~required by the providers of public water for water distribution lines, water meters, and access points.

3. SANITARY SEWER

Easements shall be provided for public sanitary sewer systems in locations ~~as may be directed by the City Manager~~required by the provider of public sewer for sewer collection lines and access points.

4. DRAINAGE

Stormwater or drainage easements, if provided, shall be in accordance with the City-approved stormwater operation and maintenance agreement or as required by the Stormwater Ordinance found in Chapter 24 Article III of the City of Hendersonville Code of Ordinances.

C. WIDTH

Easement widths for potable water and sanitary sewer lines shall be provided in accordance with Table 3.06.C, Minimum Easement Width.

TABLE 3.06.C: MINIMUM EASEMENT WIDTH

PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
Sanitary Sewer Mains			
8 - 10	10 or less	20	30
8 - 10	10 - 12.5	25	35
8 - 10	12.5 - 15	30	40
8 - 10	15 – 17.5	34	45
8 - 10	17.5 - 20	40	50
12 – 24	15 or less	30	40
12 – 24	15 – 17.5	35	45
12 – 24	17.5 – 20	40	50
> 24	Any depth	[3]	[3]
Any size not listed here	> 20	[3]	[3]
Potable Water Mains			

8 - 10	10 or less	Section 3.06 Easements	20	30

TABLE 3.06.C: MINIMUM EASEMENT WIDTH			
PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
8 – 10	> 10	25	35
12 – 24	10 or less	30	35
12 – 24	> 10	35	40

NOTES:
[1] Nominal diameter.
[2] Temporary easement for construction only.
[3] As specified by City Manager.

D. EASEMENT UPSIZING

The City Manager may increase the minimum required easement widths for potable water sanitary sewer, drainage, or other utility services based on topographic conditions, environmental considerations, the size of the line, the required depth of the line, or the need to remain clear of other utilities as determined by the utility provider.

E. MAINTENANCE

1. All easements for drainage or utilities shall be cleared of undergrowth, trees, and other obstructions prior to approval of the final plat unless the ~~City Manager~~utility provider certifies in writing that ~~such clearance is unnecessary.~~ clearing is not necessary to enable the utility provider to utilize the easements.
2. Clearance is not required for easements that are provided for possible future use.
3. Easements for stormwater management facilities and stormwater drainage systems located outside the street right-of-way shall be maintained by an owner's association, and maintenance responsibility for these features shall be indicated on the final plat.

F. IDENTIFICATION

All easements shall be granted in favor of the City of Hendersonville, the State of North Carolina, the appropriate utility provider, an owner's association, as appropriate, and shall be shown and clearly labeled on the final plat.

SECTION 3.07. SUBDIVISION NAMES

The name of a proposed development shall not duplicate or be phonetically similar to an existing development name in the County unless the proposed development lies adjacent or in proximity to the existing development.

SECTION 3.08. CLUSTER MAILBOX UNITS

New residential subdivisions shall include cluster mailbox units in accordance with U.S. Postal Service guidelines and the following:

A. Wherever possible, cluster mailboxes shall be located in a centralized location, within an open space set-aside, served by pedestrian access and served by two or more off-street parking spaces.

B. In cases where the cluster mailboxes must be placed within a public right-of-way, the mailbox unit(s) shall be located and configured in accordance with the latest revision of the NCDOT policy guidance on the placement cluster box units (CBUs), including provision of a vehicular turnout.

C. Cluster mailbox units placed on a private street shall comply with NCDOT policy guidance on the placement of cluster box units (CBUs) on State-maintained streets.

SECTION 3.09. DEDICATION OF PUBLIC LAND

A. DEDICATION OF LAND FOR PUBLIC PARKS

Subdivisions of land for 30 or more single-family residential lots (including detached and attached units) shall be required to dedicate a portion of the land, or pay a fee-in-lieu thereof, for public parkland, in accordance with the standards of this section.

1. DEDICATION AMOUNT

a. Single-family residential subdivisions of 30 or more lots shall dedicate 500 square feet of land per residential lot to the City for its use in developing public parkland.

b. No credit towards required parkland dedication is given for lands mandated for preservation by State or federal requirements.

c. No more than 25 percent of the total dedication requirement may be met through dedication of water areas.

2. PROCEDURE FOR DEDICATION OR PAYMENT

a. The developer shall identify land proposed for dedication on the ~~major subdivision~~ Major Subdivision, or propose payment of an in-lieu fee as part of the application for approval of a ~~major subdivision~~ Major Subdivision.

b. The City shall review the proposed application and determine if it complies with the standards in Section 3.09.A.3, Nature of Area to be Dedicated, or Section 2.06, Fee-in-Lieu, as appropriate. The decision to accept dedication is up to the sole discretion of the City Council.

c. Land shall be dedicated prior to recording the first final plat for the subdivision, or the payment-in-lieu shall be paid prior to recording the first final plat for the subdivision for which the payment-in-lieu is paid.

3. NATURE OF AREA TO BE DEDICATED

All lands proposed for dedication as park areas shall meet the following standards:

a. UNITY

The dedicated land shall be a single parcel of land if the parcels are contiguous, whether the subdivision is developed in phases or sections.~~, except where it is determined by the City Manager that multiple parcels would better serve City residents.~~

b. USABILITY

Public parkland must be without significant topographic elevation changes, well-drained, and suitable ~~usable land~~ for use as a public park under generally accepted public park development standards for the development of a public park~~, as determined by the City Manager~~. In cases where dedication includes an area of water, public access to all portions of a water feature shall be provided and maintained, regardless of water feature's size.

c. SHAPE

The dedicated land shall be of a shape that supports gathering and recreation activities.

d. LOCATION

i. The dedicated parkland shall be located so it can reasonably serve the park needs of the residents of the subdivision and immediate area.

ii. The City ~~Council~~ may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the recreation and park area with adjacent development or park facilities, existing or planned.

e. ACCESS

i. All dwelling units in the subdivision and residents in the immediate area shall have access to and from the parkland provided by means of streets and public walkways or trails.

ii. Rights-of-way for this access shall be shown on the preliminary and final plats.

iii. All dedicated lands shall have access by way of a street. Such access can be provided when the dedicated land is adjacent to existing or proposed public parkland with street access.

4. CREDIT FOR GREENWAYS

Land or easements dedicated to the City in accordance with Section 4.05, Greenways, shall be credited towards the standards in Section 3.09.A.1, Dedication Amount.

ARTICLE 4: INFRASTRUCTURE

SECTION 4.01. PURPOSE AND INTENT

The purpose of this section is to establish standards for the planning, installation, and operation of public infrastructure as part of the subdivision of land in the City's planning jurisdiction. More specifically, this section is intended to:

A. Provide for the orderly growth and development of the City;

B. Coordinate the provision of streets within and contiguous to proposed subdivisions with other existing or planned streets in the general area;

C. Provide for the adequate provision of public services and infrastructure;

D. Maintain conditions essential to the public's health, safety, and general welfare; and

E. Facilitate the further re-subdivision of larger tracts into smaller parcels of land, where appropriate.

SECTION 4.02. GENERAL REQUIREMENTS

A. REASONABLE RELATIONSHIP

All required improvements and rights-of-way (other than required reservations) in this article shall substantially benefit the development or bear a reasonable relationship to the need for public facilities attributable to the new development.

B. CONSISTENCY WITH ADJACENT DEVELOPMENT

Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, the utility facilities (such as, water or sewer lines) shall be located and constructed in accordance with the standards in this section so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

C. WITHIN SPECIAL FLOOD HAZARD AREAS

Placement of required infrastructure within a special flood hazard area shall only be in accordance with the applicable standards for flood damage prevention in the Flood Damage Prevention Ordinance.

D. AS-BUILT PLANS REQUIRED

1. Whenever a developer installs or causes to be installed any water, sewer, stormwater, or sidewalk, the developer shall, as soon as practicable after installation is complete, and before acceptance, furnish the City with an as-built plan prepared by a licensed professional that shows the exact location and configuration of the utility. Nothing shall limit the depiction of more than one type of utility on the same as-built plan sheet.
2. The as-built plan must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing the development.
3. As-built plans shall be prepared and verified prior to issuance of a certificate of occupancy, commencement of operation, approval of a final plat, or release of a performance guarantee, as appropriate.

E. MAINTENANCE REQUIRED

1. Required infrastructure installed or caused to be installed by a developer and intended for ownership or operation by another entity shall be maintained by the developer until such time as the infrastructure is accepted by the entity who will own or operate it.
2. All utility facilities shall be constructed in a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

F. DEDICATION AND ACCEPTANCE

1. STREETS AND ASSOCIATED FACILITIES

a. The subdivider or developer shall install all streets in accordance with all NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements, as appropriate.

b. Streets and their associated infrastructure shall remain under private ownership or be dedicated to the City or NCDOT, in accordance with all applicable requirements.

2. POTABLE WATER

a. The subdivider or developer shall install all potable water supply lines and meters in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.

b. Potable water supply lines, including water tanks, distribution lines, water mains, and laterals shall be dedicated to the City or other public entity providing potable water for maintenance and operation. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City or another public entity providing potable water.

c. All lots in new subdivisions subject to the standards in this Ordinance shall abut a potable water main line.

d. In no instance shall a potable water service line serving an individual use extend across the lot line.

3. SANITARY SEWAGE SYSTEM

a. In cases of development being served by a public sewage systems, the subdivider or developer shall install all sewer lines in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.

b. All lots in new subdivisions subject to the standards in this Ordinance shall abut a sanitary sewer main line.

c. Except for private centralized systems, sanitary sewage lines, pump stations, and treatment facilities shall be dedicated to the City for maintenance and operation.

d. In no instance shall a sewer service line serving an individual use extend across the lot line.

e. Sewer lines serving individual lots or uses prior to their connection to the central collection system shall not be the responsibility of the City.

f. Centralized private sewage systems shall be offered for dedication to the City, who may choose to accept the system in the sole discretion of the City Council.

4. STORMWATER MANAGEMENT FACILITIES

a. The subdivider or developer shall install all stormwater management facilities in accordance with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, and any applicable State or federal requirements.

b. The City shall not accept dedication of land occupied by a stormwater management facility or maintenance responsibilities, though the City may require posting of a performance guarantee for stormwater management facility maintenance in accordance with Section 5.01, Stormwater Management.

c. The City may require granting and recordation of an access and maintenance easement to allow the City or its designated representatives to access and maintain a stormwater management facility required by this Ordinance.

5. PUBLIC PARK LAND

a. Land designated as public park land on a final plat shall be considered to be offered for dedication until such offer is accepted by the City. The offer may be accepted through conveyance of fee simple marketable title (unencumbered financially and environmentally) of the land to the City at the time of final plat recordation, or by other appropriate manner of acceptance in the City's discretion.

b. Until an offer of dedication is accepted by the City, land offered for dedication may be used for open space purposes by the landowner or by the owners' association. Land offered for dedication shall not be used for any purpose inconsistent with the proposed public use.

SECTION 4.03. STREETS

A. GENERALLY

1. STREETS DISTINGUISHED

All streets, roads, and alleys within the City's planning jurisdiction shall be designated as one of the following street types, based on maintenance responsibility:

a. State-maintained, or NCDOT streets (this includes roadways in the federal highway system);
b. City streets that ~~are~~ will be owned, maintained or ~~and~~ operated by the City of Hendersonville; or
c. Private streets that ~~are~~ will be owned and maintained by individuals or owner associations.

2. TYPES OF STREETS

a. PUBLIC STREETS

Streets that are owned, operated, or maintained by the NCDOT, the City, or the federal government shall be considered as public streets.

b. PRIVATE STREETS

Streets that are owned, operated, or maintained by an individual or an owner's association shall be considered private streets.

3. STREET CLASSIFICATION

a. All new and existing streets in the City's planning jurisdiction shall be identified in the City's adopted policy guidance as one of the following street classifications:

TABLE 4.03.3: STREET CLASSIFICATION

STREET TYPE	DESCRIPTION
Freeway	Freeways are the highest classification of streets and are designed and constructed with mobility and long-distance travel in mind. Access is controlled, intersections are grade-separated, driveways serving individual lots are prohibited, and roadways are designed for high-speed travel of 55 mph or greater. Roadways in this functional classification category connect the City to other destinations in the State and connect major activity centers in the City to one another. Freeways carry the highest traffic volumes.
Expressway	These streets provide a high degree of mobility both within the City's urban areas as well as through neighboring rural areas. Vehicles move at high-to-moderate speeds and four-way intersections are often signal-controlled. These streets include at-grade intersections with other streets typically spaced 2,000 feet apart, but driveways to individual lots are typically limited to right-in/right-out or grade separated left turns. The average number of vehicles trips can vary widely based on the urban or rural location of an expressway.
Boulevards	Boulevards connect major streets to one another and provide for vehicle trips of moderate length at medium speeds. The road is typically two or more lanes with a median with median breaks provided for U-turns. Full-movement driveways may be provided when alternative forms of access are not available.

TABLE 4.03.3: STREET CLASSIFICATION

STREET TYPE	DESCRIPTION
Major Thoroughfare	Major thoroughfares provide a balance of mobility and access with moderate traffic volumes and low-to-medium speeds between 25 and 55 mph. Streets may be up to four lanes wide with no median and no requirements for access control. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Minor Thoroughfare	Minor thoroughfares provide balanced mobility and access with moderate traffic volumes and lot-to-medium design speeds of up to 45 mph. Streets may have up to three lanes with no more than one lane per direction. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
Local	Local streets occupy the largest percentage of lane miles across all types of streets and primarily provide direct access to individual lots. Local streets are often configured to discourage through traffic, though local streets can also effectively disperse local traffic when configured as part of a highly connected network offering multiple routes.
Cul-de-Sac	A dead-end local street that terminates in a vehicular turnaround.
Alley	A secondary street that provides direct access to a limited number of individual lots or land uses. In most cases, access is provided to the side or rear of the lot served by the alley.

b. Nothing shall prohibit a change in street classification based on traffic volumes or anticipated needs.

c. In no instance shall a private street be classified as a freeway, expressway, boulevard, or thoroughfare street.

4. COMPLIANCE WITH POLICY GUIDANCE

a. ALL STREETS

Except where otherwise allowed in accordance with Section 3.04.A.2, Street Access Exemptions, all streets and rights-of-way within the City's planning jurisdiction shall be designed, constructed, and maintained in accordance with the following:

i. Streets maintained by the State shall comply with the standards established for the particular classification of street in question by the NCDOT.

ii. Streets dedicated to or maintained by the City shall comply with all applicable standards established by this Ordinance or the City's Code of Ordinances, whichever is higher or more restrictive.

b. ADDITIONAL STANDARDS FOR STATE-MAINTAINED STREETS

i. All streets intended for dedication to the State shall have rights-of-way and construction meeting the standards contained in the *Subdivision Roads, Minimum Construction Standards Handbook*, as revised, published by the NCDOT.

ii. The District Highway Engineer shall approve the plat with respect to road construction, road width, and right-of-way prior to recording. Without the approval, the plat cannot be recorded.

iii. Once the development meets the minimum housing requirements for state road acceptance, the developer shall petition NCDOT for state road acceptance.

iv. After inspection and upon receipt of outcome of the inspection, the developer shall have 12 months to turn over roads to NCDOT.

B. STREET DESIGN

1. DEDICATION AND CONSTRUCTION

a. All lands associated with a new or modified street right-of-way shall be dedicated to the City or the State as a part of the development process in accordance with Section 136-66.10 of the North Carolina General Statutes.

b. All streets shall be improved to the full width, cross section, and profile, including paving and drainage, as specified in the development approval, this Ordinance, the City's adopted policy guidance, State or federal law, and any other applicable provisions.

c. The subdivider or developer shall be responsible for the construction and installation of all streets and infrastructure in accordance with the applicable development approval, NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements.

d. No road construction or improvements shall commence until a plan showing the proposed roadway improvements and a construction plan demonstrating compliance with the standards of this Ordinance is approved by the City Manager.

2. PRIVATE STREETS

a. NEW STREETS

i. Except where otherwise allowed in accordance with Section 3.04.A.2, Street Access Exemptions, all streets constructed, extended, or modified after March 5, 2020 shall be constructed, maintained, and operated in accordance with the standards for public streets.

ii. Private streets shall not be constructed as part of development within the City's corporate limits.

iii. Existing streets associated with land or subdivisions proposed for voluntary annexation shall meet applicable City requirements prior to or concurrent with annexation.

b. EXISTING PRIVATE STREETS

i. Neither the City of Hendersonville or NCDOT shall be responsible for maintenance of private streets existing on or after March 5, 2020.

ii. The City shall not accept maintenance responsibility for any private streets that do not meet the City's standards for street configuration and construction.

3. GENERAL LAYOUT

a. Streets shall be related appropriately to the topography and designed to facilitate the drainage and stormwater runoff.

b. Street grades shall be governed by NCDOT requirements and shall conform as closely as practicable to the original topography.

c. Half streets (such as streets of less than the full required right-of-way and pavement width) shall not be permitted, except where the streets, when combined with a similar street, developed previously or simultaneously, on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this Ordinance.

d. When a development abuts or contains an existing or proposed freeway, expressway, or boulevard, the City Manager may require frontage streets, reverse frontage with landscape plantings, or other treatment as may be necessary for adequate protection of residential properties and to ensure separation of through and local traffic.

e. Reserve strips or parcels controlling access to streets shall be prohibited, except where required as part of development on a double-frontage lot.

4. COMPLIANCE WITH TRANSPORTATION IMPACT ANALYSIS FINDINGS

In cases where new development is subject to a requirement to prepare a transportation impact analysis, all streets and street-related infrastructure shall comply with the findings of the analysis.

5. CONTINUATION AND COORDINATION OF NEW STREETS

a. New streets or upgrades to existing streets resulting from new development shall comply with the location, classification, configuration, and operation requirements identified in the City's adopted policy guidance or NCDOT standards, as appropriate. For the purposes of this section, the City's adopted policy guidance shall include, but not be limited to the following:
   i. The Comprehensive Plan;
   ii. The Comprehensive Transportation Plan from the French Broad MPO, as amended; and
   iii. The City's Standard Specifications and Details.

b. Whenever a street within a new development continues an existing street that formerly terminated outside the development or it is expected that a new street will be continued beyond the development at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the development.

c. The arrangement of streets in a development shall provide for the alignment and continuation of existing or proposed streets into adjoining lands in those cases in which the adjoining lands are undeveloped and deemed appropriate by the DRC for future development or in which the adjoining lands are developed and include opportunities for such connections.

d. Street rights-of-way shall be extended to or along adjoining property boundaries such that a roadway connection or street stub shall be provided for development where practicable and feasible in each direction (north, south, east, and west) for development which abuts vacant lands.

e. Boulevard and thoroughfare streets shall intersect with surrounding boulevard and thoroughfare streets at safe and convenient locations, as determined by the NCDOT and the City Manager.

f. At all locations where streets terminate with no street connection, but a future connection is planned or accommodated, a sign shall be installed at the location with the words "FUTURE ROAD CONNECTION" to inform property owners.

g. The final plat shall identify all stub streets and include a notation that all street stubs are intended for connection with future streets on adjoining undeveloped or underdeveloped lands.

h. The use of residential strips of land in order to prevent the extension of proposed or existing streets or access thereto is prohibited.

i. Where access to a subdivision site is by a street that does not meet City or State standards, that street shall be improved by the developer in order to meet current City or State standards, as appropriate.

6. CONNECTIVITY

Streets within new subdivisions shall be connected to one another to ensure emergency access and prevent traffic congestion in accordance with the following:

a. MINIMUM CONNECTIVITY INDEX SCORE REQUIRED

All development shall achieve an internal street connectivity score in accordance with Table 4.03.B.6: Minimum Street Connectivity Score.

TABLE 4.03.B.6: MINIMUM STREET CONNECTIVITY SCORE

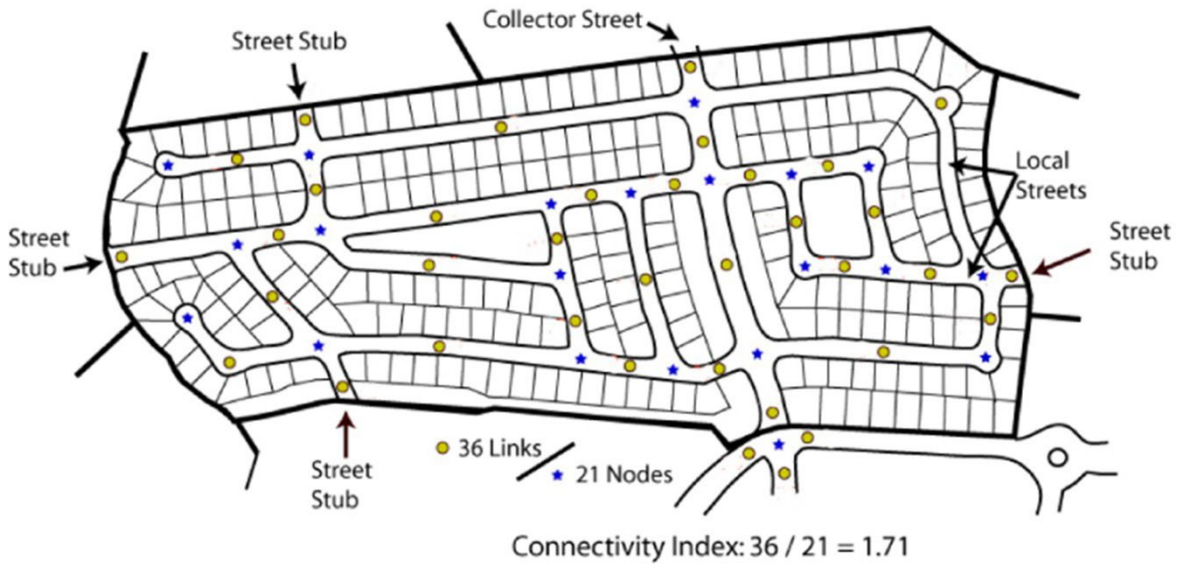
ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE
R-15, R-20, and R-40	1.20
All Other Districts	1.40

b. CONNECTIVITY INDEX SCORE CALCULATION

i. The connectivity index for a development is calculated by dividing its links by its nodes.

ii. Figure 4.03.B.6, Street Connectivity Index Example, provides an example of how to calculate the connectivity index. Nodes (stars) exist at street intersections and cul-de-sac heads within the development. Links (circles) are stretches of road that connect nodes. Street stub-outs are considered as links, but temporary dead-end streets internal to a development or alleys are not counted as links. One link beyond every node that exists in the development and provides access to the street system outside the development shall be included in the index calculation. In the diagram, there are 36 links (circles) and 21 nodes (stars); therefore the connectivity index is 1.71 (36/21 = 1.71).

FIGURE 4.03.B.6: STREET CONNECTIVITY INDEX EXAMPLE



c. REDUCTION IN MINIMUM INDEX SCORE

The minimum connectivity index score may be reduced if the owner/developer demonstrates it is not possible to achieve due to topographic conditions, natural features, existing road configurations, or adjacent existing development patterns. In these instances, internal street design shall achieve as high a connectivity index score as is reasonably practical.

C. STREET CONFIGURATION

1. STREET RIGHTS-OF-WAY

a. All new streets established in the City's jurisdiction after March 5, 2020 shall include a minimum street right-of-way configured in accordance with Table 4.03.C.1: Minimum Street Right-of-Way Requirements.

TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS

TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]

TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS

TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Expressway	8 lanes, raised median	160
	4 lanes, grass median	150
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Boulevard	8 lanes, raised median	160
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	

NOTES:
[1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips.
[2] Minimum rights-of-way may need to be wider to accommodate all forms of planned infrastructure in accordance with the City's adopted policy guidance.
[3] Radius will be wider.

b. In cases where an existing street is depicted on the City's adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the City's adopted policy guidance as part of the development.

2. STREET INTERSECTIONS

Street intersections shall be configured in accordance with the following standards:

a. Not more than two streets shall intersect at any one point unless the City or NCDOT certifies that such an intersection can be constructed with no extraordinary danger to public safety.

b. Streets shall intersect at right angles to the maximum extent practicable, and no two streets shall intersect at less than 60 degrees.

c. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of the street.

d. Where a street center line offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 125 feet.

e. Except when no other alternative is practicable or legally possible, no two streets may intersect with any other street on the same side at a distance of less than 200 feet measured

from centerline to centerline of the intersecting street. When the intersected street is an expressway or boulevard, the distance between intersecting streets shall be at least 1,000 feet, unless no other alternative is practicable.

f. Property lines at street intersections shall be shown as a chord connecting points not less than 15 feet back from the street intersection along each street right-of-way line. Longer setbacks for chord connections for property lines may be required by the DRC as needed for public safety.

g. In commercial developments the City may assign traffic control to thru traffic within 500 feet of the point of access to the public right-of-way.

3. DEVELOPMENT ENTRY POINTS

a. Unless exempted in accordance with subsection (d) below, all subdivisions shall provide streets from the development to the street system outside the development in accordance with Table 4.03.C.3, Required Points of Access:

TABLE 4.03.C.3: REQUIRED POINTS OF ACCESS [1]

TYPE OF DEVELOPMENT	DEVELOPMENT SIZE	MINIMUM NUMBER OF VEHICULAR ACCESS POINTS [2]
Residential and Mixed-Use Development [3]	30 or fewer lots	1
	31 or more	2
Non-residential Development, other than Industrial [4]	Less than 5 acres or fewer than 10 lots	1
	More than 5 acres	2

NOTES:
[1] Points of access shall refer to streets, not driveways.
[2] Additional vehicular access points may be required where determined necessary by the City.
[3] Multi-family or mixed-use developments of 100 dwelling units or more shall provide at least two points of access regardless of the number of lots.
[4] The Fire Code may require a minimum of two points of access.

b. Nothing in this section shall limit the total number of streets providing access to the street system outside a development, or exempt a development from meeting all applicable street connectivity standards.

c. Street stubs shall be credited as an access point when all ingress or egress to a development is only available from a single expressway, boulevard, or thoroughfare street.

d. Development shall be exempted from these standards if it is demonstrated the following conditions apply:

i. A transportation impact analysis allows a deviation;
ii. No other street access points can be located due to existing lot configurations, absence of connecting streets, environmental, or topographic constraints;
iii. NCDOT will not authorize the required number of entrances; or
iv. Alternative access can be provided in a manner acceptable to the City that is supported by a transportation impact analysis.

4. TURN LANES

Turn lanes for either or both left and right turns into a commercial or residential subdivision driveway may be necessary for safety when there are high roadway and/or turning volumes or traffic, when the roadway speeds are moderate or high, or where needed due to limited sight distance. When provided, turn lanes shall be configured in accordance with the following:

a. The final determination for the need, location, and design of a turn lane is the responsibility of the NCDOT, or the City, as appropriate.

b. Left and right turn lanes shall be constructed in accordance with NCDOT standards and specifications.

c. Right-turn lanes shall be constructed entirely within the frontage of the property being served, since an adjacent development might subsequently require an entrance that would otherwise encroach into the turn lane.

d. The NCDOT may require a undivided street to be widened when the median has an inadequate width for a left turn lane.

5. DECELERATION LANES

a. Any use capable of generating more than 60 trips per peak hour, as estimated by using NCDOT guidelines or the Institute of Traffic Engineers Trip Generation Manual, shall provide at least one deceleration lane per street front in accordance with NCDOT standards when the use is located along an expressway or boulevard street.

b. Deviations from these requirements may only be authorized when the NCDOT indicates that a particular development design or technique can still achieve a satisfactory level of access control consistent with the objectives of this section.

6. CUL-DE-SAC AND DEAD-END STREETS

a. No permanently designed cul-de-sac or other dead-end street shall be longer than 800 linear feet, except where land cannot otherwise be subdivided practicably in the opinion of the City Manager.

b. In cases where one cul-de-sac is accessed from another cul-de-sac, the maximum length for all cul-de-sacs accessed from one another shall be 500 linear feet.

c. All permanent cul-de-sacs or other dead-end streets shall be provided at the closed end with a turn-around configured in accordance with the City's minimum requirements.

d. Dead-end streets intended to be continued at a later time shall be provided with a turn-around as required for a dead-end street when required by the City Manager.

e. Only that portion to be required as right-of-way when the street is continued shall be dedicated and made a public street.

7. STREET GRADE

Street grades shall comply with the following standards:

a. Streets and their associated gutters shall maintain grade levels in accordance with Table 4.03.C.7, Maximum and Minimum Street Grade.

TABLE 4.03.C.7: MAXIMUM AND MINIMUM STREET GRADE

STREET TYPE	MAXIMUM GRADE	MINIMUM GRADE
Expressways and Boulevards	6%	Not less than 1%
Major and Minor Thoroughfares	8%	Not less than 1%
Local Streets	10%	

b. Street and intersection approaches shall not have grades in excess of three percent for a distance of 100 feet from the intersection of center lines in all directions for all streets.

c. All changes in grades for local streets and thoroughfares shall be connected by a vertical curve of a minimum length of 40 times the algebraic difference in the percents of grade ("K" value). Stop conditions shall have a minimum "K" value of 14 times the algebraic difference

of the percents of grade. "K" values for arterials shall be per the AASHTO Geometric Design of Highways and Streets based on design speed.

d. The City Manager may consider deviations from these standards based on topographic conditions or public safety concerns.

8. STREET CURVES

Street curves shall maintain the minimum radii established in Table 4.03.C.8: Minimum Curve Radii and Tangents:

TABLE 4.03.C.8: MINIMUM CURVE RADII AND TANGENTS

STREET TYPE	MINIMUM RADII (FEET)	MINIMUM TANGENT DISTANCE BETWEEN REVERSE CURVES ON THE SAME STREET (FEET)
Expressways and Boulevards	600	150
Major and Minor Thoroughfares	400	100
Local Streets	150	0

9. STREET DRAINAGE

a. All required drainage facilities associated with a street right-of-way shall be constructed prior to consideration of a final plat.

b. Storm sewers, drains, and structures installed by the subdivider shall be installed of a size, type, and in locations as approved by the City Manager, or NCDOT, as appropriate.

c. Street drainage facilities located outside the street right-of-way shall be maintained by the developer, the landowner, or an owners' association, and maintenance responsibility shall be noted on the final plat.

d. The City shall not be responsible for any private or commonly-held subdivision drainage infrastructure connected to publically-maintained drainage facilities, streams, or other outlets having constant flow.

10. SIGHT DISTANCE TRIANGLES

a. SIGHT DISTANCE TRIANGLES ESTABLISHED

i. Corner lots and lots with driveways, alleys, or other methods of ingress/egress to a street shall include sight distance triangles to ensure visibility for drivers and pedestrians moving through or in an intersection.

ii. Required sight distance triangles shall be configured in accordance with Table 4.03.C.10: Sight Distance Triangle Requirements.

iii. Land within a required sight distance triangle shall comply with the standards in Section 4.03.C.10.c, Limitations on Obstructions within Required Sight Distance Triangles.

TABLE 4.03.C.10: SIGHT DISTANCE TRIANGLE REQUIREMENTS

TYPE OF STREET, INTERSECTION, OR DRIVEWAY		MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
Intersections of Streets [4]		10/70
Driveways Serving Parking Lots		10/70
Driveways Serving Land Uses Without Parking Lots	Residential	None
	All Other Uses of Land	10/70 wherever possible

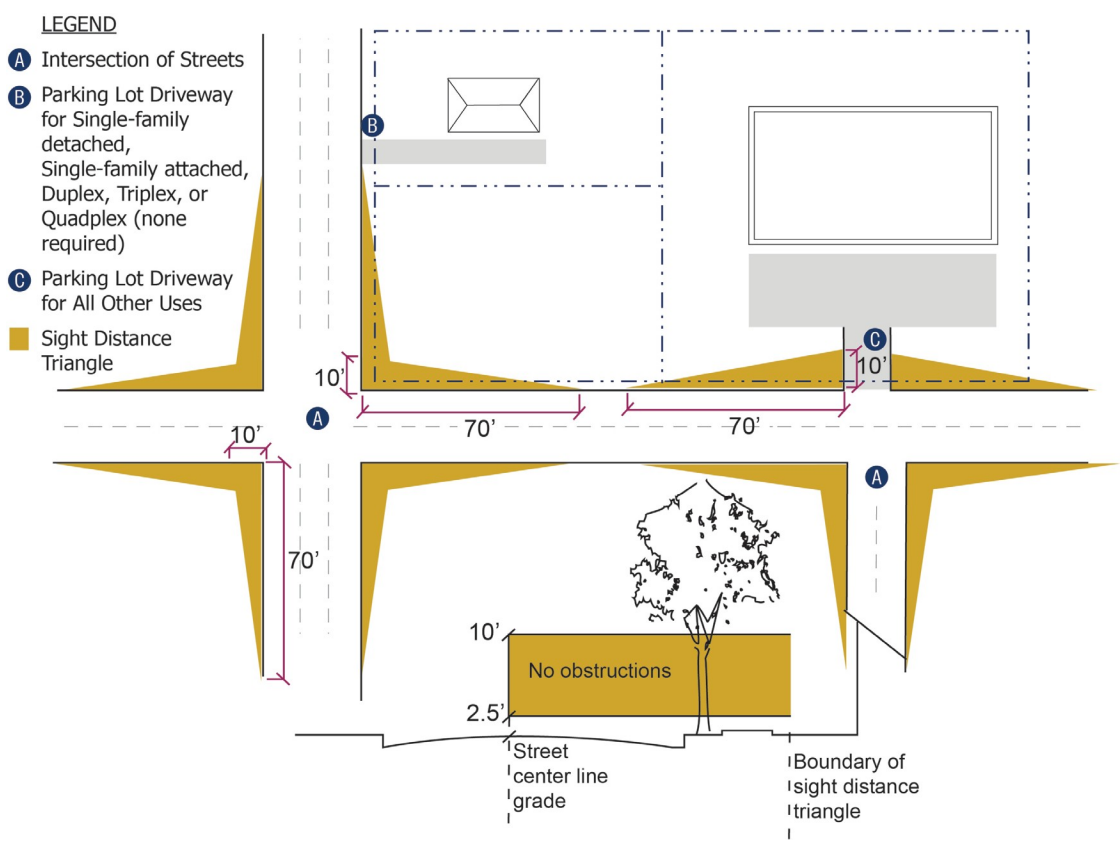
NOTES:
[1] See Figure 4.03.C.10, Sight Distance Triangles, for the 10/70 configuration.
[2] The NCDOT may require an alternate configuration.

TABLE 4.03.C.10: SIGHT DISTANCE TRIANGLE REQUIREMENTS	
TYPE OF STREET, INTERSECTION, OR DRIVEWAY	MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
[3] AASHTO requirements shall be applied to streets with curves. [4] Includes all streets, including public streets.	

b. MEASUREMENT OF SIGHT DISTANCE TRIANGLE

Sight distance triangles shall be an area between a point at the edge of a street right-of-way located 70 linear feet from the intersection and a second point at the edge of the opposing street right-of-way located ten feet from the intersection (see Figure 4.03.C.10, Sight Distance Triangles).

FIGURE 4.03.C.10: SIGHT DISTANCE TRIANGLES



c. LIMITATIONS ON OBSTRUCTIONS WITHIN REQUIRED SIGHT DISTANCE TRIANGLES

i. No planting, structure, fence, wall, slope, embankment, parked vehicle, or other obstruction to vision between the heights of two-and-one-half (2½) feet and ten feet above the centerline grades of intersecting streets or accessways may be located within a required sight distance triangle.

ii. No structure or object, regardless of its size, which obstructs visibility within a required sight distance triangle to the detriment of vehicular or pedestrian traffic shall be permitted.

D. STREET FEATURES

1. STREET NAMES

Street names and property address numbers shall be assigned by Henderson County.

2. TRAFFIC CONTROL SIGNS AND SIGNALS

a. If deemed necessary by the City or by NCDOT, signals shall be installed by the developer at each street intersection within the subdivision and at each intersection of a subdivision street and a state-maintained road or access road.

b. Signs and signals shall comply with NCDOT regulations with regards to size, shape, color, location and information contained thereon.

c. At least two or more traffic-control signs shall be placed at each four-way street intersection and at least one at each "T" intersection.

d. Signs and signals shall be installed free of visual obstruction.

3. STREET SIGNS

a. The subdivider or developer shall install standard street signs as part of new development.

b. In cases where decorative street signs are proposed, the developer or subdivider shall be responsible for the cost of the decorative street signs.

c. Decorative street signs shall be approved as to form and content by the City prior to installation.

d. Street name signs shall conform to City and NCDOT standards.

e. At least two street name signs shall be placed at each four-way street intersection and at least one at each "T" intersection.

f. Street signs shall be installed on the northwest and southeast corners of every four-way intersection.

g. Signs shall be installed free of visual obstruction.

4. STREET LIGHTS

a. Streets and sidewalks shall be illuminated with street lights or pedestrian lighting for security and safety, in accordance with City, utility company, and NCDOT standards.

b. Areas adjacent to the vehicular entrances for non-residential, mixed-use, and multi-family residential developments shall be adequately lighted to ensure the safety of persons and the security of the buildings.

5. VEHICULAR GATES

a. Gates to private property shall conform to City requirements for emergency access and be served by a vehicular turnaround.

b. Proposed gates shall be reviewed and decided by the City Manager.

c. In no instance shall a vehicular gate be placed within a public street right-of-way, but vehicular gates may be located within the right-of-way for a private street.

6. BRIDGES AND CULVERTS

a. All bridges shall be designed by a professional engineer licensed by the State of North Carolina.

b. All bridges and culverts shall be built to NCDOT standards.

7. DAMS

a. Maintenance of a dam structure shall be the responsibility of the developer or an owners' association.

b. The party responsible for dam maintenance shall provide a performance guarantee for the dam's maintenance in perpetuity in accordance with the standards in Section 2.05, Performance Guarantees.

SECTION 4.04. SIDEWALKS

A. LOCATION

Sidewalks meeting the requirements in Section 4.04.D, Configuration, are required in accordance with the City's adopted policy guidance and the following standards:

1. SIDEWALKS PROVIDED ON BOTH SIDES OF THE STREET

a. Sidewalks shall be provided along both sides of all expressway and boulevard streets, regardless of the zoning district where located.

b. Sidewalks shall be provided along both sides of all streets except alleys in the area designated as downtown in the City's adopted policy guidance.

2. SIDEWALKS PROVIDED ON ONE SIDE OF THE STREET

a. Sidewalks shall be required on one side of the street in the following locations:

i. Along local streets; and

ii. Along cul-de-sac, dead-end, and loop streets serving nine or more lots or nine or more dwelling units.

b. When sidewalks are required on one side of the street, they shall generally be located on the side of the street to best continue existing sidewalk networks, if present.

c. Sidewalks are not required around the head of a cul-de-sac street.

d. Where there is no clear preferable street side for the placement of a sidewalk, the sidewalk shall be placed on the street side where it is least likely to have a negative impact on stormwater management, in the opinion of the City Manager.

e. In cases where sidewalks are already found on both sides of a street serving immediately adjacent development, sidewalks shall be provided along both sides of the street serving new development.

3. NO SIDEWALKS REQUIRED

No sidewalks shall be required in the following locations:

a. Along freeways and interstate highways maintained by NCDOT;

b. Along alleys and accessways to individual lots not served by a street; and

c. Along gravel streets.

B. CLUSTER MAILBOX UNITS

Sidewalk access shall be provided to all cluster mailbox installations that do not include vehicle parking spaces in accordance with Section 3.08, Cluster Mailbox Units.

C. RESPONSIBILITY FOR SIDEWALK PROVISION

1. The applicant or developer of a subdivision or site plan, as appropriate, shall be responsible for the provision of sidewalks required in accordance with this section.

2. In no instance shall a final plat be recorded or land conveyed within a subdivision subject to the standards in this section before the sidewalk is completed, a fee-in-lieu has been provided (see Section 2.06, Fee-in-Lieu), or a performance guarantee has been provided in accordance with Section 2.05, Performance Guarantees.

D. CONFIGURATION

1. Sidewalks shall be located within a designated street right-of-way or in another City-approved location.

2. Sidewalks shall be at least five feet wide, and may be required to match the width of a connecting sidewalk that exceeds five feet in width.

3. Sidewalks shall be constructed of concrete or other hard-surface materials, consistent with the established sidewalk patterns on adjacent developments.

4. Pedestrian street crossings shall be raised above the adjacent street level, be constructed of material other than asphalt, or be striped as a traffic-calming measure.

5. Sidewalks shall connect with existing sidewalks at property boundaries.
6. Whenever curb and gutter construction is used on public streets, wheelchair ramps for the disabled, configured in accordance with NCDOT standards, shall be provided at intersections and other major points of pedestrian flow in accordance with Section 136-44.14 of the North Carolina General Statutes.
7. New nonresidential, mixed-use, and multi-family development shall provide at least one on-site improved connection between the development and the adjacent public sidewalk system (planned or existing).

E. CREDIT FOR TRAILS

Hard-surfaced, ADA-accessible trails within open space set-asides shall be credited towards these sidewalk requirements when trails are available for use by the public and connect open space set-asides to schools, shopping areas, or other recreation areas.

SECTION 4.05. GREENWAYS

A. REQUIRED GREENWAY DEDICATION AND CONSTRUCTION

1. Whenever a tract of land included within any proposed ~~minor subdivision~~ Minor Subdivision, ~~major subdivision~~ Major Subdivision, or conservation subdivision includes any part of a greenway designated in the City's adopted policy guidance, the greenway shall be platted and dedicated to the City as a greenway easement.
2. Greenways shall be constructed as part of the required infrastructure serving a site or a subdivision.

B. GREENWAY CONFIGURATION

1. A greenway easement shall be at least 50 feet wide, to the maximum extent practicable.
2. The greenway shall include an all-weather surface trail of at least ten feet in width, paved with asphalt or concrete that meets ADA guidelines for accessibility.
3. The trail shall be edged with gravel shoulders of at least one foot in width on each side.
4. Positive drainage shall be established in areas adjacent to the paved trail.
5. In cases where a greenway crosses a street, the pedestrian crossing area shall be demarcated and supplemented with signage that alerts drivers to the presence of pedestrians.

C. DENSITY CREDITS

1. Land that is dedicated in fee-simple interest to and accepted by the City in accordance with this section shall be credited toward the donating parcel's lot or tract area for the purpose of calculating the density of development and area coverage calculations though no longer part of the parcel.
2. Dedicated land credits shall be transferred to subsequent holders if properly noted in transfer deeds.

D. OPEN SPACE SET-ASIDE CREDITS

Land associated with a greenway dedication or easement shall be credited towards any open space set-aside requirements.

E. PARK LAND DEDICATION CREDITS

Land associated with a greenway dedication or easement shall be credited towards any requirements in Section 3.09.A, Dedication of Land for Public Parks.

F. PAYMENT IN-LIEU OF PROVIDING GREENWAYS

Provision for payment of a fee-in-lieu of providing a greenway shall be in accordance with Section 2.06, Fee-in-Lieu.

SECTION 4.06. POTABLE WATER

All new development shall comply with the City's standards for potable water in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. WATER SUPPLY SYSTEM REQUIRED

1. Every lot within a subdivision shall be served by a means of a water supply that is adequate to accommodate the reasonable needs of the use or subdivision lot(s).
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the potable water system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the water supply system requirements of this Ordinance.

B. CONNECTION TO CITY WATER SUPPLY SYSTEM

Except where exempted by this Ordinance, all new development shall connect to the public potable water supply system.

C. DEDICATION AND ACCEPTANCE

1. The subdivider or developer shall install all potable water supply lines and service connections in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for installation of the required potable water lines.
3. Potable water supply lines, including water tanks, distribution lines, water mains, pump stations, valves, hydrants, laterals, and other appurtenances shall be dedicated to the City for maintenance and operation.
4. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City.

D. OVERSIZING OF WATER SUPPLY SYSTEM-RELATED IMPROVEMENTS

1. The water supply system where the subdivision is being developed may require installation of certain oversized facilities, such as water mains in excess of eight inches in diameter, when it is in the interest of future development.
2. When oversizing is required, the public water system operating where the subdivision is located shall pay for that portion of the improvement that exceeds the standards set forth in this Ordinance.
3. When oversizing is required, the developer may enter into a development agreement with the City for reimbursement of the cost of the oversize lines.

SECTION 4.07. SANITARY SEWER

All new development shall comply with the City's standards for wastewater disposal in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

A. SEWAGE SYSTEM REQUIRED

1. Every lot within a subdivision intended to be developed shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of the use or subdivision lot and that complies with all applicable City and State requirements.
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the sanitary sewer system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the sanitary sewer system requirements of this Ordinance.
4. No sewage treatment system that discharges into surface waters shall be allowed.

B. CONNECTION TO PUBLIC SEWER

Except where exempted by this Ordinance, all new development shall connect to the public sanitary sewer system.

C. DEDICATION AND ACCEPTANCE

1. In cases of development being served by the public sewage system, the subdivider or developer shall install all sewer lines in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for the installation of the required sanitary sewer lines.
3. Sanitary sewage lines, including treatment facilities, pump stations, force mains, and laterals shall be dedicated to the City for maintenance and operation.
4. Service lines serving individual lots or uses outside of a right-of-way or sewer easement shall not be the responsibility of the City.

SECTION 4.08. FIRE PROTECTION

All new development shall comply with the City's adopted Fire Code and related appendices, the City's Standard Specifications and Details, as well as the following:

A. FIRE HYDRANTS

1. Every subdivision that is served by a public water system with at least six-inch lines shall include a system of fire hydrants within the development.
2. Fire hydrants must be located so that not more than 400 linear feet, measured along the centerline of the street right-of-way, separates a property within the development and a fire hydrant. However, the City may require a deviation from the standards in this section if a different configuration is warranted pursuant to the Fire Code or other generally accepted applicable standards.
3. Local fire officials shall determine the precise location of all fire hydrants.
4. Fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter and placed within ten feet of the edge of a public street without curb and gutter.
5. The City shall, after consultation with local fire officials, determine the design standards of all hydrants based on fire flow needs, which shall maintain a minimum flow rate of 1,000 gallons-per-minute, and 20 psi, or shall be supplemented with a pump or increased diameter pipe sizes.
6. Additional lots subdivided from the same parent parcel/tract of land shall comply with these fire hydrant standards.

ARTICLE 5: ENVIRONMENT

SECTION 5.01. STORMWATER MANAGEMENT

All new development shall comply with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, as well as the following:

A. PURPOSE AND INTENT

These stormwater management standards are proposed to ensure new and existing development is configured to retain and slowly release stormwater to help promote ground water quality and avoid nuisance flooding on surrounding lands. These standards are intended to:

1. Establish basic requirements for stormwater management for all uses in the City's planning jurisdiction; and
2. Identify the types of development required to file a stormwater management plan to control stormwater in accordance with this section.

B. APPLICABILITY

1. STORMWATER MANAGEMENT REQUIRED

The stormwater management standards in this section shall apply to all development that disturbs one acre of land area or more.

2. STORMWATER MANAGEMENT PLAN REQUIRED

Development subject to these standards shall comply with the following:

a. Stormwater management plans shall be prepared by a licensed professional authorized by the State to prepare such documents.

b. Stormwater management plans shall be prepared in accordance with Chapter 24, Article III~~3~~, theStormwater Ordinance, of the City's Code of Ordinances.

SECTION 5.02. SEDIMENTATION AND EROSION CONTROL

All new development shall comply with the standards in the Henderson County Soil Erosion and Sedimentation Control Ordinance and the following:

A. EROSION AND SEDIMENTATION CONTROL PLAN REQUIRED

Any development subject to a ~~minor subdivision~~ Minor Subdivision, conservation subdivision, ~~major subdivision~~ Major Subdivision, or final plat that requires land disturbing activity shall require prior approval of an erosion and sedimentation control plan by Henderson County in accordance with Section 113A-57(4) of the North Carolina General Statutes, unless exempted by this section.

B. EXEMPTIONS

Section 5.02.A, Erosion and Sedimentation Control Plan Required, shall not apply in cases where the Henderson County or the State Sedimentation Control Commission has certified to the City that:

1. An erosion and sedimentation control plan for the associated project has already been submitted to and approved by the County or the State Sedimentation Control Commission; or
2. The County or the State Sedimentation Control Commission has examined the preliminary plans for the development and it reasonably appears that an erosion and sedimentation control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until the County or the Commission approves the erosion and sedimentation control plan.

C. TIMING OF REVIEW

An applicant for development subject to this section shall submit proof of an approved erosion and sedimentation control plan prior to issuance of a building permit or final plat, as appropriate.

SECTION 5.03. STEEP SLOPES

A. PURPOSE

These standards establish additional requirements for subdivision and development of lands that include steep slopes, ridgelines, and hillsides that are visible from the public realm as necessary to protect the health, safety, and welfare of the public. More specifically, these standards are intended to:

1. Prevent or reduce the possibility of accelerated erosion on lands with significant slopes;
2. Reduce the risk of landslide or subsidence resulting from inappropriate construction techniques or development patterns in areas with steep slopes; and
3. Protect the scenic character of hillsides and ridgelines visible from the public realm.

B. APPLICABILITY

The standards in this section shall apply to ~~minor subdivisions~~ Minor Subdivisions, conservation subdivisions, and ~~major subdivisions~~ Major Subdivisions located on lands with an average slope of 15.1 percent or more.

C. STANDARDS

1. MINIMUM LOT AREA AND COVERAGE

a. Regardless of the zoning district where located, lots located in lands subject to these standards shall maintain minimum lot sizes and maximum lot coverages in accordance with Table 5.03.C, Steep Slope Lot Standards.

TABLE 5.03.C: STEEP SLOPE LOT STANDARDS

AVERAGE SLOPE OF LOT	MINIMUM LOT SIZE	MAXIMUM LOT COVERAGE BY IMPERVIOUS SURFACE[%]
15.1% - 25%	1.3 times the minimum lot size of the zoning district where located	25
More than 25%	1.5 times the minimum lot size of the zoning district where located	20

b. Visual examples of slope are provided in Figure 5.03.C, Slope Examples.

FIGURE 5.03.C: SLOPE EXAMPLES



2. DEVELOPMENT PROHIBITED
   a. Except for public utilities and telecommunications equipment, permanent structures, including driveways, streets, and utilities are prohibited on lots with average slopes of 35 percent or more. Grading of lots is permitted subject to Section 5.02.A, Erosion and Sedimentation Control Plan Required.
   b. Nothing shall limit the ability to credit land with average slopes of 35 percent or more towards the gross residential density of the land.

SECTION 5.04. OPEN SPACE STANDARDS

New development shall provide common open space in accordance with Section 6-16, Common Open Space Standards, in the City's Zoning Ordinance.

ARTICLE 6: OWNER ASSOCIATIONS

SECTION 6.01. PURPOSE

The purpose of this section is to set out the requirements for establishment of a homeowners' or property owners' association (hereinafter "association") that shall be responsible for the long-term maintenance of common areas, common features, and private infrastructure in a subdivision. This section also sets out the requirements associated with transfer of subdivision control and maintenance responsibility from the subdivider to the association.

SECTION 6.02. APPLICABILITY

A. The standards in this section shall apply to subdivisions with open space set-aside(s), lands held under common ownership, or shared responsibility for common infrastructure including, but not limited to streets or stormwater management facilities.

B. Establishment of an owners' association shall not be required for ~~minor subdivisions~~ Minor Subdivisions (see Section 2.04.I, Minor Subdivision), or expedited subdivisions (see Section 2.04.F, Expedited Subdivision), but the responsible party for any private infrastructure shall be identified in the subdivision approval.

SECTION 6.03. CREATION REQUIRED

A. A homeowners' or property owners' association shall be established in areas that have private common open space or shared private infrastructure. Associations are required to accept ownership and maintenance responsibility of all open space set-aside(s), shared infrastructure, or common areas within a development.

B. Associations are also required in order to fulfill the requirements of Chapter 47C (the "Condominium Act") of the North Carolina General Statutes, or the requirements of Chapter 47F (the "Planned Community Act") of the North Carolina General Statutes.

C. The association shall be in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development, though maintenance responsibility shall only transfer from the developer to the association in accordance with Section 6.08, Transfer of Maintenance Responsibility.

SECTION 6.04. RESPONSIBILITIES OF ASSOCIATION

Upon transfer of maintenance responsibility, the association shall be responsible for:

A. Liability insurance and payment of premiums for liability insurance and local taxes;

B. Maintenance of all common elements including, but not limited to, stormwater management facilities, private utilities, private accessways, private sidewalks and trails, private streetlights, and private common recreation facilities shown on the preliminary and final plats;

C. Maintenance of public streets until such time as NCDOT or the City agrees to accept the responsibility for street maintenance, as appropriate;

D. Maintenance of an escrow account intended for the maintenance and repair of community facilities; and

E. Payment of assessments for public and private improvements made to or for the benefit of the common elements.

SECTION 6.05. PROCEDURE FOR ASSOCIATION ESTABLISHMENT

A. Documents for the creation of the association shall be submitted to the City for review and approval prior to approval of a ~~minor subdivision~~ Minor Subdivision (see Section 2.04.I, Minor Subdivision), or final plat (see Section 2.04.G, Final Plat), as appropriate. Documentation shall include, but not be limited to the information in Section 6.06, Documentation Requirements.

B. The association shall be established by the subdivider prior to the sale of the first lot in the subdivision.

C. The association documents shall establish that the subdivider shall maintain the common area, common facilities, and infrastructure until at least 75 percent of the lots are sold; and

D. Responsibility for maintaining the subdivision's common areas, common facilities, and private infrastructure shall be transferred in accordance with the standards in Section 6.08, Transfer of Maintenance Responsibility.

SECTION 6.06. DOCUMENTATION REQUIREMENTS

A. The association documents submitted to the City for review and approval prior to formation shall include, but not be limited to, the following:

1. A declaration of all restrictive covenants and conditions;

2. A declaration of all deed restrictions;

3. A declaration that the association is responsible for liability insurance and all applicable taxes;

4. A declaration of common ownership and maintenance responsibilities of all on-site improvements not dedicated to a local or state agency, including but not limited to streets, street signs, drainage systems, wastewater systems, open space set-aside areas, recreational facilities, and private infrastructure;

5. A description of the structural organization and operating procedures of the association;

6. Association by-laws;

7. A legal description of all open space set-asides and other lands owned in common;

8. Provisions establishing the legal authority of the association to maintain control over all common areas, common features, and private infrastructure in the subdivision, following transfer of control by the subdivider;

9. Provisions authorizing the association to compel contributions from owners in the development to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure;

10. Provisions authorizing the association to increase the amount of mandatory fees or assessments, when necessary, for the continued maintenance of common areas, common features, or private infrastructure;

11. Provisions authorizing the association to convert any member's unpaid assessments into a lien on the real property; and

12. Evidence related to the establishment of a reserve fund to support the continued maintenance and upkeep of common areas, common features, and private infrastructure.

B. Following approval of the required documentation by the City, the subdivider shall record all required documentation with the Henderson County Register of Deeds.

SECTION 6.07. MEMBERSHIP REQUIREMENTS

A. Following establishment of the association by the subdivider, membership in the association shall be automatic and mandatory for all purchasers of land within the subdivision and their successors in title.

B. All members of an association shall be responsible for contributions to the association's reserve fund to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure.

SECTION 6.08. TRANSFER OF MAINTENANCE RESPONSIBILITY

A. The subdivider shall be responsible for maintenance of all common areas, common features, and private infrastructure until maintenance responsibility is transferred to the association in accordance with the standards in this subsection.

B. Maintenance responsibility shall not be transferred from the subdivider to the association until all of the following occur:

1. At least 75 percent of the total number of lots in the subdivision are sold; and

2. The subdivider commissions a report prepared by a licensed professional indicating that all common areas, common features, and infrastructure elements comply with the minimum standards in this Ordinance and the City Code of Ordinances. The report shall also include verification of the reserve fund balance in accordance with the standards in this section; and
3. The City Manager reviews and approves the report prepared by the licensed professional; and
4. A reserve fund dedicated to the continued maintenance and upkeep of common areas, common features, and private infrastructure is established with a banking institution acceptable to the City in the name of the association that contains a minimum balance that includes the following:
   a. Except for sidewalks and street trees, ten percent of the construction costs of common features and private infrastructure;
   b. Liability insurance and taxes for two years; and
   c. Facilities, stormwater, and landscaping maintenance costs for two years.
5. In the event the association has not collected sufficient assessment funds from the lot owners in the subdivision to meet the minimum balance requirements of the reserve fund, the subdivider shall be responsible for the difference needed to meet the minimum balance requirements.

C. The subdivider shall retain maintenance responsibility of all private streets until at least 75 percent of the lots are sold.

D. Applications to cede maintenance responsibility to the association for common areas, common features, or private infrastructure prior to conveyance of 75 percent of the lots in the subdivision may be reviewed by the City Manager. The City Manager, at the request of the subdivider, may waive the timing and reserve fund requirements upon a finding that the association has sufficient financial capacity to assume maintenance responsibility for common areas, common facilities, and private infrastructure.

SECTION 6.09. FAILURE TO MAINTAIN IS A VIOLATION

Failure to maintain common areas, common features, or infrastructure is a violation of this Ordinance and is subject to the penalties and remedies in Article 7, Enforcement.

ARTICLE 7: ENFORCEMENT

SECTION 7.01. PURPOSE

This section establishes procedures through which the City seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

SECTION 7.02. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons subdividing or occupying land in the City's planning jurisdiction.

SECTION 7.03. STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes and any other applicable periods of limitation imposed by law.

SECTION 7.04. VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

A. SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Henderson County Register of Deeds;

B. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plats, permits, certificates, or other forms of authorization as set forth in this Ordinance;

C. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, ~~variance~~ Variance, adjustment, condition, or qualification placed upon any required plat, permit, certificate, or other form of authorization upon land or improvements thereon;

D. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Article 5, Environment, or any related environmental provision of the Zoning Ordinance or the City Code of Ordinances.

SECTION 7.05. RESPONSIBLE PERSONS

A. GENERAL

The landowner, tenant, or other occupant of any land or structure and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this Ordinance.

B. FAILURE BY CITY DOES NOT RELIEVE INDIVIDUAL

Failure of a City official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the landowner from responsibility for the condition or damages that may result and shall not result in the City, its officers, or agents being responsible for conditions or damages.

SECTION 7.06. ENFORCEMENT RESPONSIBILITIES

The City Manager shall have responsibility for enforcement of this Ordinance in accordance with the following:

A. INVESTIGATIONS

The City Manager shall have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

B. INSPECTIONS

1. The City Manager has the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
2. If the City Manager cannot obtain permission to enter from a responsible person, the City shall obtain an administrative search warrant prior to entering the property.

C. SUPPORTING DOCUMENTATION

The City Manager or a designee shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

SECTION 7.07. ENFORCEMENT PROCEDURE

When the City Manager finds a violation of this Ordinance, they shall notify the responsible person(s) of the violation in accordance with the following:

A. WRITTEN NOTICE OF VIOLATION

A written notice of violation shall be prepared and shall include all of following:

1. VIOLATION EXISTS
   That the land or activity is in violation of this Ordinance;
2. NATURE OF THE VIOLATION
   The nature of the violation, and citation of the section(s) of this Ordinance violated;
3. REMEDY
   The measures necessary to remedy the violation;
4. ALLOWABLE TIME PERIOD
   The time period in which the violation must be corrected;
5. PENALTIES THAT MAY BE ASSESSED
   That penalties or remedies may be assessed; and
6. APPEAL
   That the party cited has the right to appeal the notice in accordance with Section 2.04.C, Appeal, as an appeal of an ~~a~~Administrative ~~d~~Decision by a City staff person.

B. DELIVERY OF WRITTEN NOTICE

Written notice of violation shall be provided to the landowner, occupant, holder of the development approval or any other responsibleperson by any of the following means:

1. ~~Certified mai~~Electronic delivery~~l~~;
2. ~~Registered mail to their last known address;~~
3. ~~2.~~ Hand delivery; or
3. ~~Posting notice conspicuously on the property~~First Class Mail.
4. ~~4.~~ In addition the notice of violation may be posted on the property. The person providing the notice of violation shall certify in writing as to the notice(s) provided.

C. REMEDY UPON NOTICE

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

D. FAILURE TO COMPLY WITH ORDER

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or Section 7.08, Remedies.

E. EACH DAY A SEPARATE VIOLATION

Each day a violations continues following notice or failure to comply is considered a separate and distinct offense.

F. APPEAL OF NOTICE OF VIOLATION

A notice of violation may be appealed to the Zoning Board of Adjustment in accordance with Section 2.03.C. Appeal

SECTION 7.08. REMEDIES

A. CIVIL PENALTIES

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of $500.00 per day under the procedures provided in Section 7.09, Assessment of Civil Penalties.

B. DENIAL OF PLAT OR CERTIFICATE

The City Manager may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

C. STOP WORK ORDERS

1. GENERAL

In accordance with N.C.G.S. Section 160D-404(b), w~~W~~henever the City Manager determines that a person is engaged in doing work or activity that constitutes, creates, or results in ~~a~~ substantial violation of this Ordinance ~~and~~ or that the work or activity is being conducted in a manner that endangers life or property, ~~that irreparable injury will occur if the violation is not terminated immediately,~~ the City Manager may order the specific ~~part of the~~ work or activity that constitutes, creates, or results in a violation of this Ordinance or that poses a danger to life or property to be immediately stopped.

2. ORDER IN WRITING

The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The written stop work order shall be delivered to holder of the development approval and the Landowner(s) if not the holder) by personal delivery, electronic delivery or first-class mail. The person(s) delivering the stop work order shall certify in writing that the order was delivered.

3. APPEAL

Except as provided in N.C.G.S. Section 60D-1112 and 160D-208, a~~A~~ny person aggrieved by the issuance of a stop work order may appeal the issuance of the order in accordance with Section 2.04.C, Appeal. ~~An appeal shall not stay the stop work order~~No further work or activity shall take place in violation of a stop work order ~~unless the BOA fails to hear the appeal within 30 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 30 days, the stop work order shall be stayed until the BOA acts on the appeal~~pending a ruling on the appeal. Violation of a stop work order is a Class 1 misdemeanor pursuant o N.C.G.S. Section 160D-404(b).

4. COMPLIANCE REQUIRED

Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect.~~, unless the order is stayed in accordance with subsection (3) above.~~

D. REVOCATION OF PERMITS

1. The City Manager may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
2. Permits or certificates may be revoked, in accordance with N.C.G.S. Section 160D-403(f) ~~160A-422~~ of the NorthCarolina General Statutes, for any of the following:
   a. Any substantial departure from the approved application, plans, or specifications;
   b. Refusal or failure to comply with the requirements of ~~State or local laws~~any applicable City Development Regulation or any State law delegated to the City for enforcement in lieu of the State; or
   c. For making false statements or misrepresentations in securing the permit, certificate, or approval.

3. Any permit or certificate mistakenly issued in violation of an applicable State or City law may also be revoked.

4. Revocation can only be made by the reviewing authority originally approving the development approval, and in the manner of the original approval.

~~3.~~5. The revocation by a staff member may be appealed pursuant to Section 4.04.C. Appeal. If the appeal is filed regarding a local government development regulation adopted pursuant to Chapter 160D, the provisions of N.C.G.S. Section 160D-405(f) regarding stays shall apply.

E. CRIMINAL PENALTIES

1. VIOLATION OF EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000) per day up to a maximum amount of twenty-five thousand dollars ($25,000) in accordance with Section 113A-64 of the North Carolina General Statutes.

2. TRANSFER, SALE OR SUBDIVISION OF LAND IN VIOLAION OF THIS ORDINANCE

The subdivision of land in violation of this Ordinance, or the transfer or sale of land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved shall be guilt of a Class 1 misdemeanor as provided in N.C.G.S. Section 160D-807. The terms and conditions and remedies provided by N.C.G.S. Section 160D-807 shall apply to this type of violation.

~~2.~~3. ALL OTHER VIOLATIONS

Any violation other than a violation of erosion and sedimentation control rules of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175 of the North Carolina General Statutes, subject to a maximum fine of $500 per day.

F. INJUNCTIVE OR OTHER EQUITABLE RELIEF

The City may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the City's application for equitable relief.

1. ACTION BY CITY COUNCIL

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an subdivision plat, or soil erosion and sedimentation control plan, it may institute a civil action in the name of the City, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation either before, during, or after the institution of any other action or proceeding authorized by this Ordinance.

2. SUPERIOR COURT

The action shall be brought in the Superior Court ~~of~~ for Henderson County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

3. NO RELIEF FROM CRIMINAL PENALTIES

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

G. STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the City Manager may exercise any and all enforcement powers granted to it by State law or common law.

H. PREVIOUS ENFORCEMENT

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

I. REMEDIES; CUMULATIVE AND CONTINUOUS

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

SECTION 7.09. ASSESSMENT OF CIVIL PENALTIES

A. RESPONSIBLE PARTIES

Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.

B. NOTICE

1. NOTIFICATION REQUIRED

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section 7.07, Enforcement Procedure.

2. CIVIL PENALTY IMPOSED

If after receiving a written notice of violation under Section 7.07, Enforcement Procedure, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

3. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

4. ASSESSMENT CONTENTS

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 30 days of the date of the notice.

5. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The City may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

6. ASSESSMENT UNTIL COMPLIANCE

Civil penalties may be assessed until compliance is achieved.

C. CONTINUING VIOLATION

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

D. DEMAND FOR PAYMENT

If compliance is not achieved, then the City Manager shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

E. NONPAYMENT

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the City may recover any unpaid civil penalty by filing a civil action in the nature of debt.

F. PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation. ~~over the course of a calendar year.~~

ARTICLE 8: MEASUREMENT

SECTION 8.01. RULES OF LANGUAGE CONSTRUCTION

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

A. MEANINGS AND INTENT

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section 1.04, Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in Section 9.01, Definitions, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

B. HEADINGS, ILLUSTRATIONS, AND TEXT

1. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map other than the Official Zoning Map, the text shall control.
2. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

C. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

D. COMPUTATION OF TIME

1. The time in which an act is to be done shall be computed by excluding the first day and including the last day.
2. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the City.

E. TIME-RELATED LANGUAGE

1. TIME STANDARD

   Whenever certain hours are named, they shall mean standard time or daylight saving time, as may be in current use in Hendersonville, North Carolina.
2. DAY

   The term "day" means a calendar day, including weekends and holidays.
3. HOLIDAY

   The term "holiday" means a legal holiday recognized by the City, State, or federal government.
4. MONTH

   The term "month" means a calendar month.
5. YEAR

   The term "year" means a calendar year.
6. TEMPORARY

   The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

F. REFERENCES TO THIS ORDINANCE

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

G. REFERENCES TO OTHER REGULATIONS OR PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition or amendment of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

H. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

I. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the City to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision specifically provide otherwise.

J. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

K. TECHNICAL AND NON-TECHNICAL TERMS

1. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
2. In cases where words or phrases in this Ordinance use two or more meanings, all meanings shall be identified in Article 9, Definitions.

L. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made in this Ordinance are those of the City of Hendersonville, North Carolina, unless otherwise indicated.

M. MANDATORY AND DISCRETIONARY TERMS

1. The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.
2. The words "provision," "standard," and "requirement" are used interchangeably and all have the same meaning.
3. The words "condition of approval" are used interchangeably with the word "stipulations" with regard to conditions or requirements attached to the approval of a proposed development.

N. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions, or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

O. TENSES, PLURALS, AND GENDER OF WORDS

1. TENSE

   Words used in the past or present tense include the future tense as well as the past and present.
2. NUMBER

   Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.
3. GENDER

   Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

P. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Q. TERM NOT DEFINED

If a term used in this Ordinance is not defined, the City Manager is authorized to provide a definition, based upon the definitions used in professionally accepted sources.

SECTION 8.02. RULES OF MEASUREMENT

A. PURPOSE

The purpose of this section is to clarify the rules of measurement and exemptions as typically used in this Ordinance. These standards may be modified by other applicable sections of this Ordinance.

B. MEASUREMENTS, GENERALLY

1. STRAIGHT LINES

Unless otherwise stated in this Ordinance, distances specified in this Ordinance are to be measured as the length of an imaginary straight line joining two points.

2. ROUNDING

All calculations that result in a fractional unit or part of a whole number, the number shall be rounded up to the next highest whole number, unless otherwise provided in this section or elsewhere in this Ordinance.

3. IRREGULAR SHAPES

In cases where an irregular shape complicates the application of these standards, the City Manager shall determine the applicable dimensional, setback, or bulk standards.

4. SEPARATION

When the provisions of this Ordinance require separation between two or more lots, or a lot and another feature, separation shall be measured by drawing straight lines from the nearest point of one lot line to the nearest point of the lot line subject to the separation requirement.

5. ABUTTING VERSUS ADJACENT

a. ABUTTING

The term abutting describes a condition where two or more features (a lot line, building, driveway, etc.) are immediately beside or next to one another either on the same lot or on different lots sharing a common lot line.

b. ADJACENT

The term adjacent describes a condition where two or more similar features (a lot line, building, use type, structure, site feature, etc.) are proximate to one another, but are separated by some form of intervening feature, such as a street, alley, water feature, railroad, lot or property under separate ownership, or natural feature of sufficient size so as to prevent direct sight or impede the movement of sound from one feature to another.

C. LOT DIMENSIONS

1. LOT MEASUREMENTS

a. MINIMUM LOT AREA

The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements shall be included within the lot area. The following features shall not be included in calculating minimum lot area:

- **i.** Public street rights-of-way;
- **ii.** Private street area;
- **iii.** The "pole," arm," or "pan handle" portion of a flag lot; and
- **iv.** Land that is submerged or regularly underwater and jurisdictional wetlands.

b. LOT WIDTH

- **i.** The mean width measured at right angles to its depth at the actual or proposed building setback line.
- **ii.** Lot width on a cul-de-sac lot is measured at a point 50 feet inwards from the street right-of-way edge.

c. LOT DEPTH

The distance along the perpendicular bisector of the lot.

d. STREET FRONTAGE

The length of the lot line of a single lot abutting a public or private street right-of-way.

e. ACREAGE

The total number or gross number of acres on a tract or site.

2. LOT LINES

A lot line is a line of record bounding a lot which separates one lot from another lot or separates that lot from a public or private street or any other public space. The following terms describe differing types of lot lines:

a. FRONT LOT LINE

The lot line connecting the two side lot lines along the edge of the street that provides a lot's street address or that opposes the primary entrance of a building.

b. REAR LOT LINE

The lot line opposite and most distant from the front lot line.

c. SIDE LOT LINE

The lot line connecting the front and rear lot lines regardless of whether it abuts a right-of-way or another lot line.

3. LOT TYPES

a. CORNER LOT

A lot which occupies the interior angle at the intersection of two street lines or a single street which make(s) an angle of more than 45 degrees and less than 135 degrees. The front of the lot is the lot line adjacent to the street from which the lot obtains its street address.

b. FLAG LOT

A lot having shape and configuration so that it connects to street frontage by an extension and/or arm of the main portion of the lot.

c. INTERIOR LOT

A lot other than a corner lot with only one frontage on a street.

d. LOT OF RECORD

A lot which is part of a subdivision, a plat of which has been recorded in the Henderson County Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

e. THROUGH LOT (DOUBLE FRONTAGE LOT)

A lot which fronts upon two parallel streets, and/or which fronts upon two streets which do not intersect at the boundaries of the lot.

4. LOTS SERVING CONDOMINIUM USE TYPES

Individual condominium uses, whether residential or nonresidential, are exempted from minimum lot area requirements in this Ordinance, but shall be located on a larger site or parent tract that meets the standards for the zoning district where located.

D. SETBACKS

New lots shall be developed in accordance with all required setbacks for the zoning district where development is located in accordance with the City's Zoning Ordinance.

E. LOT COVERAGE

1. Lot coverage is the percentage of a lot or development site that is covered by impervious, or built-upon area.

2. Built-upon area includes buildings, structures, pavement, and site features that are impervious or partially impervious to rain or stormwater runoff.
3. The following features are not considered impervious, and as a result are not included within the built-upon area:
   a. A slatted deck or walkway;
   b. The water area of a swimming pool;
   c. A surface covered by number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric;
   d. A trail as defined in Section 113A-85 of the North Carolina General Statutes that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or
   e. Landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

F. SLOPE AND ELEVATION

1. SLOPE
   The degree of deviation of the ground surface from a flat, horizontal elevation, usually expressed in percent or degrees of deviation from horizontal.
2. AVERAGE SLOPE
   The amount of elevation change from the lowest point of a lot to the highest point of a lot divided by the distance between the two points.
3. FINISHED GRADE
   The established grade following grading, excavation, or other land-disturbing activity.
4. NATURAL GRADE
   The level of the ground elevation prior to the commencement of development or land disturbing activity.
5. BASE FLOOD ELEVATION
   A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation establishes the Regulatory Flood Protection Elevation.
6. REGULATORY FLOOD PROTECTION ELEVATION
   The minimum height allowable for lowest structural member comprising habitable space within a building. This is a height equivalent to one linear foot in elevation above the base flood elevation.

ARTICLE 9: DEFINITIONS

SECTION 9.01. DEFINITIONS

Table 9.01, Definitions, includes definitions of terms used throughout this Ordinance. The definitions contained in N.C.G.S. Section 160D-102 shall also apply to this Ordinance.

TABLE 9.01: DEFINITIONS

TERM	DEFINITION
#'S	
160D	This refers to Chapter 160D of the North Carolina General Statutes.
A	
ABANDONMENT	The relinquishment of property or a cessation of the use of the property for a continuous period.
ABROGATE	To abolish or annul.
ABUTTING LAND	For the purpose of public notice, abutting land is the condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.
ACCESS EASEMENT	An easement which grants the right to cross land.
ACCESSWAY	A paved or unpaved travelway intended to serve vehicles for the purposes of obtaining ingress, egress, or circulation around a lot or site. Subdivisions of up to three lots may be served by a vehicular accessway.
ACREAGE	Total acreage means gross acres.
ADJACENT	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street, waterbody, or right-of-way divides the parcels.
ADMINISTRATIVE ADJUSTMENT	A type of ~~flexibility~~ flexible permit approval reviewed and approved or denied by theCity Manager or ~~Administrative planning~~Community Development staff in accordance with Section 2.04.B, Administrative Adjustment.
ADMINISRATIVE DECISION	Decisions made in the implementation, administration, or enforcement of this Ordinance that involve the determination of facts and the application of objective standards set forth in this Ordinance, or other land development regulations as applicable.
ADMINISTRATIVE HEARING	A proceeding to gather facts needed to make an ~~a~~Administrative ~~d~~Decision. An administrative hearing may be held by City staff or the Planning Board under the terms of this Ordinance. An ~~a~~Administrative ~~h~~Hearing is also considered a public hearing if held by the Planning Board.
ADOPTED POLICY GUIDANCE	The combined future land-use policy guidance provided by the adopted comprehensive plan, area plans prepared for specific parts of the City, and system plans related to the City's infrastructure systems.
AFFECTED PARTY	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
AGGRIEVED PARTY	A person, with a legally recognized interest (i.e., fee simple ownership) and standing to appeal, that is injuriously affected by a decision from any decision-making body of the City, including any officer or agent of the City.
AGRICULTURAL ACTIVITIES	For the purposes of this Ordinance, development and activities defined as "agriculture."
ALL WEATHER SURFACE	Paving or surface treatment to a walkway or vehicular use area that is capable of withstanding adverse weather while still maintaining is regular or typical surface characteristics.
AMENDMENT	A ~~minor~~ ch[illegible]eletion ~~to a legal statutory document.~~

APPEAL	A request for review of an administrative official's or decision-making body's interpretation or decision made under this UDO.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate City department or board as part of the development review processes.
AS-BUILT PLANS	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
B	
BASE FLOOD	The flood having a 1 percent chance of being equaled or exceeded in any given year. Also known as the "100-year flood."
BASE FLOOD ELEVATION	A determination of the water surface elevations of the base flood as published in the flood insurance study.
BEST MANAGEMENT PRACTICE	A structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
BLOCK	The land lying within an area bounded on all sides by streets.
BLOCK FACE	The lands abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, railroad right-of-way, watercourse, or un-subdivided land.
BOARD OF ADJUSTMENT	Also referred to as "BOA" in this Ordinance. A quasi-judicial board appointed by ~~the Board of Commissioners~~City Council governed by N.C.G.S. Section 160D-302.
BONA FIDE FARM	A bona fide farm shall be as defined in Section 153A-340 of the North Carolina General Statutes, as amended.
BOND	See "Performance Guarantee."
BUILDING	~~A structure having a roof supported by walls or columns constructed or used for residence, business, industry, or other public or private purposes.~~ Any structure used or intended for supporting or sheltering any use or occupancy.
BUILDING PERMIT	An authorization issued by Henderson County that allows an applicant to begin construction activities in accordance with the applicable development approval and all applicable City and County requirements.
BUILT-UPON AREA	Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including, but not limited to, buildings, pavement, and certain recreation facilities. (Note: wooden slatted decks, gravel, and the water area of a swimming pool are considered pervious.)
BUSINESS DAY	Any day in which normal business is conducted. A business day does not include a holiday or a weekend day.
C	
CALENDAR DAY	All days in every month, including weekends and holidays.
CERTIORARI	A situation where an appellant may file an appeal of a decision directly to a higher court of law.
CITY	City of Hendersonville, North Carolina.
CITY'S PLANNING JURISDICTION	The land area located with the Hendersonville city limits, the City's extraterritorial jurisdiction, and land subject to a development agreement to which the City is a party.
CIVIL ACTION	Proceedings conducted before a court of law.
CLUSTER MAILBOX UNITS	A centralized series of two or more mailboxes that serve individual housing units within a development.
COMMON DEVELOPMENT REVIEW PROCEDURE	The types of activities undertaken by City staff as part of the review of any application submitted under this Ordinance.
COMMON LAW VESTED RIGHT	Legal doctrine that recognizes where property owners have reasonably made a substantial expenditure of money, time, labor or energy in a good faith reliance on a permit from the government, that they acquire "vested rights" or a protected right to complete the development of their land as originally begun despite any changes in the zoning on the property.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
COMPLETE APPLICATION	A complete application is one that: 1. Contains all information and materials established by the City Manager as required for submittal of the particular type of application; 2. Is in the form established by the City Manager as required for submittal of the particular type of application; 3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate review standards of this Ordinance; and 4. Is accompanied by the fee established for the particular type of application. An application will not be accepted for review until it is complete.
COMPLETENESS DETERMINATION	The process of determining if an application for a development approval is or is not complete.
CONDITION (OF APPROVAL)	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or an advisory or decision-making body that must be accepted by an applicant to become binding.
CONDOMINIUM	A building or group of buildings in which dwelling units, offices or floor area are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional undivided basis.
CONNECTIVITY	The relative degree of connection between streets, sidewalks, or other means of travel.
CONNECTIVITY INDEX	A measurement of the connectedness of the streets in a single development.
CONSERVATION AND DEVELOPMENT PLAN	The preliminary plan identifying potential areas for conservation and areas for development as part of a conservation subdivision.
CONSERVATION AREA	The portion of a conservation subdivision or open space set-aside that is reserved for the purposes of conservation or natural resource protection.
CONSERVATION SUBDIVISION	The division of a tract of land into two or more lots, building sites, or other divisions along with additional land area set aside as open space for conservation and/or recreation purposes.
CONSTRUCTION	The erection of any building or structure or any preparations (including land disturbing activities) for the same.
CONSTRUCTION PLANS	Drawing and specifications prepared by a qualified person showing buildings, structures, utilities, infrastructures, and site configuration aspects associated with development.
CONTIGUOUS	Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.
CONTINUANCE	The adjournment or postponement of review or decision on an application to specified future date.
CONTRACT PURCHASER	A party to a contract for the purchase of land from the landowner.
CONTROL CORNER	A recognized corner of a lot or piece of real property that is permanently marked with a monument or marker for the purpose of determining distances, bearing, or metes and bounds descriptions of the lot or real property.
CORPORATE LIMITS	The political boundary of the municipal incorporation of the City of Hendersonville.
COUNTY	Henderson County, North Carolina.
COVENANT	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development that runs with the land.
CURB	A constructed element used to stabilize paving, gutter, planting areas, or sidewalks.
D	

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
DECK	A structure, without a roof, directly adjacent to a principal building which has an average elevation above finished grade.
DEDICATION	The act of giving, donating, or dedicating land or infrastructure improvements to a unit of government for their operation and maintenance.
DEED RESTRICTION	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
DEFERRAL	A postponement of consideration of an application or request to a future date that may or may not be specified.
DEMOLITION	Complete or constructive removal of a building or portion of a building on any site.
DESIGNEE	A person selected or designated to carry out a duty or role.
DEVELOPER	~~A person engaging in land, site, or building development.~~ A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property per NCGS 160D-102 (11). As used herein, the term "Developer" may also include an Applicant.
DEVELOPMENT	~~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; drilling operations; or storage of equipment or materials. Development is also any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.~~ Any of the following, per NCGS 160D-102 (12): a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure. b. The excavation, grading, filling, clearing, or alteration of land. c. The subdivision of land as defined in G.S. 160D-802. d. d. The initiation or substantial change in the use of land or the intensity of use of land.
DEVELOPMENT APPROVAL	~~The granting of a permit or affirmative decision on a development application reviewed in accordance with this Ordinance.~~ An administrative or quasi-judicial approval made pursuant to NCGS 160D-102 (13) that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, Variances, and Certificates of Appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.
DEVELOPMENT REGULATION	This Ordinance and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.
~~DEVIATION ALSO MINOR DEVIATION~~	~~A de minimus, small, or slight departure from a requirement or standard for good cause shown.~~
DRAINAGE	General terms applied to the removal of surface or resurface water from a given area either by gravity via natural means or by systems constructed so as to remove water, and is commonly applied herein to surface water.
DRAINAGE EASEMENT	An easement which grants the right to maintain, relocate, or, utilize land within the easement for the improvement of drainage and stormwater flow.
DRAINAGE, POSITIVE	An area that has been graded or shaped to prevent pooling of stormwater runoff.

DRIVEWAY	The portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not a part of the vehicle accommodation.
DWELLING UNIT	One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided for use as a permanent residence by one family. Occupation of property can be under Condominium or Fee Simple ownership, or rental status.
E	
EASEMENT	The right to use or temporarily occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
EROSION	The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
EROSION CONTROL MEASURE	A device which controls the soil material within the land area under responsible control of the person conducting a land-disturbing activity.
EVIDENTIARY HEARING	A hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this Ordinance. An eEvidentiary hHearing is also considered a public hearing. An eEvidentiary hHearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.
EX PARTE COMMUNICATION	Any communication between a member of a decision-making body and a person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
EXEMPTION	A use, site feature, or development condition that is exempted authorized to deviate from otherwise applicable requirements

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
EXISTING DEVELOPMENT	Development that is built or those projects that at a minimum have established a vested right under North Carolina zoning law based on at least one of the following criteria: (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; (b) Having an outstanding valid building permit as authorized by Sections ~~153A-344.1 and 160A-385.1~~ 160D-102; 108; 108.1 of the North Carolina General Statutes; or (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by Sections ~~153A-344.1 and 160A-385.1~~ 160D-102; 108; 108.1 of the North Carolina General Statutes.
EXISTING LOT OF RECORD	A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this Ordinance.
EXTRA-TERRITORIAL JURISDICTION	The land area located outside the City's corporate limits but still subject to the planning and development regulations of the City of Hendersonville.
F	
FEE	An amount charged in accordance with the regularly adopted fee schedule of the City.
FEE SCHEDULE	The City's published list of application fees and fees for violations.
FILL	The act of depositing soil, sand, stone, or other inert debris customarily used for supplementing or augmenting land. The term "fill" also applies to the deposit soil, sand, stone, or other deposited material.
FINAL PLAT	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
FINANCIAL GUARANTEE	See "Performance Guarantee."
FINE	A sum of money imposed on a violator as punishment for violation of law.
FLAG LOT	An irregularly shaped lot where the buildable portion of the lot is connected to its street frontage by an arm. Further, in cases where a minimum lot width is prescribed, the arm is less than the presumptive minimum required lot width.
FLOOD INSURANCE RATE MAP	An official map of a community issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the City are delineated.
FLOOD OR FLOODING	For flood damage prevention purposes, a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.
FLUSHING HYDRANT	See "Hydrant, Flushing."
FRONTAGE	A strip or extent of land abutting and extending along a street.
G	
GENERAL STATUTES	A statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.
GOOD CAUSE	Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.
GOOD FAITH	A sincere belief or motive without any malice or the desire to defraud others or conceal the truth.
GRADING	Excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
GREENWAY	A path, trail, or linear arrangement of land used of purposes of mobility and recreation. A greenway typically includes an improved surface for locomotion flanked by undeveloped lands.
H	
HABITABLE SPACE	A space in a building for living, sleeping, eating or cooking, or used as a home occupation.
HALF STREET	A partial street that has a reduced pavement and right-of-way width.
HARDSHIP	Special or specified circumstances that place an unreasonable or disproportionate burden on one applicant or landowner over another.
HOLIDAY	A holiday observed by the City.
HOMEOWNERS' ASSOCIATION	An organization of homeowners or property owners of lots or land in a particular subdivision, condominium, or planned development. The owners' association is responsible for maintaining and enhancing the shared private infrastructure (e.g., stormwater, streets, and sidewalks) and common elements such as recreation areas.
HYDRANT, FLUSHING	A hydrant that is connected to a public or private water supply system, but that is not intended for fire protection because it lacks sufficient water pressure for firefighting. Flushing hydrants are typically painted a different color than traditional fire hydrants.
I	
IMPERVIOUS SURFACE (OR COVER)	Any structure, material or ground cover consisting of, but not limited to, asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or any other natural or man-made material that prevents the absorption of surface water into the soil.
IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
INCENTIVE	Inducement or supplemental reward that serves as a motivational device for a desired action or activity.
IN-LIEU FEE	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
INTESTATE SUCCESSION	The rules governing distribution of an estate to a spouse or other heirs through the laws of descent and marital rights.
J	
JURISDICTION	The official power to make legal decisions and judgements. The term can also be used to describe the geographic boundaries of a municipal corporation or the extent over which a particular agency has control.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.
K	
L	
LAND	Real estate taking the form of a single lots, multiple lots, an un-subdivided tract, or a site.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
LAND DISTURBANCE	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND DISTURBING ACTIVITY	Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural grade and may cause or contribute to sedimentation, except activities that are exempt under Section 113A-52(6) of the North Carolina General Statutes. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin.
LANDOWNER or OWNER	~~As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner.~~The holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the landowner. As used herein, "landowner" refers to all holders of the title in fee simple of a parcel of real property. The land owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.
LEGAL CHALLENGE	The filing of a suit in a court of competent jurisdiction over a decision or action taken by the City, a landowner in the City, or other interested party with standing to file suit.
LEGISLATIVE ~~PUBLIC~~ HEARING	A hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing~~.~~ per NCGS 160D-102 (20).
LOOP STREET	A street that begins and terminates from one other street.
LOT	A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. The term includes plot, parcel, or tract.
LOT FRONTAGE	The portion of a lot adjacent to a street.
LOT OF RECORD	A lot which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Henderson County Register of Deeds or a lot described by metes and bounds the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to the adoption of the City's first subdivision regulations or a lot upon which an existing structure is located provided a valid building permit was obtained for the construction or a lot which at the time of creation met all subdivision and zoning requirements.
M	
MAXIMUM EXTENT PRACTICABLE	No feasible or practical alternative exists, as determined by the City, and all possible efforts to comply with the standards or regulation to minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."
~~MINOR RELIEF~~	~~See "Deviation."~~

MIXED USE DEVELOPMENT	A tract of land or structure developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public, or entertainment. Such uses are functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.
MONUMENT	Permanent markers used to denote lot corners, street curves, and other geographic elements of a subdivision.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
MULTI-FAMILY RESIDENTIAL	Development that includes multiple dwelling units in a single building.
N	
NATURAL RESOURCES	Resources that exist without the actions of humans, including: sunlight, atmosphere, water, land, vegetation, and animal life. For the purposes of this Ordinance, natural resources may include specific areas with unique ecological conditions, views into or out of a particular area, habitats or areas with special circumstances conducive to particular life forms, or raw materials used in a production process.
N.C.G.S or G.S.	The North Carolina General Statutes
NONCONFORMING LOT OF RECORD	A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance.
NONCONFORMITY	A use, building, site, sign, or site feature that does not comply with the minimum requirements of this Ordinance or other applicable City law.
NORTH CAROLINA ADMINISTRATIVE CODE	A set of written rules prepared by the North Carolina Department of Health and Human Services that are used to help affected parties interpret the North Carolina general Statutes.
NORTH CAROLINA GENERAL STATUTES	The set of written laws adopted by the North Carolina General Assembly that Statutes that set forth general propositions of law that courts apply to specific situations.
NOTICE OF PUBLIC HEARING	The formal legal notification of a public hearing on a proposed development application. A "published notice" is one required to be printed in a newspaper of general circulation. A "mailed notice" is one delivered to specified individuals by US Mail. A "posted notice" is a sign posted on or near the property subject to the application
NOTICE OF VIOLATION	A notice indicating a violation of this Ordinance.
NUISANCE FLOODING	Somewhat common or typical flooding that takes places in the same locations or with regular frequency.
O	
OATH	The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."
OCCUPY OR OCCUPANCY	The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.
OPEN SPACE	Areas of land free from buildings, structures, or encumbrances, as well as lands with buildings or structures devoted to active or passive recreational purposes.
OPEN SPACE SET-ASIDE	Land that has been permanently set aside as open space.
ORDINANCE	A legislative enactment of the City of Hendersonville, North Carolina.
OWNER	~~The person firm or organization in whom is vested the ownership, dominion or title of property. The person firm or organization who is recognized and held responsible by the law as the owner of property.~~See "Landowner"
P	
PARCEL	See "Lot."
PARENT PARCEL	A lot or tract that is further subdivided.
PARKLAND	Land dedicated to the City for use as a public park.

PEDESTRIAN PATHWAY	Interconnected paved walkway that provides a pedestrian passage through blocks running from street to street, vehicular use areas, through sites, or other locations.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
PENALTY	Punishment for violation of a law or rule.
PERFORMANCE GUARANTEE	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or installation of required private site features prior to issuance of a building permit or other development approval.
PERSON	An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization joint venture, public or private institution, utility, cooperative, interstate body, the State of North Carolina and is agencies, a political subdivision, municipal corporation, or other entity acting as a unit.
PERSONAL PROPERTY	All forms of property, except real property.
PERVIOUS SURFACE	Any land surface not effectively covered by impervious surface, in which rainfall and stormwater runoff can naturally infiltrate.
PHASE	The discrete portion of a proposed development.
PLANNING BOARD	The board established by City Council in Chapter 40 of the City of Hendersonville Code of Ordinances, pursuant to N.C.G.S. Section 160D-301, having the authority as specified in the City's land development regulations and this Ordinance.
PLAT	A map or plan of a parcel of land which is to be, or has been subdivided.
POSITIVE DRAINAGE	Configuration of a walkway or trail in a manner that sheds water.
PRE-APPLICATION CONFERENCE	A meeting or conference conducted by a potential applicant for a permit or development approval and City staff for the purposes of discussing a potential application or City rules regarding development.
PRE-FIRM	Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map..
PRIVATE CENTRALIZED SYSTEM	A private sanitary sewer system that serves multiple uses in a single development.
PRIVATE STREET OR ROAD	A road or way for the use of private individuals that is not dedicated to the City, the State, or other public agency.
PROBATED WILL	A last will and testament authenticated by a court that calls for the distribution of real estate (land) to one or more heirs.
PROPERTY	All real property subject to land-use regulation by the City. The term includes any improvements or structures customarily regarded as part of real property.
PROPERTY OWNER	See "Landowner."
PUBLIC HEARING	A hearing conducted by the Planning Board, the Zoning Board of Adjustment, or the City Council ~~a review authority~~ for the purpose of allowing interested members of the public to provide comments, testimony or evidence as allowed by applicable law and this Ordinance, for their ~~review authority to~~ consideration in deciding an application under this Ordinance. ~~A public hearing is required to be publically noticed prior to conducting the~~As used herein, a public hearing may be an ~~a~~Administrative ~~h~~Hearing conducted by the Planning Board, an ~~e~~Evidentiary ~~h~~Hearing conducted by the BOA or City Council. ~~hearing.~~
PUBLIC INFRASTRUCTURE	Infrastructure (such as potable water lines, sanitary sewer lines, streets, storm drainage, sidewalks, trails, etc.) and related facilities or appurtenances that are owned by the public and intended for use by the public.
PUBLIC MEETING	A meeting conducted by a review authority for the consideration of a development application submitted under this Ordinance that is open to any member of the public to attend. A public meeting is not subject to public notification requirements.
PUBLIC NOTICE OR NOTIFICATION	See "Notice of Public Hearing."
PUBLIC RIGHT-OF-WAY	See "Right-of-Way."

Q	
QUASI-JUDICIAL DECISION	A decision by an elected or appointed body that applies previously-established policies. Examples include decisions on appeals and ~~variances~~ Variances.
QUASI-JUDICIAL ~~PUBLIC~~ EVIDENTIARY HEARING	~~A formal public hearing involving the legal rights of specific parties conducted by the Board of Commissioners or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed atthe hearing, and typically involve findings of fact made by the decision-making body.~~An Evidentiary Hearing. An eEvidentiary ~~h~~Hearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
QUORUM	The minimum number of council, board, or commission members that must be present in order to conduct official business or take official action.
R	
RECOMBINATION	The consolidation or shifting of lot lines between two or more parcels.
RECORDATION	Filing a plat or paperwork associated with a subdivision or other form of development at the Henderson County Register of Deeds to ensure the documents are available for public inspection in perpetuity.
REMEDY	The manner in which a right or law is enforced or satisfied when a violation of the ~~UDO~~ ordinance or related law has occurred.
REMEDY A VIOLATION	An act to bring the structure or other development into compliance with State or community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this subchapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
REQUIRED YARD	The land area located between a lot line and the boundary of a required setback.
RESERVATION	Land area set aside by a landowner for use by the public. Reservations typically involve the identification and protection of an easement for some public purpose.
RESERVE FUND	A bank account containing reserve funds for the purpose of maintaining commonly-held land, infrastructure, or facilities.
RESIDENTIAL DEVELOPMENT	Buildings established for residential purposes such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, gazebos, and customary home occupations.
RE-SUBDIVISION	The further subdivision of land already subject to an expedited subdivision, ~~minor subdivision~~ Minor Subdivision, or ~~major subdivision~~ Major Subdivision approval in accordance with the City's development regulations. The shifting of a lot line between two established lots shall be considered a re-subdivision.
REVERSE FRONTAGE LOT	A lot with two or more street frontages that includes a building or structure that is oriented in a manner that differs from other existing structures or from the development patterns indicated by adopted policy guidance or good planning practice.
REVIEW AUTHORITY	The City Manager, the City Manager's designee, the Community Development Director, Planning Board, Board of Adjustment, or City Council, as ~~a~~ appropriate.
RIGHT-OF-WAY	Property located within and adjoining the streets, roads and highways within the City, which rights-of-way are owned or otherwise maintained by the state.
ROAD	See "Street."
ROAD, PRIVATE	See "Private Street or Road."
ROAD, PUBLIC	See "Street, Public."
RURAL CHARACTER	Lands and activities located outside a municipal corporation (a city) that has a low population density where the majority of the land is undeveloped and the majority of economic activity revolves around agricultural pursuits. Rural areas are typically occupied by farms, fields, forests, and un-built land, but may also include low concentrations of homes and business activities.
S	
SEDIMENT	Solid particulate matter, both mineral and organic, that is transported by water, air, gravity, or ice from its site of origin.
SEDIMENTATION	The process by which sediment resulting from accelerated erosion is transported off-site by land-disturbing activity.

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
SIDEWALK	A paved area public right-of-way running parallel to the street for the purposes of pedestrian travel and to facilitate pedestrian access to adjacent streets and land.
SIGHT DISTANCE TRIANGLE	The triangular area formed by a diagonal line connecting two points located at designated locations on intersecting right-of-way lines or a right-of-way line and the curb or a driveway.
SIMPLE MAJORITY	More than half of the voting members of a review authority deciding an application under this Ordinance.
SINGLE-FAMILY RESIDENTIAL	Any development where no building contains more than one principal dwelling unit, every principal dwelling unit is on a separate lot, and where no lot contains more than one principal dwelling unit.
SITE SPECIFIC PLAN	A development plan prepared in accordance with ~~Sections 160A-385.1 160D-102; 108; 108.1 of theNorth Carolina General Statutes~~Chapter 40 of the City of Hendersonville Code of Ordinances.
SPECIAL FLOOD HAZARD AREA	The land in the floodplain subject to a one percent or greater chance of being flooded in any given year.
SPECIAL LEGISLATION	Laws or acts approved by the North Carolina General Assembly that apply specifically applied to the City of Hendersonville. Special legislation may be applied solely to the City or to multiple jurisdictions, but it is not universally applicable to all units of local government in North Carolina.
STATE	The State of North Carolina.
STATE BUILDING CODE	A series of ordinances enacted by North Carolina that establish the minimum requirements that must be met in the construction and maintenance of buildings for the purpose of safety and sanitation.
STOP WORK ORDER	An order issued by the City to a landowner or developer to cease and desist all land-disturbing or development activity on a site pending resolution of a problem or conflict.
STORMWATER CONVEYANCE	Stormwater management facilities or features designed to facilitate the movement of stormwater runoff.
STORMWATER MANAGEMENT DEVICE	A structure or facility intended to control stormwater runoff on an individual lot or development site.
STORMWATER RUNOFF	The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
STREET	A paved or unpaved travelway intended for use by automobiles and bicycles.
STREET CLASSIFICATION	The type or category of a street.
STREET GRADE	The incline or steepness of a street.
STREET STUB	A nonpermanent dead end street intended to be extended in conjunction with development on adjacent lots or sites.
STREET, BOULEVARD	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, CUL-DE-SAC	A street that terminates in a vehicular turnaround.
STREET, EXPRESSWAY	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, LOCAL	A street whose primary function is to provide access to abutting properties. It generally serves or is designed to serve less than 100 dwelling units and handles less than 800 trips per day.
STREET, MARGINAL ACCESS	A street meeting public street standards that provides access solely to lots inaccessible to abutting higher order streets like expressways, boulevards, or thoroughfares.

TABLE 9.01: DEFINITIONS

TERM	DEFINITION
STREET, PRIVATE	A vehicular travelway not dedicated or offered for dedication as a public street but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system.
STREET, PUBLIC	A dedicated public right-of-way in which the roadway has been accepted or constructed to public standards for vehicular traffic, but not an alley.
STREET, THOROUGHFARE	A street whose principle function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties. It generally serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used or is used to carry more than 800 trips per day.
SUBDIVIDER	Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.
SUBDIVISION	As used in this ordinance means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions 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; but the following shall not be included within this definition provided, however, that any subdivision document or plat to be recorded pursuant to such exclusions shall have the notation of "No Approval Required" and the signature of the City Manager or his designated agent before filing in the office of the Henderson County Register of Deeds. A "Subdivision" shall not include the following: ~~1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance.~~ ~~2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.~~ ~~3. The public acquisition by purchase of strips of land for the widening or opening of streets.~~ ~~4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way or easement dedication is involved and where the resultant lots equal or exceed the standards set forth in this Ordinance.~~ (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations. (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved. (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors. (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations. (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
SUBDIVISION, EXEMPT	A division of land that is exempted from review and approval by the City in accordance with the North Carolina General Statutes.
SUBDIVISION, EXPEDITED	A subdivision of land reviewed and approved administratively that is exempted from most of the public infrastructure requirements.
SUBDIVISION, MAJOR	A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.
SUBDIVISION, MINOR	A subdivision of land that includes up to eight lots (including the residual parcel) with no extension of public streets, public water, public sewer, or other public utility.
SURETY BOND	See "Performance Guarantee."

T	
THIS ORDINANCE	The Subdivision Ordinance for the City of Hendersonville, North Carolina.
TRACT	A separate tract of land under common or unified ownership in existence on the effective date of this Ordinance.
TRANSFER	Shifting of an ownership interest in land from one owner to another.
U	

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
UNSUBDIVIDED DEVELOPMENT	All construction of structures upon land under common singular ownership where such construction does not involve the sale of individual lots or parcels of land and the streets and ways are intended for use by the public or occupants of the development.
UTILITY EASEMENT	An easement which grants the right to install and maintain utilities including, but not limited to, water lines, sewer lines, storm sewer lines, electrical power lines, telephone lines, natural gas lines, and community antenna television systems.
V	
VARIANCE	The permission to develop or use property granted by the BOA, in a manner that that relaxes or waives a requirement in this Ordinance.
VEHICULAR ACCESSWAY	See "Accessway."
VESTED RIGHT	A right pursuant to North Carolina General Statutes Sections ~~160A-385.1~~ 160D-102; 108; 108.1 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.
VESTED RIGHT, COMMON LAW	A term that refers generally to the right to complete a proposed development project according to the rules in effect at the time it was approved.
VIOLATION	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or development approval.
W	
WATER SUPPLY WATERSHED	An area of land located within the same watershed of a body of water that serves as a potable water source.
WILDLIFE HABITAT	Land area that includes both physical and biological features necessary for an organism to find food, shelter, protection, and reproductive mates.
WRIT OF CERTIORARI	A writ of ~~superior~~ Superior ~~court~~ Court for Henderson County to call up the records of an inferior court or a bodyacting in a quasi-judicial capacity.
X	
Y	
YARD	An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is occupied and unobstructed from the ground upward by buildings or structures except by permitted accessory buildings or uses.
Z	

INDEX

A	
Administrative Adjustment	**Section 2.04.B**
Adopted Policy Guidance	**Section 1.07.A**
Appeal	**Section 2.04.C**
Application	
Authority to File	Section 2.03.D.1
Complete	Section 2.03.D.5
Pending	Section 1.09.D
Processing	Section 2.03
As-Built Plans	**Section 2.05.J**
	Section 4.02.D
Access to Lots	**Section 3.04**
B	
Board of Adjustment	**Section 2.02**
Bona Fide Farm	**Section 1.05.C**
C	
City Council	**Section 2.02**
City Manager	**Section 2.02**
Civil Penalties	**Section 7.08.A**
Cluster Mailbox Unit	**Section 3.08**
Computation of Time	**Section 8.01.D**
Conservation Subdivision	
Conservation & Development Plan	Section 2.04.D.4
Procedure	Section 2.04.D
Continuance	**Section 2.03.I**
Conflict	**Section 1.08**
Completeness Determination	**Section 2.03.D.5**
Criminal Penalties	**Section 7.08.E**
D	
Definitions	**Section 9.01**
Delegation	**Section 8.01.I**
Dedication	**Section 4.02.F**
Driveways	**Section 3.04**
Development Review Committee	**Section 2.02**
Development Entry Points	**Section 4.03.C.3**
E	
Easements	
Utilities	Section 3.06.B
Upsizing	Section 3.06.D
Width	Section 3.06.C
Effective Date	**Section 1.02**
Enforcement Procedure	**Section 7.07**
Exempt Subdivision	**Section 2.04.E**
Expedited Subdivision	**Section 2.04.F**
F	
Fee-in-Lieu	**Section 2.06**
Final Plat	**Section 2.04.G**
Fire Protection	**Section 4.08**
G	
Greenway	**Section 4.05**
H	
I	
Infrastructure, Public	
Acceptance	Section 2.04.G.6
Fire Protection	Section 4.08
Greenways	Section 4.05
Potable Water	Section 4.06
Sanitary Sewer	Section 4.07
Sidewalks	Section 4.04
Stormwater	Section 5.01
Streets	Section 4.03
Intersection, Street	**Section 4.03.C.2**
J	
K	
L	
Language Construction	
Delegation	Section 8.01.I
Mandatory Terms	Section 8.01.M
Time-Related Language	Section 8.01.E
Land Suitability	**Section 3.02**
Lot	
Access	Section 3.04
Dimensional Requirements	Section 3.03.A
Flag	Section 3.03.C
Lines	Section 8.02.C.2
Nonconforming	Section 1.09.B
Reverse Frontage	Section 3.03.D
Types	Section 8.02.C.3
M	
Major Subdivision	**Section 2.04.H**
Minor Subdivision	**Section 2.04.I**

INDEX

Monuments	**Section 3.05**
N	
Public Notice	**Section 2.03.F**
O	
Open Space	**Section 5.04**
Owner Association	**Section 6.02**
P	
Parkland	**Section 3.09.A**
Performance Guarantees	**Section 2.05**
Planning Board	**Section 2.02**
Plan	
As-Built	Section 2.05.J
Conservation and Development	Section 2.04.D.4
Site-Specific Development	Section 1.10.D
Plat	
Final	Section 2.04.G
Preliminary	Section 2.04.H
Potable Water	**Section 4.06**
Pre-application Conference	**Section 2.03.C**
Public Hearing	**Section 2.03.G**
Public Meeting	**Section 2.03.G.1**
Purpose & Intent	**Section 1.04**
Q	
Quasi-Judicial Hearing	**Section 2.03.G.2**
R	
Remedies	**Section 7.08**
Review Procedures	
Flow Chart Legend	Section 2.04.A.3
Summary Table	Section 2.02
Rules of Measurement	
Generally	Section 8.02.B
Lot Coverage	Section 8.02.E
Lots	Section 8.02.C
Setbacks	Section 8.02.D
Slope	Section 8.02.F
Responsible Persons	**Section 7.05**
S	
Sanitary Sewer	**Section 4.07**
Sidewalk	**Section 4.04**
Sight Distance Triangle	**Section 4.03.C.10**
Sedimentation & Soil Erosion	**Section 5.02**
Stormwater	**Section 5.01**
Street	
Classification	Section 4.03.A.3
Configuration	Section 4.03.C
Connectivity	Section 4.03.B.6
Design	Section 4.03.B
Grade	Section 4.03.C.7
Marginal Access	Section 3.04.C
Name	Section 4.03.D.1
Private	Section 4.03.B.2
Subdivision	
Conservation	Section 2.04.D
Exempt	Section 2.04.E
Expedited	Section 2.04.F
Major	Section 2.04.H
Minor	Section 2.04.I
Name	Section 3.07
Variance	Section 2.04.J
Steep Slopes	**Section 5.03**
T	
Transitional Provisions	**Section 1.09**
U	
V	
Variance, Subdivision	**Section 2.04.J**
Vested Rights	
Common Law Vesting	Section 1.10.B
Site Specific Development Plan	Section 1.10.D
Statutory Vesting	Section 1.10.C
Violations	**Section 7.04**
W	
Withdrawal	**Section 2.03.I.2**
X	
Y	
Z	

Ordinance #___-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, the Session Laws 2019-111, 2020-3 and 2020-25 were signed into law in order to adopt a new Chapter 160D of the North Carolina General Statutes entitled "LOCAL PLANNING AND DEVELOPMENT REGULATION," hereinafter "Chapter 160D"; and

WHEREAS, Chapter 160D consolidates and updates the statutory authority and requirements for land development regulation within the City and its extraterritorial jurisdiction; and

WHEREAS, City Council desires to amend certain chapters of the Code of Ordinances for the City of Hendersonville, North Carolina, sometimes hereinafter referred to as the "Code," for conformance with Chapter 160D, including both prior law brought forward as part of Chapter 160D and the changes or clarifications made with the adoption of Chapter 160D;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina as follows:

SUBPART A: The readoption and amendment of Chapter 12 of the Code of Ordinances for the City of Hendersonville, North Carolina, "BUILDINGS AND BUILDING REGULATIONS:

Chapter 12 of the Code of Ordinances for the City of Hendersonville entitled "BUILDINGS AND BUILDING REGULATIONS" is hereby readopted and amended to read as shown on Attachment A to this Ordinance, Attachment A being incorporated herein by reference as if fully set forth in this Subpart A.

SUBPART B: The readoption and amendment of Chapter 24, Article II of the Code of Ordinances for the City of Hendersonville, North Carolina "FLOOD DAMAGE PREVENTION ORDINANCE":

Chapter 24, Article II of the Code of Ordinances for the City of Hendersonville, North Carolina, entitled "FLOOD DAMAGE PREVENTION ORDINANCE" is hereby readopted and amended to read as shown on Attachment B to this Ordinance, Attachment B being incorporated herein by reference as if fully set forth in this Subpart B.

SUBPART C: The readoption and amendment of Chapter 24, Article III of the Code of Ordinances for the City of Hendersonville, North Carolina "STORMWATER ORDINANCE":

Chapter 24, Article III of the Code of Ordinances for the City of Hendersonville, North Carolina entitled "STORMWATER ORDINANCE" is hereby readopted and amended to read as shown

on Attachment C to this Ordinance, Attachment C being incorporated herein by reference as if fully set forth in this Subpart C.

SUBPART D: The readoption and amendment of Chapter 28 of the Code of Ordinances for the City of Hendersonville, North Carolina "HISTORIC PRESERVATION":

1. Chapter 28 of the Code of Ordinances for the City of Hendersonville, North Carolina entitled "HISTORIC PRESERVATION" is hereby readopted and amended to read as shown on Attachment D to this Ordinance, Attachment D being incorporated herein by reference as if fully set forth in this Subpart D.

2. The Hendersonville Historic Preservation Commission Main Street Local Historic District Design Standards, as amended and attached to this Ordinance as Attachment D1, said Attachment D1 being incorporated herein by reference as if fully set forth in this Subpart D, shall be presented to the Historic Preservation Commission for adoption and approval, and to the extent that approval by the City Council is required, the Hendersonville Historic Preservation Commission Main Street Local Historic District Design Standards, as amended and attached to this Ordinance as Attachment D1, are hereby approved.

3. The Hendersonville Historic Preservation Commission Design Standards, as amended and attached to this Ordinance as Attachment D2, said Attachment D2 being incorporated herein by reference as if fully set forth in this Subpart D, shall be presented to the Historic Preservation Commission for adoption and approval, and to the extent that approval by the City Council is required, the Hendersonville Historic Preservation Design Standards, as amended and attached to this Ordinance as Attachment D2, are hereby approved.

SUBPART E: The readoption and amendment of Chapter 40 of the Code of Ordinances for the City of Hendersonville, North Carolina "PLANNING AND DEVELOPMENT":

Chapter 40 of the Code of Ordinances for the City of Hendersonville, North Carolina entitled "PLANNING AND DEVELOPMENT" is hereby readopted and amended to read as shown on Attachment E to this Ordinance, Attachment E being incorporated herein by reference as if fully set forth in this Subpart E.

SUBPART F: General Provisions:

1. The Chapters and Articles of the Code of Ordinances for the City of Hendersonville, North Carolina readopted and amended in Subpart A, Subpart B, Subpart C, Subpart D and Subpart E of this Ordinance are hereby declared to be severable. If any provision of any of the foregoing readopted and amended Chapters or Articles of the Code of Ordinances, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of such readopted and amended Chapters and Articles which can be given effect without the invalid Chapters, Articles, or application.

2. All actions taken by or on behalf of the City of Hendersonville, prior to the effective date of this Ordinance, in the administration and enforcement of the Chapters and Articles of the

Code of Ordinances for the City of Hendersonville, North Carolina, which are being readopted and amended by this Ordinance, are hereby ratified.

3. The adoption of this Ordinance shall not invalidate any pending enforcement actions, nor shall this Ordinance prohibit the enforcement of the Code of Ordinances for the City of Hendersonville, NC, as amended by this Ordinance, with respect any existing Code violations.

4. This Ordinance shall be effective upon its adoption. All prior provisions of Chapter 12, Chapter 24 Article II, Chapter 24 Article III, Chapter 28 and Chapter 40 the Code which are in conflict with this Ordinance, are hereby repealed.

5. As used in this Subpart F, Paragraph 1, the terms “Chapters” and “Articles” shall be deemed to include Chapters and Articles in whole or in part.

6. City staff and the codifier shall have the authority to make technical corrections to the Chapters and Articles of the Code of Ordinances for the City of Hendersonville, North Carolina readopted and amended in Subpart A, Subpart B, Subpart C, Subpart D and Subpart E of this Ordinance ,to correct typographical errors, insert omitted words where insertion of such words will not change the substance of the Code, and correct statutory references.

This Ordinance is adopted by the City Council of the City of Hendersonville, North Carolina on this 2nd day of July 2021.

Attest:

_____
Barbara G. Volk, Mayor, City of Hendersonville

_____
Angela L. Reece, City Clerk

Approved as to form:

_____
Angela S. Beeker, City Attorney

Attachment A

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

Chapter 12 BUILDINGS AND BUILDING REGULATIONS[1]

~~ARTICLE~~ARTICLE I. IN GENERAL

Sec. 12-1. Fire limits.

The fire limits of the ~~city~~City shall be that portion of the ~~city~~City included in the following description:

Beginning at a point on the ~~city~~City limit boundary due south of the terminus of the east curb of Jonesborough Street; thence to the intersection of the east curb of Jonesborough Street and the north curb of Davis Street; thence following the north curb of Davis Street to the east curb of Yarborough Street; thence following the east curb of Yarborough Street to the east curb of Kanuga Road; thence north to the Toxaway Railroad; thence west to a point 150 feet west of Kanuga Road; thence following Kanuga Road northerly and easterly to the east margin of Washington Street; thence north to West Fourth Avenue, following the east margin of Washington Street; thence, with the south curb of West Fourth Avenue in an easterly direction 100 feet to a point; thence in a northerly direction parallel with the east curb of Washington Street to the south curb of West Fifth Avenue; thence north to the north curb of West Seventh Avenue; thence west to the east curb of Buncombe Street; thence following the east curb of Buncombe Street north to the south curb of West Eighth Avenue; thence following the south curb of West Eighth Street east to a point 150 feet west of the west curb of Church Street; thence northerly 150 feet west of Highway 25 North to the ~~city~~City limits; thence east to a point 150 feet east of Highway 25 North on the north ~~city~~City limits; thence southerly to a point 150 feet east of Main Street and north of East Seventh Avenue; thence easterly 150 feet north of East Seventh Avenue to the east curb of Cherry Street; thence, south along the east curb of Cherry Street to the north curb of Seventh Avenue; thence, eastwardly along the north curb of Seventh Avenue to the ~~city~~City limits; thence southerly to a point on the ~~city~~City limits 150 feet south of East Seventh Avenue; thence westerly 150 feet south of East Seventh Avenue to the east curb of Grove Street; thence following the east curb of Grove Street south to the ~~city~~City limits; thence westerly on the ~~city~~City limits to the point of beginning.

---

[1]Charter reference(s)—Regulatory codes, § 14.1Charter reference(s)—.

Cross reference(s)—Maintenance and inspection of buildings for pool rooms, discotheques and amusement centers, § 8-36Cross reference(s)—; maintenance of stables, sheds or other places where livestock are kept, § 10-45Cross reference(s)—; requirements for construction and maintenance of enclosures for fowl, § 10-70Cross reference(s)—; environment, ch. 20Cross reference(s)—; fire prevention and protection, ch. 22Cross reference(s)—; floods, ch. 24Cross reference(s)—; health and sanitation, ch. 26Cross reference(s)—; historic preservation, ch. 28Cross reference(s)—; housing, ch. 30Cross reference(s)—; manufactured homes and trailers, ch. 34Cross reference(s)—; planning and development, ch. 40Cross reference(s)—; environmental services, ch. 44Cross reference(s)—; construction and demolition wastes from private property, § 44-46Cross reference(s)—; streets, sidewalks and other public places, ch. 46Cross reference(s)—; utilities, ch. 52Cross reference(s)—; construction or alteration of drinking water systems, § 52-481Cross reference(s)— et seq.; zoning ordinance, app. A; subdivisions, app. B.

State law reference(s)—Municipal authority to regulate the construction of buildings, ~~G.S. 160A-411~~ G.S. 160D-402(b); 404(c);1102; ~~160A-412~~ G.S. 160D-402(b); 1104; Establishment of fire limits, G.S. 160D-1128.

Provided, however, that in the description set forth in this section the reference to 150 feet from any street or curbline shall be construed to include the total depth in feet of any lot abutting such street or curb, whichever distance is greater.

(Code 1971, § 7-1)

Editor's note(s)—The fire limits of the ~~city~~City have changed and a complete legal description of such fire limits is on file and available in the ~~city~~City clerk's office.

Sec. 12-2. State building code; county to perform inspections.

The North Carolina State Building Code is applicable throughout the ~~city~~City and is administered by the county through a contractual agreement with the ~~city~~City.

Secs. 12-3—12-30. Reserved.

~~ARTICLE~~ARTICLE II. CONDEMNATION OF BUILDINGS OR STRUCTURES[2]

Sec. 12-31. Condemnation of buildings or structures, generally.

(1) This Article II is adopted pursuant to the authority of N.C.G.S. § 160D-1119.

(2) The Community Development Director and the code enforcement officer for the City of Hendersonville are hereby declared to be a local inspectors for the purposes of carrying out the duties authorized by N.C.G.S. § 160D-1117-1126 and this Article II. For the ease of reference, the Community Development Director and the code enforcement officer will collectively be referred to as "the code enforcement officer" in this Article II. The code enforcement officer shall have the authority and duties granted by N.C.G.S. § 160D-1117 through 1126, and is charged with carrying out these duties on behalf of the City of Hendersonville. The code enforcement officer shall have the authority to delegate any and all duties ascribed to a designee, and such designee shall be considered as, shall act as, and shall have authority as, a local inspector when carrying out the duties of the code enforcement officer. This designation of authority is made pursuant to N.C.G.S. § 160D-1102.

(3) The code enforcement officer shall declare unsafe any residential or nonresidential building or structure which appears to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, or other causes determined to be unsafe. In such event, the code enforcement officer shall affix a notice of the dangerous character of the building or structure to a conspicuous place on the exterior wall of the building or structure. Any person removing this notice shall be guilty of a Class 1 misdemeanor as provided in N.C.G.S. § 160D-1120.

As used in this Chapter 12, the word "building" shall be deemed to refer to all structures, in addition to

(4) buildings. Nothing in this Article II shall be deemed to limit any authority of City or County building inspectors granted pursuant to Chapter 160D Article 11 of the North Carolina General Statutes.

[2]Editor's note(s)—Ord. No. 04-1059, § 1, adopted October 7, 2004, amended ~~article~~Article II in its entirety to read as herein set out. Formerly, ~~article~~Article II pertained to the condemnation of nonresidential buildings or structures and derived from Ord. No. 01-0749, § 1, adopted July 12, 2001.

(Ord. No. 04-1059, § 1, 10-7-04)

Sec. 12-32. Condemnation of nonresidential buildings or structures in community development target areas.

The code enforcement officer as necessary, may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to be vacant or abandoned.

(2) It appears to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

If the code enforcement officer declares a nonresidential building or structure to be unsafe, the code enforcement officer must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term "community development target area" means an area that has characteristics of a development zone under G.S. § 105-129.3A, a "nonresidential development area" under G.S. § 160A-503(10), or an area with similar characteristics designated by ~~city~~City council as being in special need of revitalization for the benefit and welfare of its citizens.

(Ord. No. 04-1059, § 1, 10-7-04)

Sec. 12-33. Action in event of failure to take corrective action.

As authorized by N.C.G.S. § 160D-1121, i~~I~~f the owner of a building or structure that has been condemned as unsafe pursuant to this A~~a~~rticle II shall fail to take prompt corrective action, the code enforcement officer shall give him written notice, by certified or registered mail to his last known address or by personal service, of the following:

(1) That the building or structure is in a condition that appears to meet one or more of the following conditions:

a. Constitutes a fire or safety hazard;

b. Is dangerous to life, health, or other property;

c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children;

d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That an administrative hearing will be held before the code enforcement officer at a designated place and time, not later that ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the code enforcement officer may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure at least ten (10) days prior to the hearing and a notice of the hearing is published in a newspaper having general

circulation in the City's planning and development regulation jurisdictioncity at least once not later than one week prior to the hearing.

(Ord. No. 04-1059, § 1, 10-7-04)

Sec. 12-34. Order to take corrective action

As provided in N.C.G.S. § 160D-1122, if, upon a hearing held pursuant to the notice prescribed in Sec. 12-33 the code enforcement officer shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the code enforcement officer shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such period, not less than sixty (60) days, as the code enforcement officer may prescribe, provided that where the code enforcement officer finds that there is imminent danger to life or other property, the code enforcement officer may order that corrective action be taken in such lesser period as may be feasible.

Sec. 12-35. Appeal of an order to take corrective action.

As provided in N.C.G.S. § 160D-1123, any owner who has received an order under Sec. 12-34 may appeal from the order to the City Council by giving notice of appeal in writing to the inspector and to the local government clerk within ten (10) days following issuance of the order. In the absence of an appeal, the order of the code enforcement officer is final. The City Council shall conduct an evidentiary hearing to consider the appeal in accordance with the requirements of N.C.G.S. § 160D-406 and render a decision within a reasonable time. The City Council may affirm, modify and affirm, or revoke the order.

Sec. 12-36. Failure to comply with an order to take corrective action.

As provided in N.C.G.S. § 160D-1124, if the owner of a building or structure fails to comply with an order issued pursuant to Sec. 12-34 from which no appeal has been taken, or fails to comply with an order of the City Council following an appeal, the owner is guilty of a Class 1 misdemeanor.

Sec. 12-374. Equitable eEnforcement.

(1) A provided in N.C.G.S. § 160D-1125(a), where violation of this Article, the City may enforce the provisions of this Article II by initiating any appropriate action or proceedings to prevent, restrain, correct, or abate the violation, or to prevent the occupancy of the building or structure involved, in lieu of or in addition to any other remedies.

(2) (a) In the case of a nonresidential building or structure declared unsafe under this Aarticle II, the cityCity may, in lieu of seeking civil enforcement under Sec. 12-36, proceed as authorized by G.S. § 160A-432(a) G.S. 160D-1125, and cause the building or structure to be removed or demolished. The amounts incurred by the cityCity in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in ArticleArticle 10 of Chapter 160A, G.Sof the North Carolina General Statutes. If the building or structure is removed or demolished by the cityCity, the cityCity shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The cityCity shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of Henderson County and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

The amounts incurred by the City in connection with the demolition or removal under this section shall also be a lien against any other real property owned by the owner of the building or structure and located within the City's planning and development regulation jurisdiction, except for the owner's primary residence. The provisions of Sec. 12-37(2) also apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(3) ~~(b)~~

(4) Nothing in this section shall be construed to impair or limit the power of the C~~c~~ity to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. No. 04-1059, § 1, 10-7-04)

Sec. 12-38. Records and Reports.

The code enforcement officer shall keep all records and reports required by N.C.G.S. § 160D-1126.

~~Sec. 12-35. Appeals.~~

~~If, upon a hearing held pursuant to the notice prescribed in section 12-33 the code enforcement officer finds that the building or structure meets one or more of the conditions specified in section 12-33(1), he shall render an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the code enforcement officer may prescribe. Provided, however, nothing herein shall preclude the county building inspector from requiring that corrective action be taken in a lesser period of time upon finding that there is imminent danger to life or other property.~~

~~(Ord. No. 04-1059, § 1, 10-7-04)~~

Article III. NONRESIDENTIAL PROPERTY MAINTENANCE AND REPAIR CODE

Sec. 12-3~~96~~. Applicability and compliance.

(1) This Article is adopted pursuant to the authority of N.C.G.S. § 160A-174, N.C.G.S. § 160A-193, and N.C.G.S. §s 160D-1129 and 1130. The Community Development Director and the code enforcement officer, or their designee, shall enforce the provisions of this Article III on behalf of the City. For ease of reference, the Community Development Director and the code enforcement officer will collectively be referred to as "the code enforcement officer" in this Article III. The code enforcement officer shall have such authority and power as is necessary or convenient to carry out and effectuate the purpose of this Article III, in addition to the others herein granted.~~(a)~~

~~(1)~~ Every ~~commercial~~ nonresidential building or structure and the premises on which it is situated~~, used or intended to be used for commercial business occupancy~~ shall comply with the provisions of this ~~Code~~Article III, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this ~~article~~Article, and irrespective of any permits or licenses which shall have been issued for the occupancy of the building or for the installment or repair of equipment or facilities prior to the effective date of this ~~article~~Article. This ~~article~~Article establishes minimum standards for the maintenance and repair ~~initial and continual occupancy and use~~ of all such nonresidential buildings, and does not replace or modify standards otherwise established by law for the construction, repair, alteration, or use of the building, equipment or facilities contained therein except as provided herein. Where there is mixed occupancy of a building, any ~~commercial business~~nonresidential use therein shall be regulated by and subject to the provisions of this ~~article~~Article.

(2)

~~(b)~~ It shall be the duty of each and every owner, operator or other party in interest of a ~~commercial~~ nonresidential building or premises to which this A~~a~~rticle is applicable to comply with the regulations and requirements set forth herein. No license, permit or certificate of occupancy shall be issued unless and until all applicable sections of this ~~article~~Article have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this A~~a~~rticle.

(3) ~~(c)~~

(4) This Article establishes minimum standards for the initial and continual occupancy and use of all non-residential buildings or premises, in addition to any other requirements of applicable law; however, t~~T~~he provisions of this ~~Code~~ Article that apply to the exterior or exterior components of a building shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured to prevent the entry of unauthorized persons or the occurrence of conditions not permitted by law in accordance with the standards set out herein.

(5) Nothing in this Article shall limit the City's authority to proceed with any other applicable statute, code, ordinance or other applicable law in lieu of or in addition to proceeding under the terms of this Article III.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-~~37~~40. Maintenance and repair standards for ~~commercial~~ nonresidential buildings and structures, and their premises.

The failure of a nonresidential building or structure to comply with this Sec. 12-40 is hereby declared to be circumstances under which the public necessity requires that such nonresidential building or structure should be repaired, closed or demolished in accordance with the provisions stated. All ~~commercial~~ nonresidential buildings and structures, including their premises, shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the building from any unauthorized admittance from humans, animals or birds. All ~~commercial premises~~nonresidential buildings and structures and their premises shall be free of nuisances and shall be free of any hazards to the safety of occupants, customers or other persons utilizing the buildings and structures included the premises or to pedestrians and/or vehicles passing thereby. The nonresidential building and structure and the premises shall be kept in a condition that is not dangerous and injurious to the public health, safety and welfare. Without limitation of the foregoing requirements, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected. ~~:~~

(1) Interior walls or vertical studs, which seriously list, lean or buckle, to such an extent as to render the building unsafe;

(2) Supporting member or members which show 33 percent or more damage or deterioration, or non-supporting members or enclosing or outside walls that shows 50 percent or more damage or deterioration;

(3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to reasonably be safe for the purpose used;

(4) Such damage by fire, wind or other causes as to render the building unsafe;

(5) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the ~~city~~City;

(6) Inadequate facilities for egress to such an extent that there does not exist at a minimum, sufficient operable doors that the building can be entered safely and exited in the same manner in case of fire or panic;

(7) Defects significantly increasing the hazards of fire, accident or other calamities;

(8) Lack of adequate ventilation, light, heating or sanitary facilities to such an extent as to endanger the health, safety or general welfare of the occupants or other residents of the ~~city~~City;

(9) Lack of proper electrical, heating or plumbing facilities ~~required by this article~~ which constitutes a health or a definite safety hazard. If the electrical, heating or plumbing facilities are in such a condition that the service to those facilities needs to be discontinued to protect the general public, then the code enforcement officer shall be authorized to notify the appropriate official to disconnect service and that the service shall not be reconnected until the building has been re-inspected and cleared of all violations. Permits may be required from the county building inspections department. Temporary service connections may be permitted to allow for construction and/or cleaning;

(10) Any violation of the ~~city~~City fire prevention code which constitutes a condition which is unsafe and especially dangerous to life;

(11) Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way;

(12) Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the ~~city~~City fire prevention code;

(13) The building and environs surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and repaired or replaced with like or similar material according to its original use;

(14) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;

(15) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair and free of defects;

(16) Gutters and down-spouts shall be replaced or repaired as necessary and shall be appropriately located so as not to cause a hazard to pedestrian, vehicular traffic or property;

(17) Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;

(18) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the ~~city~~City;

(19) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated, or damaged, and shall not have other cracks which might admit rodents;

(20) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used and shall not leak;

(21) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged;

(22) Interior steps, railings, landings, porches or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse;

(23) All plumbing fixtures and pipes shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition;

(24) All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner;

(25) All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints or broken or loose mullions;

(26) All windows shall be maintained free of broken or cracked glass that could be in danger of falling or shattering.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-~~38~~41. Investigation.

Whenever it appears to the code enforcement officer that a nonresidential building or structure has not been properly maintained or is otherwise in violation of the standards contained in Sec. 12-40, and/or ~~so~~ that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by ~~section~~Sec. 12-~~37~~40, the code enforcement officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with N.C.G.S. § 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-~~39~~42. Complaint and hearing.

(1) ~~(a)~~ If the preliminary investigation discloses evidence ~~that a building is in~~of a violation of the minimum standards contained in Sec. 12-40, ~~he~~ the code enforcement officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential ~~such~~ building or structure a complaint. The complaint shall state ~~stating~~ the charges and contain~~ing~~ a notice ~~that~~providing all of the following:

(a) That an administrative ~~a~~ hearing will be held before the code enforcement officer, or their designated agent, at a place and time ~~therein fixed~~fixed in the complaint, not less than ten nor more than 30 days after the serving of said complaint. Venue for the hearing must be within Henderson County.

(b) That t~~T~~he owner and parties in interest shall have the right to file an answer to the complaint and to appear at the administrative hearing in person, or otherwise, and give testimony at the place and time fixed in the complaint.

(c) That a~~A~~ny person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.

(d) That t~~T~~he rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(2) Following the administrative hearing, the code enforcement officer shall dismiss the complaint if he finds no violation. If the code enforcement officer ~~; if he~~ finds that violations of this A~~a~~rticle exist, he or she shall issue a written order stating findings of fact in support of the determination of violations. The order shall also set forth the remedial action to be taken to effect compliance with this Article, and shall specify a reasonable time for compliance. The code enforcement officer shall cause the order to be served on the owner and parties in interest. ~~shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.~~

Where, as part of the order, the code enforcement officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards set forth in Sec. 12-40, the order shall be comply with the requirements of N.C.G.S. 160D-1129(e) as follows:

(3)

~~(b)~~If the code enforcement officer determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this ~~article~~Article can be made at a cost of ~~less than~~ 50 percent or less than the ~~of the~~ present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein or otherwise to vacate and close the nonresidential building or structure for any use.

(a)

(b) ~~(c)~~ If the code enforcement officer determines that the cost of repairs, alterations or improvements necessary to bring the building or structure into compliance with the provisions of the ~~article~~Article ~~can not be made at a cost of more than~~will exceed 50 percent of the present value of the building or structure, the officer shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or otherwise to demolish the building.

(c) Where a determination is made pursuant to Sec. 12-42(3)(b) that costs to remedy the violations exceed 50 percent of the present value of the building or structure, and the nonresidential building or structure is located in a local historic district, a historic district listed in the National Register of Historic Places, is designated as a local historic landmark, or is listed in the National Register of Historic Places, the City Council shall hold an administrative hearing to determine whether or not the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district prior to the code enforcement officer's issuance of the order. If City Council makes a determination that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, then the code enforcement officer's order shall order that the nonresidential building be vacated and closed until it is brought into compliance with the minimum standards contained in Sec. 12-40.

(d) The order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities of vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(4) Where the order finds that violations of Sec. 12-40 constitute a nuisance without finding that the safety or health of the occupants of a nonresidential building or structure or members of the general public is jeopardized for failure of the property to meet the minimum standards set forth in Sec. 12-40, the order shall state the actions necessary to achieve compliance with Sec. 12-40, and shall state the remedies available to the City for failing to comply as contained in Sec. 1-6 of the Code of Ordinances for the City of Hendersonville. If the owner does not comply with such order, the code enforcement office may impose any penalties or utilize all available remedies provided under Sec. 1-6 of the Code.

(5) The code enforcement officer shall have the authority to administer oaths, affirmations, examine witnesses, and receive evidence as part of the administrative hearing.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-430. Service of complaints and orders.

(a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer upon persons either personally or by ~~registered or~~ certified mail so long as the means used are reasonably designed to achieve actual notice. When service of a complaint or order is accomplished personally ~~or by registered or certified mail,~~ such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. Regular mail that is not returned shall be deemed received on the 3rd consecutive calendar day following the date of mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence~~, or, if the owners are known but have refused to accept service by registered or certified mail~~ and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the ~~city~~City at least once no later than the time at which personal service would be required under the provisions of this A~~a~~rticle. When service is made by publication, a ~~copy of the complaint or order~~notice of the pending proceedings shall be posted in a conspicuous place on the premises affected ~~by the complaint or order; in the case of the complaint, it must be posted at least ten days prior to the hearing~~.

(c) The code enforcement officer shall certify in writing for the City records the date(s) and method(s) of service.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-414. Failure to comply with orders.

(a) ~~(a)~~ In the case of an order declaring the violations of Sec. 12-40 to be a nuisance, but not declaring that the violations jeopardize the safety or health of the occupants of the nonresidential building or the general public, the code enforcement officer may enforce this Article III will all remedies available under Sec. 1-6 of the Code of Ordinances for the City of Hendersonville for failures to comply with the order.

(b) If an order, declaring that the violations of Sec. 12-40 will jeopardize the safety or health of the occupants of the nonresidential building or the general public, requires ~~if~~ the owner ~~fails to comply with an order~~ to repair the nonresidential building or structure and the premises or otherwise vacate and close the building or structure, and the owner fails to comply with the order, the code enforcement officer may:

(1) Cause such structure to be repaired, ~~and pending such repairs,~~ or otherwise may order the building to be vacated and closed;

(2) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is ~~unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects.~~unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the ~~City~~City of Hendersonville."

Any person who occupies or knowingly allows the occupancy of a building or structure so posted is guilty of a Class 3 misdemeanor.

(~~cb~~) If an order, declaring that the violations of Sec. 12-40 will jeopardize the safety or health of the occupants of the nonresidential building or the general public, requires the owner to ~~If the owner fails to comply with an order to~~ remove or demolish the building, and the owner fails to comply with the order the code enforcement officer may:

(1) Cause such structure to be removed or demolished;

(2) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."~~"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."~~

Any person who occupies or knowingly allows the occupancy of a building or structure so posted is guilty of a Class 3 misdemeanor.

(~~dc~~) The duties of the code enforcement officer set forth in subsections (~~ba~~) and (~~cb~~) shall not be exercised until after t~~:~~

~~(1) The city attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the code enforcement officer; or~~

~~(2) T~~he ~~code enforcement officer shall request the council to order him by~~City Council has adopted an ordinance specifically describing the subject property and ordering him to do either of the following as appropriate:

~~a.~~ To cause such building to be repaired, altered and improved or otherwise vacated and closed to comply with the standards established by this ~~article~~Article; or

(1)

(2) ~~b.~~ To cause such building to be ~~vacated, closed, and~~ removed or demolished. Provided however, that no ordinance shall be adopted to require the demolition of a nonresidential building or structure until the owner has first been given a reasonably opportunity to bring it into conformity with the standards contained in Sec. 12-40.

(3) The council, in ordering one of the aforesaid alternatives set out in Sec. 12-44(d)(1) or (d)(2), shall order the specific action that will best effectuate the purposes of this ~~article~~Article.

(4) An ordinance adopted pursuant to Sec. 12-44(d)(1) or (d)(2) above shall describe the property or properties. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner or owners in the "grantor index."

(e~~d~~) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition carried out pursuant to Sec. 12-44 (b) or (c) above shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in ~~Article~~Article 10, Chapter 160A of the North Carolina General Statutes. If the real property upon which the cost was incurred is located in the City, the amount of the foregoing costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. This additional lien is inferior to all prior liens and shall be collected as a money judgment.

(f) If the unsafe building is removed or demolished by the code enforcement officer, ~~he shall, if possible,~~ the officer shall offer for sale ~~sell~~ in any commercially reasonable manner the recoverable materials of the ~~unsafe~~ building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the code enforcement officer with the clerk of superior court, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. ~~for subsequent disbursement by the court to the persons found by the court to be entitled thereto.~~

(g~~e~~) Nothing in this ~~section~~ Article shall be construed to impair or limit in any way the power of the ~~city~~City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

(h~~f~~) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

(i) If the City Council has adopted an ordinance, or the code enforcement officer has issued an order, requiring the nonresidential building or structure to be repaired or vacated and closed, and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the City Council may proceed in accordance with N.C.G.S. § 160D-1129(g) to enact an ordinance to require the repair or demolishing of the building or structure within 90 days as provided by said 160D-1129(g).

(j) If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement officer may file a civil action in the name of the City to remove the occupant in accordance with the terms and requirements contained in N.C.G.S. § 160D-1129(j).

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-45~~2~~. Appeals.

(a) Appeals shall be governed by N.C.G.S. § 160D-1208. The Zoning Board of Adjustment is designated as the housing appeals board. An appeal from any decision or order of the code enforcement officer pursuant to this ~~article~~Article may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision~~,~~ or ~~if either the owner or his attorney was not present when the decision was rendered, then~~ within ten days of service of such order. Such appeal shall be taken by filing with the code enforcement officer and with the board of adjustment

(hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the code enforcement officer certifies to the board after the notice of appeal is filed with him/her, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of ~~his~~ the requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the code enforcement officer by the board, or by a court of record upon petition made pursuant to subsection (d) of this section. Except where in conflict with N.C.G.S. § 160D-1208, a~~A~~ll regulations, fees and other rules of the board shall apply to these appeals.

(b) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of ⅘ of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing upon appeals, in any case where ~~there are practical difficulties or~~ unnecessary hardships ~~in the way of~~would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(c) ~~If the board determines that the building is a building of historical value, the board may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six months of the board's order and shall be completed within two years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation. If the repairs are not commenced and completed within the time periods set out in the order, the code enforcement officer shall proceed to enforce his original order.~~Reserved.

(d) Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(e) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within 30 days after the issuance of the order or rendering of a decision, to petition the superior court for a temporary injunction, restraining the code enforcement officer pending a final disposition of the cause.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-46~~3~~. Violations and penalties for violations jeopardizing the safety and health of occupants or the general public.

(a) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close, and remove or demolish the same, upon order of the code enforcement officer ~~duly~~ made pursuant to Sec. 12-42(3) and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to

which an order has been issued pursuant to this ~~article~~Article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

(b) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of $500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten days of receipt of the citation, the ~~city~~City may seek to collect it in a civil action in the nature of a debt.

(c) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.

(d) This ~~article~~Article may be enforced by any appropriate equitable action.

(e) This ~~article~~Article may be enforced by any one, all, or any combination of the remedies authorized in this section.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-47. General provisions.

(a) A provided in N.C.G.S. § 160D-1125(a), where violation of this Article, the City may enforce the provisions of this Article III by initiating any appropriate action or proceedings to prevent, restrain, correct, or abate the violation, or to prevent the occupancy of the building or structure involved, in lieu of or in addition to any other remedies.

(b) The definitions contained in N.C.G.S. § 160D-102 shall apply to this Article, except where applicable law provides a different definition or the context indicates otherwise.

(c) The definitions contained in N.C.G.S. § 160D-1129(p) shall apply to this Article.

(d) In addition to the remedies provided in this Article III, the city shall have and may also exercise any other remedies available at law or in equity, including but not limited to N.C.G.S. § 160D-1129(j) and N.C.G.S. § 160D-1130.

Secs. 12-4~~8~~4—12-50. Reserved.

~~ARTICLE~~ARTICLE ~~I~~IV. ~~INTERNATIONAL PROPERTY MAINTENANCE CODE~~MINIMUM HOUSING CODE[3]

Sec. 12-51. Purpose and Findings.

The City Council finds that there exists within the City of Hendersonville and its planning and development regulation jurisdiction dwelling conditions which are unfit for human habitation. Council further finds that the existence and occupation of the dwellings in the City of Hendersonville that are unfit for human habitation are

[3]Editor's note(s)—Ord. No. 04-0745, §§ 1—4, adopted July 8, 2004, did not specify manner of inclusion; hence, inclusion as art. III is at the discretion of the editor.

inimical to the welfare and dangerous and injurious to the people of the City and its planning and development regulation jurisdiction. The purposes of the this Minimum Housing Code are as follows:

(1) To regulate and govern the conditions and maintenance of dwellings that are found to be unfit for human habitation in order to provide safe and decent housing for persons residing in the City and its planning and development regulation jurisdiction;

(2) To provide the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that dwellings are safe, sanitary and fit for occupation and use;

(3) To provide for the condemnation of dwellings that are unfit for human occupancy and use, and the demolition of such existing structures.

Sec. 12-52. Applicability and compliance.

(1) This Article is adopted pursuant to the authority of Article 12 of Chapter 160D of the North Carolina General Statutes.

(2) Every dwelling and the premises on which it is situated shall comply with the provisions of this Article IV, whether or not dwelling shall have been constructed, altered, or repaired before or after the enactment of this Article, and irrespective of any permits or licenses which shall have been issued for the occupancy of the dwelling or for the installment or repair of equipment or facilities prior to the effective date of this Article. This Article establishes minimum standards for the maintenance and repair of all dwellings, and does not replace or modify standards otherwise established by law for the construction, repair, alteration, or use of the dwelling or the equipment or facilities contained therein except as provided herein. Where there is mixed occupancy of a building, any dwelling therein shall be regulated by and subject to the provisions of this Article.

(3) It shall be the duty of each and every owner, operator or other party in interest of a dwelling or premises to which this Article is applicable to comply with the regulations and requirements set forth herein. No license, permit or certificate of occupancy shall be issued unless and until all applicable sections of this Article have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this Article.

(4) This Article establishes minimum standards for the initial and continual occupancy and use of all dwellings including their premises, in addition to any other requirements of applicable law. All unoccupied or vacant dwellings shall be secured to prevent the entry of unauthorized persons or the occurrence of conditions not permitted by the standards set out herein.

(5) Nothing in this Article shall limit the City's authority to proceed with any other applicable statute, code, ordinance or other applicable law in lieu of or in addition to proceeding under the terms of this Article IV.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-~~5~~531~~1~~. Minimum Standards Adopted.

A dwelling is unfit for human habitation if conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the City's jurisdiction. Defective conditions include, without limiting the generality of the foregoing, defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structure defects, or uncleanliness. In addition to and without limiting the generality of the foregoing, ~~A certain document, a copy of which is on file in the office of the city clerk, being marked and designated as the~~Chapters 2 through 7 of ~~the~~ International Property Maintenance Code, 2003 Edition, as published by the International Code Council, hereinafter the "IMPC," are ~~is~~ hereby adopted as ~~the Property Maintenance Code of the city~~minimum standards for housing in the City of Hendersonville, and shall be

additional standards used by the code enforcement officer in determining the fitness of a dwelling for human habitation. Each and all of the regulations, provisions, conditions and terms of Chapters Two through Seven of the IMPC are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Sec. 12-54 below. The IMPC is on file in the office of the City Clerk.

(Ord. No. 04-0745, § 1, 7-8-04)

~~**Sec. 12-52. Purpose.**~~

~~The purposes of the Property Maintenance Code are as follows:~~

~~(1) To regulate and govern the conditions and maintenance of all property, buildings and structures;~~

~~(2) To provide the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use;~~

~~(3) To provide for the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures;~~

~~(4) To provide for the issuance of permits and collection of fees therefor.~~

~~(Ord. No. 04-0745, § 2, 7-8-04)~~

~~**Sec. 12-53. Provisions adopted and on file with city clerk.**~~

~~Each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the city clerk are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in section 12-54 below.~~

~~(Ord. No. 04-0745, § 3, 7-8-04)~~

Sec. 12-~~55~~44. Revisions and Severability.~~.~~

(1) The following sections of the ~~Property Maintenance Code~~IMPC are hereby revised:

~~*Section 101.1.* Insert: "City of Hendersonville".~~

~~*Section 103.5.* Delete existing text and insert the following: "There shall be no fees for the activities and services performed by the department in carrying out its responsibilities under this code".~~

Section 304.14. Delete the following text: "During the period {date} to {date},".

{This will require that insect screens be provided year-round under the circumstances detailed in Section 304.14.}

Section 602.3. Delete the following text: "during the period from {date} to {date}".

{This will require that dwellings be provided heat, as specified in Section 602.3, for the entire year.}

Section 602.4. Insert: First date: "October 1"; second date: "May 1".

{This will require that indoor occupiable work spaces be provided heat from October 1 to May 1.}

(2) To the extent that any of the regulations, provisions, conditions, or terms, of the said Chapters 2 through 7 of the IMPC are deemed by a court of competent jurisdiction to be invalid, unenforceable, pre-empted or superseded by State law, or beyond the authority granted by N.C.G.S. Chapter 160D, Article 12, said regulation, provision, condition or term said be deemed severable, and the same shall not affect the enforceability or validity of the remainder of Chapters 2 through 7 of the IMPC as adopted herein.

(Ord. No. 04-0745, § 4, 7-8-04)

Sec. 12-55. Designation and authority of enforcement officer.

The Community Development Director and the code enforcement officer, and any person designated by the Community Development Director as a code enforcement officer, shall have the authority to exercise the powers prescribed by this Article IV within the City's jurisdiction. For ease of reference, the authorized enforcement officers identified by this section shall be collectively referred to in this Article IV as the "code enforcement officer." The code enforcement officer may determine that a dwelling is unfit for human habitation if the officer finds that conditions stated in Sec. 12-53 exist with respect to the dwelling. The code enforcement officer shall have such authority and power as is necessary or convenient to carry out and effectuate the purpose of this Article IV, in addition to the others herein granted.

Sec. 12-56. Definitions applicable to this Article IV.

The definitions contained in N.C.G.S. § 160D-102 shall apply to this Article IV except to the extent that applicable state law provides a different definition, this Article contains a different definition, or the context of this Article indicates otherwise. To the extent the definitions in the IMPC conflict with the definitions provided by this Article, by N.C.G.S. § 160D-102, or by the North Carolina State Building Code, the definitions in the IMPC shall be superseded by the foregoing local and state laws, rules, codes and regulations in the stated order of priority. The following terms shall have the definition indicated when used in this Article IV:

(1) Building – any structure used or intended for supporting or sheltering any use or occupancy.

(2) Dwelling – as per N.C.G.S. § 160D-102: Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Article IV, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

(3) Owner - The holder of the title in fee simple and every mortgagee of record as provided in N.C.G.S. § 160D-1202. (This definition supersedes the definition of "Landowner or owner" provided in N.C.G.S. § 160D-102.)

(4) Parties in Interest – All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof as provided in N.C.G.S. § 160D-1202.

(5) Jurisdiction or City's jurisdiction– As use in this Article IV, the word "Jurisdiction" shall refer to the City's planning and development regulation jurisdiction (see N.C.G.S. § 160D-102)

(6) Public authority – Any housing authority or any officer who is in charge of any department or branch of the City, Henderson County, or the State relating to health, fire, building regulations, or other activities concerning dwellings in the City and its planning and development regulation jurisdiction as provided in N.C.G.S. § 160D-1202.

(7) Public officer – The code enforcement officer; the officer or officers who are authorized by ordinances adopted under Article 12 of Chapter 160D of the North Carolina General Statutes to exercise the powers authorized herein and by said Article 12 of Chapter 160D.

Sec. 12-56. Investigation, complaint and hearing.

(1) Whenever a petition is filed with the code enforcement officer by a public authority or by at least five residents of the City's jurisdiction charging that any dwelling is unfit for human habitation, or when it

appears to the code enforcement officer that any dwelling is unfit for human habitation, the code enforcement officer shall, if a preliminary investigation[4] discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice providing all of the following:

(a) That an administrative hearing will be held before the code enforcement officer, or their designated agent, at a place and time fixed in the complaint, not less than ten nor more than 30 days after the serving of said complaint. Venue for the hearing must be within Henderson County.

(b) That the owner and parties in interest shall have the right to file an answer to the complaint and to appear at the administrative hearing in person, or otherwise, and give testimony at the place and time fixed in the complaint.

(c) That any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.

(d) That the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(2) If, after notice and the administrative hearing, the code enforcement officer determines that the dwelling under consideration is unfit for human habitation, the officer shall issue a written order stating findings of fact in support of that determination, and shall issue and caused to be served upon the owner one of the following orders, as appropriate:

(a) If the code enforcement officer determines that the repairs, alterations or improvements to the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. Without affecting the generality of the foregoing, repairs, alterations and improvements having a total cost of 50 percent or less than the present value of the dwelling, shall be deemed reasonable. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations of improvements, the current state of the property, and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under Sec. 12-58 below.

(b) If the code enforcement officer determines that the cost of repairs, alterations or improvements cannot be made a reasonable cost in relation to the value of the dwelling, the order shall require the owner, within the time specified in the order, to remove or demolish the dwelling. Without limiting the generality of the foregoing, a total cost of repairs, alterations or improvements which exceeds 50 percent of the present value of the dwelling, shall be deemed unreasonable.

(c) Where a determination is made pursuant to Sec. 12-56(2)(b) that costs to remedy the violations exceed 50 percent of the present value of the dwelling or are otherwise unreasonable, and the dwelling is located in a historic district, the Hendersonville Historic Planning Commission shall hold an administrative hearing to determine whether or not the dwelling is of particular significance or value towards maintaining the character of the district prior to the code enforcement officer's issuance of the order. If the Hendersonville Historic Planning Commission

[4] If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with N.C.G.S. § 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

makes a determination that the dwelling is of particular significance of value towards maintaining the character of the district, and the dwelling has not been condemned as unsafe, then the code enforcement officer's order shall order that the dwelling be vacated and closed consistent with N.C.G.S. § 160D-949.

(3) The code enforcement officer shall have the authority to administer oaths, affirmations, examine witnesses, and receive evidence as part of the administrative hearing.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-57. Service of complaints and orders.

(a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service of a complaint or order is accomplished personally such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. Regular mail that is not returned shall be deemed received on the 3rd consecutive calendar day following the date of mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the City at least once no later than the time at which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceeding shall be posted in a conspicuous place on the premises affected thereby.

(c) In addition to the service described in 12-57(a) and (b), whenever a determination is made under Section 12-56(2) that a dwelling must be vacated and closed, or removed or demolished, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease or purchase the property for the purpose of providing affordable housing. The code enforcement officer shall certify the mailing of the notices and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the code enforcement officer to wait 45 days before causing removal or demolition.

(c) The code enforcement officer shall certify in writing for the City records the date(s) and method(s) of service.

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-58. Failure to comply with orders.

(1) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the code enforcement officer may:

(a) Cause the dwelling to be repaired, altered and improved, or to be vacated and closed;

(b) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."

Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the dwelling, the code enforcement officer may:

(a) Cause the dwelling to be removed or demolished;

(b) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."

Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(3) The duties of the code enforcement officer set forth in Sec. 12-58(1) or (2) shall not be exercised until the City Council has adopted an ordinance specifically describing the subject property and ordering the officer to do either of the following as appropriate:

(a) To cause such dwelling to be repaired, altered and improved or otherwise vacated and closed to comply with the standards established by this Article; or

(b) To cause such dwelling to be removed or demolished. Provided however, that no ordinance shall be adopted to require the demolition of a dwelling until the owner has first been given a reasonably opportunity to bring it into conformity with the City's minimum housing code.

(4) The council, in ordering one of the aforesaid alternatives set out in Sec. 12-58(1) or (2), shall order the specific action that will best effectuate the purposes of this Article.

(5) An ordinance adopted pursuant to Sec. 12-58(1) or (2) above shall describe the property or properties. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner or owners in the "grantor index."

(6) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition carried out pursuant to Sec. 12-58(1) or (2) above shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the real property upon which the cost was incurred is located in the City, the amount of the foregoing costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. This additional lien is inferior to all prior liens and shall be collected as a money judgment.

(7) If the dwelling is removed or demolished by the code enforcement officer, the officer shall sell in any commercially reasonable manner the materials of the dwelling, and any personal property, fixtures, or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the code enforcement officer with the clerk of superior court, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court.

(8) Nothing in this Article shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

(9) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

(10) If the City Council has adopted an ordinance, or the code enforcement officer has issued an order requiring the dwelling to be repaired or vacated and closed, or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this Article IV, and the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order or during the proceeding, the City Council may proceed in accordance with N.C.G.S. § 160D-1203(6) to enact an ordinance to require the repair or demolishing of the dwelling within 90 days as provided by said 160D-1203(6).

(11) If any occupant fails to comply with an order to vacate a dwelling, the code enforcement officer may file a civil action in the name of the City to remove the occupant in accordance with the terms and requirements contained in N.C.G.S. § 160D-1203(8).

(Ord. No. 08-0316, § 1, 3-6-08)

Sec. 12-59. Appeals.

(a) Appeals shall be governed by N.C.G.S. § 160D-1208. The Zoning Board of Adjustment is designated as the housing appeals board. An appeal from any decision or order of the code enforcement officer pursuant to this Article may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision or within ten days of service of such order. Such appeal shall be taken by filing with the code enforcement officer and with the board of adjustment (hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the code enforcement officer certifies to the board after the notice of appeal is filed with him/her, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of the requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the code enforcement officer by the board, or by a court of record upon petition made pursuant to subsection (d) of this section. Except where in conflict with N.C.G.S. § 160D-1208, all regulations, fees and other rules of the board shall apply to these appeals.

(b) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of ⅘ of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The

board shall have power also in passing upon appeals, in any case where unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(c) Reserved.

(d) Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(e) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within 30 days after the issuance of the order or rendering of a decision, to petition the superior court for a temporary injunction, restraining the code enforcement officer pending a final disposition of the cause.

(Ord. No. 08-0316, § 1, 3-6-08)

Attachment B

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER 160D
PART II - CODE OF ORDINANCES
Chapter 24 - FLOODS
ARTICLE II. FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE II. FLOOD DAMAGE PREVENTION ORDINANCE[1]

DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

Sec. 24-31. Statutory authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective July 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the city council of the City of Hendersonville, North Carolina, does ordain as follows.

(Ord. No. 08-0844, 8-7-08)

Formatted: Indent: First line: 0.33"

Sec. 24-32. Findings of fact.

(a) The flood-prone areas within the jurisdiction of the city are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood-prone areas of uses vulnerable to floods or other hazards.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-33. Statement of purpose.

It is the purpose of this article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood-prone areas by provisions designed to:

(1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

[1]Editor's note(s)—Ord. No. 08-0844, adopted Aug. 7, 2008, repealed the former Art. II, §§ 24-31Editor's note(s)——24-43, §§ 24-66Editor's note(s)——24-70, §§ 24-91Editor's note(s)——24-96, §§ 24-116Editor's note(s)—, 24-117Editor's note(s)— and enacted a new Art. II as set out herein. The former Art. II pertained to flood damage prevention (noncoastal regular phase)and derived from Ord. No. 05-0308, § 2, 3-10-05.

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-34. Objectives.

The objectives of this article are to:

(1) Protect human life, safety, and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business losses and interruptions;

(5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

(6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(7) Ensure that potential buyers are aware that property is in a special flood hazard area.

(8) Minimize damage to private and public property due to flooding;

(9) Make flood insurance available to the community through the National Flood Insurance Program;

(10) Maintain the natural and beneficial functions of floodplains

(Ord. No. 08-0844, 8-7-08)

(6)

Formatted: Space After: 6 pt

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 8 + Alignment: Left + Aligned at: 0.31" + Indent at: 0.56"

Formatted: Indent: Left: 0", Hanging: 0.38", Space Before: 2 pt

Sec. 24-35. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory ~~structure~~ Structure (~~appurtenant structure~~ Appurtenant Structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Administrative Decision means decisions made in the implementation, administration, or enforcement of this Ordinance that involve the determination of facts and the application of objective standards set forth in this Ordinance, or other land development regulations as applicable.

Administrative Hearing means A proceeding to gather facts needed to make an Administrative Decision.

Alteration of a Watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article or ~~,~~ an application to Superior Court for a review of a board of adjustment's decision.

Area of Shallow Flooding means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of ~~special flood hazard. See Special flood hazard area~~ Special Flood Hazard. See *Special Flood Hazard Area (SFHA).*

Base ~~flood~~ Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base ~~flood elevation~~ Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a "special flood hazard area", it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Boathouse means a noncommercial, residential accessory structure, including a dock, the principle purpose of which is waterfront mooring or storage of small boats. Such structure may have one enclosed nonresidential level above the boat storage level, provided such area shall not contain more square footage than the boat storage level.

Building. See *Structure.*

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Design Flood. See *Regulatory Flood Protection Elevation.*

Development means any manmade 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.

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Development Approval means an administrative or quasi-judicial approval made pursuant to this Ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal.

Formatted: Font: 10 pt

Formatted: Font: (Default) +Body (Calibri), 10 pt

Formatted: Table Paragraph, Indent: Left: 0.1", First line: 0.23", Line spacing: Exactly 10.85 pt

Formatted: Space Before: 0 pt

Formatted: No underline, Font color: Auto

Formatted: Font: 10 pt, No underline, Font color: Auto

Formatted: No underline

Development Regulation means this Ordinance and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated

Disposal means, as defined in G.S. 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated ~~building~~ Building means a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Evidentiary Hearing means a hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this Ordinance. An Evidentiary Hearing is also considered a public hearing. An Evidentiary Hearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Existing Building and Existing Structure means any building and/or structure for which the "start of construction" commenced before the effective date of the floodplain management regulations adopted by a community, dated 12/12/2008.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; and/or

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood ~~insurance~~ Insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood ~~insurance rate map~~ Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Formatted: Font: 10 pt

Formatted: No underline, Font color: Auto

Formatted: Font: (Default) Calibri, 10 pt

Formatted: Indent: First line: 0.26", Space After: 6 pt

Formatted: Font: (Default) Calibri, 10 pt

Flood ~~insurance study~~ Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

Flood ~~prone area~~ Prone Area. See *Floodplain.*

Flood ~~zone~~ Zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain ~~administrator~~ Administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain ~~development permit~~ Development Permit means any type of permit that is required in conformance with the provisions of this article, prior to the commencement of any development activity.

Floodplain ~~management~~t Management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain ~~management regulations~~ Management Regulations means this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floodway Encroachment Analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation".

Functionally ~~dependent facility~~ Dependent Facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous ~~waste management facility~~ Waste Management Facility means, as defined in G.S. 130A, art. 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest ~~adjacent grade~~ Adjacent Grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the secretary of interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the secretary of interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

(c) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or

(d) Certified as contributing to the historical significance of a historic district designated by a community with a "certified local government (CLG) program".

Certified ~~local government (CLG) programs~~ Local Government (CLG) *Programs* are approved by the US Department of the Interior in cooperation with the state department of cultural resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Legislative Hearing means a hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

(b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to

Formatted ... [2]
Formatted ... [1]
Formatted ... [3]
Formatted ... [4]
Formatted ... [5]
Formatted ... [6]
Formatted ... [7]
Formatted ... [8]
Formatted ... [9]
Formatted ... [10]
Formatted ... [11]
Formatted ... [12]
Formatted ... [13]
Formatted ... [14]
Formatted ... [15]
Formatted ... [16]
Formatted ... [17]
Formatted ... [18]
Formatted ... [19]
Formatted ... [20]
Formatted ... [21]
Formatted ... [22]
Formatted ... [23]
Formatted ... [24]
Formatted ... [25]
Formatted ... [26]
Formatted ... [27]
Formatted ... [28]
Formatted ... [29]
Formatted ... [30]
Formatted ... [31]
Formatted ... [32]
Formatted ... [33]
Formatted ... [34]
Formatted ... [35]
Formatted ... [36]
Formatted ... [37]
Formatted ... [38]

delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

(a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

(b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(c) Available with special features enabling off-street or off-highway operation and use.

Lowest ~~adjacent grade~~ Adjacent Grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest ~~floor~~ Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

Manufactured ~~home~~ Home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Formatted: Font color: Auto, Not Strikethrough

Formatted: Font color: Auto

Manufactured ~~home park or subdivision~~ Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map Repository means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (http://FRIS.NC.GOV/FRIS) is the map repository, and for historical flood hazard data the FloodNC website (http://FLOODNC.GOV/NCFLOOD) is the map repository.

Market ~~value~~ Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

Mean ~~sea level~~ Sea Level means, for purposes of this article, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used. Referred to in this Ordinance as NAVD 1988.

N.C.G.S. or G.S. means the North Carolina General Statutes.

Formatted: Font: Not Italic

New ~~construction~~ Construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

~~Nonencroachment area~~ Non-Encroachment Area (NEA) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

Owner means the holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the owner. As used herein, "owner" refers to all holders of the title in fee simple of a parcel of real property. The owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

Planning and Development Regulation Jurisdiction means the City of Hendersonville corporate limits and the extraterritorial jurisdiction of the City of Hendersonville.

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Pre-FIRM means construction or other development for which the "start of construction" occurred before the effective date of the initial flood insurance rate map.

Principally ~~above ground~~ Above Ground means that at least 51 percent of the actual cash value of the structure is above ground.

Recreational ~~vehicle~~ Vehicle (RV) means a vehicle, which is:

(1) Built on a single chassis;

(2) Four-hundred square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

(5) Is fully licensed and ready for highway use.

Reference ~~level~~ Level is the top of the lowest floor for structures within special flood hazard areas designated as zone A1-A30, AE, A or A99.

Regulatory ~~flood protection elevation~~ Flood Protection Elevation means the "base flood elevation" plus the "freeboard". In "special flood hazard areas" where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In "special flood hazard areas" where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Remedy a ~~violation~~ Violation means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage ~~yard~~ Yard means any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Shear ~~wall~~ Wall means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

Solid ~~waste disposal facility~~ Waste Disposal Facility means any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

Solid ~~waste disposal site~~ Waste Disposal Site means, as defined in G.S. 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Formatted: Font: 10 pt

Formatted: Font: (Default) +Body (Calibri)

Special ~~flood hazard area~~ Flood Hazard Area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in section 24-37 of this article.

Start of ~~construction~~ Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial ~~damage~~ Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial ~~improvement~~ Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance

Threat to ~~public safety and/or nuisance~~ Public Safety and/or Nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Variance is a grant of relief from the requirements of this article.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in divisions 2 and 3 is presumed to be in violation until such time as that documentation is provided.

Water ~~surface elevation~~ Surface Elevation (WSE) means the height, in relation to ~~mean sea level~~NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-36. Lands to which this article applies.

This article shall apply to all Special Flood Hazard Areas within the ~~jurisdiction, including extra-territorial jurisdictions (ETJs) if applicable, of the city~~City's Planning and Development Regulation Jurisdiction and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability. Notwithstanding the foregoing, property that is used for bona fide farm purposes and which is exempt from the City's zoning in the City's extraterritorial zoning jurisdiction pursuant to N.C.G.S. § 160D-903(c) shall be subject to the floodplain regulations of Henderson County.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-37. Basis for establishing the special flood hazard areas.

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for the county dated October 2, 2008, which are adopted by reference and declared to be a part of this article~~.~~ , including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

Commented [SA1]: This is still current.

The initial ~~flood insurance rate~~ Flood Insurance Rate maps are as follows for the jurisdictional areas at the initial date:

City of Hendersonville, dated January 20, 1982.

Henderson County Unincorporated Area, dated March 1, 1982.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-38. Establishment of floodplain development permit.

A ~~floodplain development permit~~ Floodplain Development Permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of section 24-37 of this article.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-39. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-40. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-41. Interpretation.

In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-42. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-43. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58~~misdemeanor~~. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, ~~be fined not more than $50.00 or imprisoned for not more than 30 days, or both~~shall be punished at the discretion of the court. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 08-0844, 8-7-08)

Secs. 24-44—24-65. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 24-66. Designation of floodplain administrator.

The City Manager shall appoint a ~~zoning administrator, hereinafter referred to as the "~~floodplain administrator~~", is hereby appointed~~ to administer and implement the provisions of this article. The zoning administrator is also authorized to act as the floodplain administrator.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-67. Floodplain development application, permit and certification requirements.

(a) *Application requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

b. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 24-37, or a statement that the entire lot is within the special flood hazard area;

c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 24-37;

d. The boundary of the floodway(s) or nonencroachment area(s) as determined in section 24-37;

e. The base flood elevation (BFE) where provided as set forth in section 24-37, section 24-68 or section 24-94; and

f. The old and new location of any watercourse that will be altered or relocated as a result of proposed development.

(2) Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:

a. Elevation in relation to ~~mean sea level~~NAVD 1988 of the proposed reference level (including basement) of all structures;

b. Elevation in relation to ~~mean sea level~~NAVD 1988 to which any nonresidential structure in zones AE or A will be floodproofed; and

c. Elevation in relation to ~~mean sea level~~NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA form ~~81-65~~086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

b. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 24-92(4)c. when solid foundation perimeter walls are used in zones A, AO, AE, and A1-30.

(5) Usage details of any enclosed areas below the lowest floor.

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(7) Certification that copies of all other local, state and federal permits required prior to floodplain development permit issuance have been received.

(8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsections 24-92(6) and (7) of this article are met.

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(b) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

(1) A description of the development to be permitted under the floodplain development permit.

(2) The special flood hazard area determination for the proposed development in accordance with available data specified in section 24-37.

(3) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(4) The regulatory flood protection elevation required for the protection of all public utilities.

(5) All certification submittal requirements with timelines.

(6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(7) The flood openings requirements, if in zones A, AO, AE or A1-30.

(c) *Certification requirements.*

(1) *Elevation certificates.* A final as-built elevation certificate (FEMA form ~~81-31~~086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

Commented [FT2]: FEMA Form 086-0-33 is the correct Form Number

(2) *Floodproofing certificate.* If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA form ~~81-65~~086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to ~~mean sea level~~NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

Commented [FT3]: FEMA Form 086-0-34 is the correct form

(3) If a manufactured home is placed within zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of subsection 24-92(3)b.

(4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(5) *Certification exemptions.* The following structures, if located within zones A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in subsections (c)(1) and (2) of this section:

a. Recreational vehicles meeting requirements of subsection 24-92(6)a;

b. Temporary structures meeting requirements of subsection 24-92(7); and

c. Accessory structures less than 150 square feet meeting requirements of subsection 24-92(8).

(Ord. No. 08-0844, 8-7-08)

Sec. 24-68. Duties and responsibilities of the floodplain administrator.

The floodplain administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this article have been satisfied.

(2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received~~.~~, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(3) Notify adjacent communities and the ~~state department of crime control and public safety~~North Carolina Department of Public Safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the floodcarrying capacity is maintained.

(5) Prevent encroachments into floodways and nonencroachment areas unless the certification and flood hazard reduction provisions of section 24-96 are met.

(6) Obtain actual elevation (in relation to NAVD 1988 ~~mean sea level~~) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of subsection 24-67(c).

(7) Obtain actual elevation (in relation to NAVD 1988 ~~mean sea level~~) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of subsection 24-67(c).

(8) Obtain actual elevation (in relation to NAVD 1988 ~~mean sea level~~) of all public utilities in accordance with the provisions of subsection 24-67(c).

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 24-67(c) and subsection 24-92(2).

(10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or nonencroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(11) When base flood elevation (BFE) data have not been provided in accordance with the provisions of section 24-37, obtain, review, and reasonably utilize any BFE data, along with floodway data or nonencroachment area data available from a federal, state, or other source, including data developed pursuant to subsection 24-94(2)b, in order to administer the provisions of this article.

(12) When base flood elevation (BFE) data are provided but no floodway or nonencroachment area data have been provided in accordance with the provisions of section 24-37, obtain, review, and reasonably utilize any floodway data or nonencroachment area data available from a federal, state, or other source in order to administer the provisions of this article.

(13) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(14) Make onsite inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(16) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the

Commented [FT4]: Remove

Commented [FT5]: Remove

Commented [FT6]: Remove

requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(17) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(18) Follow through with corrective procedures of section 24-69.

(19) Review, provide input, and make recommendations for variance requests.

(20) Maintain a current map repository to include, but not limited to, historical and effective, the FIS report, historical and effective, FIRM and other official flood maps and studies adopted in accordance with the provisions of section 24-37 of this article, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

(21) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMRs).

Any aggrieved person affected by any administrative decision, order, requirement, or determination relating to the interpretation or application of this article made by the floodplain administrator or zoning administrator may file an appeal to the board of adjustment within 30 calendar days after receipt of said written decision, order, requirement, or determination. Appeals shall proceed in conformance with N.C.G.S. § 160D-405. The appeal shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

Formatted: Indent: Left: 0", First line: 0"

(Ord. No. 08-0844, 8-7-08)

Sec. 24-69. Corrective procedures.

Enforcement of this article shall be governed by N.C.G.S. § 160A-404. To the extent that the provisions of this article conflict with G.S. § 160D-404, G.S. § 160D-404 shall control, unless another North Carolina General Statute supersedes the application of G.S. § 160D-404 to this article in which case such other General Statute shall control.

(a) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(b) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(1) That the building or property is in violation of the floodplain management regulations;

(2) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

(c) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of this article, he or she

shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(d) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the ~~local elected governing body~~board of ~~by~~adjustment by giving notice of appeal in writing to the floodplain administrator ~~and the clerk within ten days following issuance of the final order.~~within the time stated and in accordance with the procedures provided in N.C.G.S. § 160D-405. The appeal shall be conducted by the board of adjustment as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406. Appeals from the board of adjustment shall be governed by N.C.G.S. § 160D-1402. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(e) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a ~~misdemeanor~~ Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

Formatted: Font: (Default) +Body (Calibri)

(Ord. No. 08-0844, 8-7-08)

Sec. 24-70. Variance procedures.

(a) The board of adjustment as established by the City of Hendersonville~~, hereinafter referred to as the "appeal board",~~ shall hear and decide requests for variances from the requirements of this article. Consideration of the variance by the board of adjustment shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406.

(b) ~~Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S., chapter 7A.~~ The Owner must consent to all applications for a variance if the Owner is not the applicant.

(c) Variances may be issued for:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(2) Functionally dependent facilities if determined to meet the definition as stated in section 24-35, provided provisions of subsections 24-70(i)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(3) Any other type of development, provided it meets the requirements of this section.

(d) In passing upon variances, the ~~appeal board~~board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location as defined under section 24-35 as a functionally dependent facility, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(e) A written report addressing each of the above factors shall be submitted with the application for a variance.

(f) Upon consideration of the factors listed above and the purposes of this article, the ~~appeal board~~board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.

(g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(i) *Conditions for variances:*

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances;

(2) Variances shall not be issued within any designated floodway or nonencroachment area if the variance would result in any increase in flood levels during the base flood discharge;

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(4) Variances shall only be issued prior to development permit approval;

(5) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(j) Appeals from variance decisions. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

Formatted: Font: Italic

Formatted: Indent: Left: 0", First line: 0"

(Ord. No. 08-0844, 8-7-08)

Secs. 24-71—24-90. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 24-91. General standards.

In all special flood hazard areas the following provisions are required:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

(a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

(b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) Onsite waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.

(9) Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, nonencroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, nonencroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

(10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in subsection 24-70(i).

A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 24-67(c).

(11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(15) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(16) When a building or structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations (BFEs), the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

(17) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area

(Ord. No. 08-0844, 8-7-08)

Sec. 24-92. Specific standards.

In all Special flood hazard areas where base flood elevation (BFE) data have been provided, as set forth in section 24-37, or section 24-94, the following provisions, in addition to the provisions of section 24-91, are required:

(1) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 24-35.

(2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 24-35. Structures located in A, AO, AE, and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 24-67(c), along with the operational plan and the inspection and maintenance plan.

(3) *Manufactured homes.*

a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in section 24-35.

b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the state regulations for manufactured homes adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

c. All enclosures or skirting below the lowest floor shall meet the requirements of subsection (4).

d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

(4) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

b. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and

c. Shall include, in zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

2. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

4. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) *Additions/improvements.*

a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure;

2. ~~A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.~~ A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway both the existing structure and the addition and/or improvements must comply with the standards for new construction.

b. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

~~Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction~~.

c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction~~,~~ consistent with the code and requirements for the original structure.

2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

d. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

2 Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) *Recreational vehicles.* Recreational vehicles shall either:

Formatted: Font: (Default) +Body (Calibri)

a. Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

b. Meet all the requirements for new construction.

(7) *Temporary nonresidential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

a. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

b. The name, address, and phone number of the individual responsible for the removal of the temporary structure;

c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

e. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

(8) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

b. Accessory structures shall not be temperature-controlled;

c. Accessory structures shall be designed to have low flood damage potential;

d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

e. Accessory structures shall be firmly anchored in accordance with the provisions of subsection 24-91(1);

f. All service facilities such as electrical shall be installed in accordance with the provisions of subsection 24-91(4); and

g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 24-92(4)c.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 24-67(c).

(9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood,including the effects of buoyancy assuming the tank is empty;

(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Sec. 24-97 of this ordinance.

(b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Sec. 24-97 of this ordinance.

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Sec. 24-97 of this ordinance.

(d) Commercial storage facilities are not considered “limited storage” as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-93. Reserved.

Formatted: Indent: Left: 1"

Formatted: Indent: Left: 1.5"

Formatted: Indent: Left: 1"

Sec. 24-94. Standards for floodplains without established base flood elevations.

Within the special flood hazard areas designated as approximate zone a and established in section 24-37, where no base flood elevation (BFE) data have been provided by FEMA, the following provisions, in addition to the provisions of section 24-91, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:

a. When base flood elevation (BFE) data are available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this article and shall be elevated or floodproofed in accordance with standards in sections 24-91 and 24-92 of this article.

b. When floodway or nonencroachment data are available from a federal, state, or other source, all new construction and substantial improvements within floodway and nonencroachment areas shall also comply with the requirements of sections 24-92 and 24-96 of this article.

c. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with the provisions of section 24-37 and utilized in implementing this article.

d. When base flood elevation (BFE) data are not available from a federal, state, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in section 24-35. All other applicable provisions of section 24-92 shall also apply.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-95. Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.

Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor nonencroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of sections 24-91 and 24-92; and

(2) Until a regulatory floodway or nonencroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-96. Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 24-37 of this article. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to the standards outlined in sections 24-91 and 24-92, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of a floodplain development permit; or

b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(2) If subsection (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

a. The anchoring and the elevation standards of subsection 24-92(3); and

b. The no encroachment standard of subsection (1).

(Ord. No. 08-0844, 8-7-08)

Secs. 24-97~~—24-115. Reserved.~~ Standards for Areas of Shallow Flooding (Zone AO)

Located within the Special Flood Hazard Areas established in Sect. 24-37, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sec. 24-91 and Sec. 24-92, all new construction and substantial improvements shall meet the following requirements:

(1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of five (5) feet, above the highest adjacent grade; or at least five (5) feet above the highest adjacent grade if no depth number is specified.

Formatted: Indent: Left: 0.5"

(2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Sec. 24.97 (1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Sec. 24-67 (c) and Sec. 24-92 (2).

(3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

DIVISION 3. GENERALLY APPLICABLE PROVISIONS

Section 24-98. Conflicts between the standards of this Ordinance or land development regulations.

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control. Where the terms of this Ordinance conflict with the terms of a provision in any other Code, ordinance, regulation or policy adopted by the City, the more restrictive standard shall control. The more restrictive standard or provision is the one that imposes greater restrictions or burdens, or more stringent controls.

Section 24-99. Completeness Determination

On receiving a development application, the Floodplain Administrator shall make a completeness determination in accordance with Sec. 40-78 of the Code of Ordinances for the City of Hendersonville.

Sec. 24-100. Conflicts of Interest for City Staff

(1) No staff member shall make a final decision on an Administrative Decision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.

(2) No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.

(3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.

(4) For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Section 24-101. Notification of Decisions, Approvals and Determinations.

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

(1) Administrative Decision, Development Approval and Determinations by Staff. Written notice of Administrative Decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the Administrative Decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the Administrative Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

Formatted: Font: 12 pt, Bold, No underline, Font color: Auto

Formatted: Indent: First line: 0.5"

Formatted: Font: 12 pt, Bold

Formatted: Block 1

Formatted: Normal, Left, Indent: Left: 0", Right: 0.15", Space Before: 1.45 pt, Line spacing: Multiple 0.96 li, No widow/orphan control, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tab stops: 0.5", Left

Formatted: Font: 12 pt, Bold

Formatted: Block 1

Formatted: Indent: Left: 0.5", No bullets or numbering, Tab stops: Not at 1.04"

Formatted: Indent: Left: 0.5", No bullets or numbering, Tab stops: Not at 1.04"

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.25", Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0.79" + Indent at: 1.04", Tab stops: Not at 1.04"

Formatted: Font: 12 pt, Bold

Formatted: Block 1

Formatted: Indent: Left: 0", First line: 0.5"

Formatted: Underline

Formatted: Indent: Left: 0.25", Numbered + Level: 3 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0.79" + Indent at: 1.04"

(2) Decisions Regarding Evidentiary Hearings by the Zoning Board of Adjustment. A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment following an Evidentiary Hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

Formatted: Underline

Sec. 24-102-115. Reserved

Formatted: Section

DIVISION 34. LEGAL STATUS PROVISIONS

Sec. 24-116. Effect on rights and liabilities under the existing flood damage prevention ordinance.

This article in part comes forward by reenactment of some of the provisions of the flood damage prevention ordinance enacted January 7, 1982, as amended, and it is not the intention to repeal but rather to reenact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Hendersonville enacted on January 7, 1982, as amended, which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for the unincorporated area of Henderson County is July 5, 2005.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-117. Effect upon outstanding floodplain development permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this article; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-118. Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Formatted: Indent: First line: 0.5"

Sec. 24-119 Effective Date.

This ordinance shall become effective upon adoption.

Sec. 24-120 Adoption Certification.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the governing body of Community Name, North Carolina, on the Day (number or text) day of Month, Year.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, Year.

_____

(signature)

Secs. 24-118—24-130. Reserved.

Attachment C

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

ARTICLE III. STORMWATER ORDINANCE[1]

Sec. 24-131. Title.

This article shall be officially known as "the stormwater ordinance." It is referred to herein as "this article."

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-132. Authority.

The city council is authorized to adopt this article pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; City of Hendersonville; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185. This ~~ordinance~~ article is also authorized by N.C.G.S. § 160D-925, Stormwater control.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-133. Findings.

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal phase II stormwater rules promulgated under it, as well as rules of the state environmental management commission promulgated in response to federal phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.

Therefore, the city establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

(Ord. No. 11-0419, § 2, 4-7-11)

[1]Editor's note(s)—Ord. No. 11-0419, §§ 1, 2, adopted Apr. 7, 2011, repealed the former Art. III, §§ 24-131Editor's note(s)——24-137, and enacted a new Art. III as set out herein. The former Art. III pertained to NPDES phase II stormwater and derived from Ord. No. 07-1157, § 1, 11-8-07; Ord. No. 08-0207, § 2, 2-7-08.

Sec. 24-134. Purpose.

(a) *General.* The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

(b) *Specific.* This article seeks to meet its general purpose through the following specific objectives and means:

(1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;

(2) Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards;

(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

(7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance;

(8) Coordinating site design plans that include open space and natural areas with the latest adopted Hendersonville Comprehensive Plan;

(9) Controlling illicit discharges into the municipal separate stormwater system;

(10) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-135. Applicability and jurisdiction.

(a) *General.* Beginning with and subsequent to its effective date, this article shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to subsection (b) of this section.

(b) *Exemptions.*

(1) Development or redevelopment that cumulatively disturbs less than one acre.

(2) Development or redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

(3) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this article.

(c) *No development or redevelopment until compliance and permit.* No development or redevelopment shall occur except in compliance with the provisions of this article or unless exempted. No development or redevelopment for which a permit is required pursuant to this article shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(d) *Map.* The provisions of this article shall apply within all ~~planning and zoning jurisdictions~~planning and land development regulation jurisdiction of the city, ~~including~~ which includes the City's ~~its~~ extra-territorial jurisdiction. In the event of a dispute, the applicability of this article to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances. This article does not affect the legal requirements to obtain other permits which may be required by the division of water quality, the division of land resources, the local flood hazard prevention ordinance, zoning or building permits or any other state, federal or local government permit that may be required.

The engineering department shall develop and maintain a storm sewer system base map ("the stormwater map") of stormwater drainage system components including outfalls, BMP locations, drainage areas and receiving streams in accordance with the city's NPDES permit. The stormwater map shall be updated to take into account changes in the land area covered by this article and the geographic location of structural BMPs permitted under this article.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-136. Interpretation.

(a) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this article shall be construed according to the general and specific purposes set forth in section [24-134] of this article. If a different or more specific meaning is given for a term defined elsewhere in this Code, the meaning and application of the term in this article shall control for purposes of application of this article.

(b) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this article and any heading, caption, figure, illustration, table, or map, the text shall control.

(c) *Authority for interpretation.* The stormwater administrator has authority to determine the interpretation of this article. Any person may request an interpretation by submitting a written request to the stormwater administrator, who shall respond in writing within 30 days. The stormwater administrator shall keep on file a record of all written interpretations of this article.

(d) *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(e) *Computation of time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday

observed by the city, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the city. References to days are calendar days unless otherwise stated.

(f) *Delegation of authority.* Any act authorized by this article to be carried out by the stormwater administrator of the city may be carried out by his or her designee.

(g) *Usage.*

(1) *Mandatory and discretionary terms.* The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

(2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

(3) *Tense, plurals, and gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(h) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-137. Terms defined.

When used in this article, the following words and terms shall have the meaning set forth in this section, unless other provisions of this article specifically indicate otherwise.

Administrative Decision means decisions made in the implementation, administration, or enforcement of this article that involve the determination of facts and the application of objective standards set forth in this article, or other land development regulations as applicable.

Administrative Hearing means A proceeding to gather facts needed to make an Administrative Decision.

Built-upon area (BUA). That portion of a development or redevelopment project that is covered by impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department. The state department of environment and natural resources.

Design manual. The stormwater design manual approved for use in phase II jurisdictions by the state division of water quality for the proper implementation of the requirements of the federal phase II stormwater program. All references herein to the design manual are to the latest published edition or revision.

Development. Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Development Approval means an administrative or quasi-judicial approval made pursuant to this article that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal.

Development Regulation means this article and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.

Disturbed area. All land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area".

Division. The division of water quality in the department.

Evidentiary Hearing means a hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this article. An Evidentiary Hearing is also considered a public hearing. An Evidentiary Hearing is conducted in accordance with the terms of this article and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

Larger common plan of development or sale. Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Legislative Hearing means a hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi- judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing

N.C.G.S. or G.S. means the North Carolina General Statutes.

One-year, 24-hour storm. The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

*Owner means t*he holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the Owner. As used herein, "Owner" refers to all holders of the title in fee simple of a parcel of real property. The Owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

Owner of an Interest. ~~The~~ A legal or beneficial ~~owner~~ holder of a legal interest in land, including but not limited to an Owner, a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "~~Owner~~Owner of an Interest" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an ~~owner~~Owner of an Interest, unless the secured lender is included within the meaning of "~~owner~~Owner of an Interest" under another description in this definition, such as a management entity.

Planning and Development Regulation Jurisdiction means the City of Hendersonville corporate limits and the extraterritorial jurisdiction of the City of Hendersonville.

Redevelopment. Any land-disturbing activity on previously-developed land.

Structural BMP. A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this article.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-138. Design manual.

(a) *Reference to design manual.* The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

The design manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the phase II laws.

(b) *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.

(c) *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for approval pursuant to this article but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this article with regard to the application.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-139. Relationship to other laws, regulations and private agreements.

(a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or

requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-140. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-141. Effective date and transitional provisions.

(a) *Effective date.* This article shall take effect on April 7, 2011.

(b) *Final approvals, complete applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the city prior to the effective date of this article and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with the provisions of this article dealing with the control and/or management of post-construction runoff, but shall be required to comply with all stormwater provisions in effect at time of approval.

(c) *Violations continue.* Any violation of provisions existing on the effective date of this article shall continue to be a violation under this article and be subject to penalties and enforcement under this article unless the use, development, construction, or other activity complies with the provisions of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-142. Review and decision-making entities.

(a) *Stormwater administrator.*

(1) *Designation.* The city engineer or his or her designee shall serve as the stormwater administrator and administer and enforce this article.

(2) *Powers and duties.* The stormwater administrator shall have the following powers and duties under this article:

a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this article.

b. To make determinations and render interpretations of this article.

c. To establish application requirements and schedules for submittal and review of applications ~~and appeals~~, to review and make recommendations to the city council and/or other city departments on applications for development or redevelopment approvals.

d. To enforce the provisions of this article in accordance with its enforcement provisions.

e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this article.

f. To provide expertise and technical assistance upon request.

g. To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.

h. To take any other action necessary to administer the provisions of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-143. Review procedures.

(a) *Permit required; must apply for permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(b) *Effect of permit.* A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this article, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this article.

(c) *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the stormwater administrator by the ~~land owner~~Owner or the ~~land owner~~Owner's duly authorized agent.

(d) *Establishment of application requirements, schedule, and fees.*

(1) *Application contents and form.* The stormwater administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this article.

(2) *Submission schedule.* The stormwater administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) *Permit review fees.* The city shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) *Administrative manual.* For applications required under this Code, the stormwater administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this article, and information on how and where to obtain the design manual in an administrative manual, which shall be made available to the public.

(e) *Submittal of complete application.* Applications shall be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this article, along with the appropriate fee. If the stormwater administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to

submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(f) *Review.* The stormwater administrator shall review the application and determine whether the application complies with the standards of this article.

(1) *Approval.* If the stormwater administrator finds that the application complies with the standards of this article, the stormwater administrator shall approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this article. The conditions shall be included as part of the approval.

(2) *Fails to comply.* If the stormwater administrator finds that the application fails to comply with the standards of this article, the stormwater administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) *Revision and subsequent review.* A complete revised application shall be reviewed by the stormwater administrator after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-144. Applications for approval.

(a) *Concept plan and consultation meeting.* Before a stormwater management permit application is deemed complete, the stormwater administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the latest Hendersonville Comprehensive Plan, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys, boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) *Natural resources inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to

environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

(3) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

(b) *Stormwater management permit application.* The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this article. All such plans shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual, and that the designs and plans ensure compliance with this article.

The submittal shall include all of the information required in the submittal checklist established by the stormwater administrator. Incomplete submittals shall be treated pursuant to subsection 24-143(d) of this article.

(c) *As-built plans and final approval.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this article. A final inspection and approval by the stormwater administrator shall occur before the release of any performance securities.

(d) *Other permits.* No certificate of compliance or occupancy shall be issued by the zoning administrator or their designee without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the zoning administrator or their designee may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-145. Approvals.

(a) *Effect of approval.* Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(b) *Time limit/expiration.* An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The stormwater administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-146. Appeals.

Right of appeal. Any aggrieved person affected by any administrative decision, order, requirement, or determination relating to the interpretation or application of this article made by the stormwater administrator may file an appeal to the board of adjustment within 30 calendar days after receipt of said written decision, order, requirement, or determination. Appeals shall proceed in conformance with N.C.G.S. § 160D-405. The appeal shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-147. General standards.

All development and redevelopment to which this article applies shall implement stormwater control measures that comply with each of the following standards:

(a) Required for all development or redevelopment which disturbs one acre or more of ground area.

(b) *Stormwater treatment.*

(1) All stormwater treatment measures shall treat either:

a. The runoff volume from the disturbed area calculated utilizing the one-year, one-hour design storm rainfall depth; or

b. The difference in stormwater runoff volume between the pre- and post-development conditions for the one-year, 24-hour storm; whichever is greater.

(2) Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

(3) All structural stormwater treatment systems used shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS).

(c) *Stormwater quantity control.* Discharge stormwater at a rate equal to or less than the pre-development discharge rate for both the two-year, 24-hour storm and the ten-year, 24-hour storm with the ability to pass the 25-year, 24-hour storm.

(d) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.

(e) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Every structural BMP installed pursuant to this section shall be made ~~accesible~~accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and it's term shall specify who may make use of the easement and for what purposes.

(f) For best management practices that require a separation from the seasonal high water table, provide separation by at least 12 inches of naturally occurring soil above the seasonal high water table.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-148. Standards for stormwater control measures.

(a) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as best management practices, or BMPs) required under this article shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this article.

(b) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-149. Dedication of BMPs, facilities and improvements.

Unless otherwise approved by city council, ownership and maintenance responsibility of any existing or future stormwater management facilities shall remain with the ~~owner~~Owner of the property or a legally established property owner's association. Such facilities shall meet all the requirements of this article and include adequate and perpetual access and sufficient area, be easement or otherwise, for inspection and regular maintenance. An Owner of an Interest may assume responsibility together with the Owner. In such case the Owner of an Interest shall be considered a responsible Owner of an Interest.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-150. Variances.

A variance is a means whereby the city may grant relief from the effect of this article in cases of hardship. Variances shall proceed in the same manner, and be governed by the same rules, as a zoning variance under N.C.G.S. § 160D-705. A variance constitutes permission to depart from the literal requirements of ~~[~~this article~~]~~. The Owner must consent to all applications for a variance if the Owner is not the applicant. A variance from the dimensional requirements of this article may be granted by the board of adjustment if it finds the following:

(1) Strict enforcement of the regulations would result in ~~practical difficulties or~~ unnecessary hardships to the applicant for the variance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The variance is ~~in harmony~~consistent with the ~~general~~ spirit, purpose and intent of ~~[~~this article~~]~~ ~~and preserves its spirit~~.

(3) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:

a. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

b. The hardship ~~relates to the applicant's property~~results from conditions that are peculiar to the property, such as location, size, or topography, ~~rather than to~~Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

c. The hardship results from the application of ~~[this article]~~this article and ~~from no other cause, including~~non from the actions of the ~~owner~~applicant or the Owner of the property. ~~or previous owners.~~ The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

d. The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

(4) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(5) Consideration of the variance by the board of adjustment shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-151. Additional standards for special situations.

Trout waters. In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-152. Onsite wastewater.

(a) *Operation and maintenance requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this article must be approved and permitted by the county health department. Both the county septic permit and documentation showing the operation and maintenance for the system are required before a certificate of occupancy may be issued.

(b) *Standards for operation and maintenance.* Onsite systems for domestic wastewater covered by this article shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-153. General standards for maintenance.

(a) *Function of BMPs as intended.* The ~~owner~~Owner of each structural BMP installed pursuant to this article shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

(b) *Annual maintenance inspection and report.* The person responsible for maintenance of any structural BMP installed pursuant to this article shall submit to the stormwater administrator an inspection report from one of the following persons performing services only in their area of competence: a person certified by the North Carolina cooperative extension service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

(1) The name and address of the ~~land owner~~Owner;

(2) The recorded book and page number of the lot of each structural BMP;

(3) A statement that an inspection was made of all structural BMPs;

(4) The date the inspection was made;

(5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article; and

(6) The original signature and seal (if applicable) of the qualified person certified by the North Carolina cooperative extension service for stormwater treatment practice inspection and maintenance.

All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-154. Operation and maintenance agreement.

(a) *In general.* Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this article, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this article, the ~~owner~~Owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent ~~owner~~Owners and Owners of an Interest of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original ~~owner~~Owner shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the ~~owner~~Owner ~~or owners~~and all responsible Owners of an Interest to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to city a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it shall be referenced on the final plat, if required, and shall be recorded with the county register of deeds. A copy of the recorded maintenance agreement shall be given to the stormwater administrator within 14 days following its recordation.

(b) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the City of Hendersonville shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the city shall first consent to the expenditure.

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural BMPs. Two-thirds of the total amount of sinking fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any structural BMPs, and the city shall not be liable to any person for the condition or operation of structural BMPs.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the City of Hendersonville for any costs and injuries arising from or related to the structural BMP, unless the city has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-155. Inspection program.

Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the ~~owner~~Owner, an Owner of an Interest with authority, or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-156. Performance security for installation and maintenance.

(a) *May be required.* The City of Hendersonville may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are

(1) Installed by the permit holder as required by the approved stormwater management plan; and/or

(2) Maintained by the ~~owner~~Owner and, if applicable, a responsible Owner of an Interest as required by the operation and maintenance agreement.

This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the city may require in conjunction with a subdivision or development plan.

(b) *Amount.*

(1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25 percent.

(2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(c) *Uses of performance security.*

(1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the ~~owner~~Owner or responsible Owner of an Interest in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.

(2) *Default.* Upon default of the ~~owner~~Owner or responsible Owner of an Interest to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the ~~owner~~Owner and the responsible Owner of an Interest, if applicable, to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the city shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) *Costs in excess of performance security.* If the city takes action upon such failure by the ~~owner~~Owner or responsible Owner of an Interest, the city may collect from the ~~owner~~Owner or responsible Owner of an Interest the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) *Refund.* Within 60 days of the final approval, the installation performance security shall be refunded to the ~~owner~~Owner or responsible Owner of an Interest if applicable, or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-157. Notice to ~~owner~~Owners and Owners of an Interest.

(a) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat, if required, and shall be recorded with the county register of deeds. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(b) *Signage.* For homeowner's and other associations, and where appropriate in the determination of the stormwater administrator to assure compliance with this article, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-158. Records of installation and maintenance activities.

The ~~owner~~Owner and responsible Owner of an Interest, if applicable, of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-159. Nuisance.

The ~~owner~~Owner and responsible Owner of an Interest (if applicable) of each stormwater BMP, whether structural or nonstructural BMP, shall maintain it so as not to create or result in a nuisance condition.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-160. General enforcement and violations.

(a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the city. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the city.

(b) *Violation unlawful.* Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this article, or the terms or conditions of any permit, maintenance agreement, or

other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article and is subject to the same civil or criminal penalties as other city Code (see section 1-6 of this Code) violations, with each day that a violation continues constituting a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.

(c) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an ~~owner~~Owner, Owner of an Interest, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

(1) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.

(2) *Responsibility for land or use of land.* The ~~owner~~Owner of the land on which the violation occurs, any Owner of and Interest, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-161. Remedies and penalties.

The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(a) *Remedies.*

(1) *Withholding of certificate of occupancy.* The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the ~~owner~~Owner, an Owner of an Interest, or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.

(3) *Injunction, abatements, etc.* The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(b) *Civil penalties.* Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. civil penalties may be assessed up to the full amount of penalty to which the city is subject for violations of its phase II stormwater permit, or if no phase II stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

(c) *Criminal penalties.* Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-162. Enforcement procedures.

Enforcement of this article shall be governed by N.C.G.S. § 160A-404. To the extent that the provisions of this article conflict with G.S. § 160D-404, G.S. § 160D-404 shall control, unless another North Carolina General Statute supersedes the application of G.S. § 160D-404 to this article in which case such other General Statute shall control.

(a) *Initiation/complaint.* Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the stormwater administrator, who shall record the complaint. The complaint shall be investigated promptly by the stormwater administrator.

(b) *Inspection.* The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article.

(c) *Notice of violation and order to correct.* When the stormwater administrator finds that any building, structure, or land is in violation of this article, the stormwater administrator shall notify, in writing, the ~~property owner~~Owner or other person violating this article. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the state Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

(d) *Extension of time.* A person who receives a notice of violation and correction order, or the ~~owner~~Owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation. The stormwater administrator may

grant time extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(e) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this article.

(f) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written each day that a violation continues shall constitute a separate and distinct violation or offense notice, through any remedy or penalty authorized by this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-163. Illicit discharges and connections.

(a) *Illicit discharges.* No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

(1) Water line flushing;

(2) Landscape irrigation;

(3) Diverted stream flows;

(4) Rising ground waters;

(5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));

(6) Uncontaminated pumped ground water;

(7) Discharges from potable water sources;

(8) Foundation drains;

(9) Air conditioning condensation;

(10) Irrigation water;

(11) Springs;

(12) Water from crawl space pumps;

(13) Footing drains;

(14) Lawn watering;

(15) Individual residential car washing;

(16) Flows from riparian habitats and wetlands;

(17) Dechlorinated swimming pool discharges;

(18) Street wash water; and

(19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the state, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the city.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(b) *Illicit connections.*

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, ~~waste water~~wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and ~~waste water~~wastewater from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the ~~property owner~~Owner, an Owner of an Interest, or the person using said connection shall remove the connection within one year following the effective date of this article. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or

b. Was made in violation of any applicable regulation or ordinance, other than this section;

The stormwater administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the stormwater administrator shall take into consideration:

1. The quantity and complexity of the work,

2. The consequences of delay,

3. The potential harm to the environment, to the public health, and to public and private property, and

4. The cost of remedying the damage.

(c) *Spills.* Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the city of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

(d) *Nuisance.* Illicit discharges and illicit connections which exist within the city extraterritorial jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in section 26-39 of this Code.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-164. Conflicts of Interest for City Staff

(1) No staff member shall make a final decision on an Administrative Decision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.

(2) No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this article unless the staff member is the Owner of the land or building involved.

(3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.

(4) For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Section 24-165. Notification of Decisions, Approvals and Determinations.

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

(1) Administrative Decision, Development Approval and Determinations by Staff. Written notice of Administrative Decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the Administrative Decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the Administrative Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

(2) Decisions Regarding Evidentiary Hearings by the Zoning Board of Adjustment. A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment following an Evidentiary Hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

Attachment D

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

Chapter 28 HISTORIC PRESERVATION[1]

ARTICLE I. IN GENERAL

Sec. 28-1. Purpose of chapter.

The historical heritage of the city is one of its most valued and important assets. Conservation of historic properties will stabilize and increase property values in their areas and strengthen the overall economy of the city, county and state. By means of listing, regulation and acquisition of historic properties, the city seeks, within its zoning jurisdiction, to:

(1) Safeguard its heritage by preserving any property therein that embodies important elements of its culture, history, architectural history or prehistory; and

(2) Promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city, county and state as a whole.

(Code 1971, § 13½-1)

Sec. 28-2. Conflict with other laws.

Whenever this chapter requires a longer waiting period or imposes other higher standards with respect to a designated historic property than are established under any other Charter provision, regulation or ordinance, this chapter shall govern. Whenever the provisions of any other Charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this chapter, such other Charter provision, ordinance or regulation shall govern.

(Code 1971, § 13½-2)

Sec. 28-3. Remedies.

In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this chapter is about to be demolished, whether as the result of deliberate neglect or otherwise, materially altered, remodeled or removed, except in compliance with this chapter, the city, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, material alteration, remodeling or removal, to retrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area

[1]Cross reference(s)—Buildings and building regulations, ch. 12Cross reference(s)—; environment, ch. 20Cross reference(s)—; designation of historic districts, § 28-11 et seq.; housing, ch. 30Cross reference(s)—; manufactured homes and trailers, ch. 34Cross reference(s)—; planning and development, ch. 40Cross reference(s)—; streets, sidewalks and other public places, ch. 46Cross reference(s)—; heritage trees, § 46-124Cross reference(s)—; zoning ordinance, app. A; subdivisions, app. B.

State law reference(s)—Historic districts and landmarks, G.S. ~~160A-400.1~~ 160D-940 et seq.

or object. Such remedies shall be in addition to any others authorized by this chapter for violation of a municipal ordinance.

(Code 1971, § 13½-3)

Sec. 28-4. Applicability to publicly owned buildings, sites, etc.

All of the provisions of this chapter are applicable to construction, alteration, moving and demolition by the state, its political subdivisions, agencies and instrumentalities; provided, however, that they shall not apply to interiors of buildings or structures owned by the state. The state shall have a right of appeal to the state historical commission, or as otherwise specified by state law.

(Code 1971, § 13½-4)

Sec. 28-5. Acquisition by city; authority.

Within the limits of its zoning jurisdiction, the city council (and, with the approval of the city council, the historic preservation commission) may acquire property designated as a historic landmark or located within a historic district designated pursuant to this chapter and may pay therefor out of any funds which may be appropriated for that purpose. The city has the authority to acquire, maintain, manage, repair, restore, exchange or dispose of any such property. If the property is acquired under this section but is not used for some other governmental purpose, it shall be deemed to be a "museum," notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public.

(Code 1971, § 13½-5)

Sec. 28-6. Ownership of property.

All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by the city shall be acquired in the name of the city unless otherwise provided by the city council. So long as owned by the city, such historic properties may be maintained by or under the supervision and control of the city. However, all lands, buildings or structures acquired by the historic preservation commission from funds other than those appropriated by the city may be acquired and held in the name of the historic preservation commission, the city, or both.

(Code 1971, § 13½-6)

Sec. 28-7. Definitions.

As used in this Chapter 28, the following words shall have the means stated:

Administrative Decision means decisions made in the implementation, administration, or enforcement of this Chapter that involve the determination of facts and the application of objective standards set forth in this Chapter, or other land development regulations as applicable.

Administrative Hearing means a proceeding to gather facts needed to make an Administrative Decision.

Determination means a final, written and binding order, requirement, or determination regarding an administrative decision.

Development Approval means an administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal.

Development Regulation means this Chapter 28 and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.

Evidentiary Hearing means a hearing by the commission to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this Chapter. An Evidentiary Hearing is also considered a public hearing. An Evidentiary Hearing is conducted in accordance with the terms of this Chapter and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

G.S. or N.C.G.S. means the North Carolina General Statutes.

Legislative Hearing means a hearing held for the purpose of soliciting public comments on a proposed ordinance or development regulation. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi- judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing

Owner means the holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the Owner. As used herein, "Owner" refers to all holders of the title in fee simple of a parcel of real property. The Owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

Planning and Development Regulation Jurisdiction means the City of Hendersonville corporate limits and the extraterritorial jurisdiction of the City of Hendersonville.

Quasi-judicial Decision means a decision involving the finding of facts regarding a specific application of a development regulation or standard adopted by the Historic Preservation Commission authorized by this Chapter and that requires the exercise of discretion when applying the regulation or the standards adopted. The term includes, but is not limited to, decisions involving variances, certificates of appropriateness and appeals of administrative determinations.

Zoning Board of Adjustment shall mean the Board of Adjustment for the City of Hendersonville duly created and authorized pursuant to G.S. 160D-302.

Zoning Map shall mean the Official Zoning Map for the City of Hendersonville.

Zoning Ordinance shall mean the Official Zoning Ordinance for the City of Hendersonville.

Sec. 28-8. Administration, Enforcement and Appeals.

(1) This Chapter shall be administered by City staff, in particular the commission coordinator and the zoning administrator, in accordance with G.S. 160D-403, except to the extent superseded or otherwise provided in G.S. Chapter 160D, Article 9, or other applicable law.

(2) This Chapter shall be enforced by the commission coordinator and the zoning administrator in accordance with the requirements of G.S. 160D-404 and other applicable Sections of this Chapter, except to the extent superseded or otherwise provided in G.S. Chapter 160D, Article 9, or other applicable law. In enforcing the Chapter all methods of enforcement and remedies provided by this Chapter, and all other available enforcement methods and remedies at law or in equity, and any combination of any of the foregoing, shall be authorized for use in the enforcement of this Chapter. The use of one enforcement method or remedy shall not preclude the use of any other enforcement method or remedy authorized by this Chapter , or available at law or in equity.

(3) An appeal of a determination made pursuant to this Chapter may be taken as follows:

(a) An appeal of an administrative determination by staff may be appealed to the commission in accordance with the requirements of G.S. 160D-405.

(b) An appeal of a quasi-judicial decision of the commission may be made pursuant to G.S. 160D-1402.

(c) Any person aggrieved shall also have such remedies as are provided in Article 14 of Chapter 160D of the North Carolina General Statutes.

(4) Any person aggrieved by a legislative decision rendered by city council shall have such remedies as are provided in Article 14 of Chapter 160D of the North Carolina General Statutes.

Secs. 28-~~97~~—28-40. Reserved.

ARTICLE II. HISTORIC PRESERVATION COMMISSION[2]

Sec. 28-41. Organization; membership.

(a) *Creation; compensation; appointments.* There is hereby established, by the authority of G.S. ~~160A-400.1~~ 160D-940 et seq., and G.C. 160D-303 the city historic preservation commission, hereafter referred to as "the historic preservation commission," or "commission," to consist of nine members appointed by the city council. The commission shall serve without monetary compensation. In establishing the commission and making appointments to it, the city council may seek the advice of such state or local historical agencies, societies or organizations as it may deem appropriate.

(b) *Qualifications of members.* All members of the historic preservation commission shall be residents of~~, or owners of real property situated within,~~ the territory subject to the zoning jurisdiction of the city, and a majority of the members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields~~; provided, however, that no more than three persons shall serve as regular members at one time, which persons are eligible for membership solely as landowners within the zoning jurisdiction.~~

(c) *Tenure.* Members of the historic preservation commission shall serve overlapping terms of three years. The initial members shall serve staggered terms; thereafter, all appointments shall be for a term of three years. Notwithstanding the foregoing, the city council may remove any member of the historic preservation commission for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the commission to carry out its designated functions.

(d) *Rules of procedure; annual report.* The historic preservation commission shall adopt rules of procedure for the conduct of its business, and an annual report shall be prepared and submitted by March 1 of each year to the planning board and the city council. Such report shall include a comprehensive and detailed review of the activities, problems and actions of the commission as well as any budget requests or recommendations. The commission shall keep a record of its members' attendance and of its resolutions, findings and recommendations, which record shall be a public record.

(e) *Conflicts of Interest for commission members* shall be governed by G.S. 160D-109, and the following:

---

[2]Cross reference(s)—Boards, commissions and committees, § 2-226 et seq.

State law reference(s)—Authority to establish an historic preservation commission, G.S. ~~160A-400.7~~ 160D-303; 941.

(1) When acting in an advisory capacity to consider or recommend a potential legislative decision be made by the city council, members of the commission shall not vote where the outcome of the matter being considered is reasonable likely to have a direct, substantial and readily identifiable financial impact on the member. If the proposed action by city council will amend the official zoning map for the city to adopt a new or amend an existing historic district overlay district, then a member shall not vote on the proposed overlay district adoption or amendment if an owner of the property to be included in the historic overlay district is a person with whom the member has a close familial, busines or other associational relationship.

(2) When acting in an administrative capacity to make an administrative decision, no member of the commission shall vote on the decision if the outcome of the matter being considered is reasonable likely to have a direct, substantial and readily identifiable financial impact on the member. A member shall not vote on the administrative decision if the applicant or a person subject to the decision is a person with whom the member has a close familial, busines or other associational relationship.

(3) When acting in a quasi-judicial capacity, no member shall participate or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process 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.

(4) A "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(e) *Conflict of Interest for city staff* shall be governed by G.S. 160D-109, and the following:

(1) No staff member shall make a final decision on an Administrative Decision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.

(2) No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved.

(3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.

(4) For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Code 1971, § 13½-11; Ord. No. 01-1069, § 1, 10-4-01; Ord. No. 07-0526, § 1, 5-3-07; Ord. No. 12-0929, § 1, 9-6-12)

Sec. 28-42. Powers.

The historic preservation commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this chapter and G.S. ~~160A-400.1~~ 160D-942 et seq., including, but not limited to, the following:

(1) ~~As a guide for the identification and evaluation of landmarks, the commission, at the earliest possible time, and consistent with the resources available to it, shall undertake an inventory of properties of~~

~~historical, architectural, prehistorical and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the division of archives and history.~~ Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.

(2) Recommend to the city council areas to be designated by ordinance as an "historic district," and buildings, structures, sites, areas or objects within its zoning jurisdiction to be designated by ordinance as "landmarks." z

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the same by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.

(4) Restore, preserve and operate such historic properties.

(5) Recommend to the city council that the designation of any area as a historic district or part thereof, or designation of any building, structure, site, area or object as a historic landmark be revoked or removed for cause.

(6) Conduct an educational program with respect to historic properties within its jurisdiction.

(7) Cooperate with the state, federal and local governments in pursuance of the purposes of this chapter. The city council or the commission, when authorized by the city council, may contract with the state or the United States of America, or any agency of either, or with any other organization, provided the terms are not inconsistent with state or federal law.

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.

(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan.

(10) Review and act upon proposals for alterations, demolitions or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this chapter.

(11) Negotiate at any time with the owner of a building, structure, site area, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

(12) Accept funds granted to the commission for preservation purposes from private individuals and organizations.

(13) Adopt by rule design ~~guidelines~~ standards whose purpose shall be to ensure, insofar as possible, that changes in designated historic properties shall be in harmony with the reasons for their designation~~.~~ per 160D-947 (c).

(14) Adopt rules of procedure for the conduct of its business~~.~~ per 160D-947 (c).

(Code 1971, § 13½-12)

State law reference(s)—Similar provisions, G.S. ~~160A-400.8~~ 160D-942.

Sec. 28-43. Receipt and expenditure of funds.

The commission, within the limits of funds appropriated for its use, may expend funds for the operation of the commission affairs and for the acquisition, restoration, preservation, operation and management of buildings,

structures, sites, areas or objects located within a historic district or designated as such historic landmark, or of land on which such buildings or structures are located or to which they may be removed.

(Code 1971, § 13½-13)

State law reference(s)—Appropriations to historic preservation commissions, G.S. ~~160A-400.12~~ 160D-943.

Sec. 28-44. Staff and technical services.

The commission may recommend to the city council suitable arrangements for the procurement or provision of staff or technical services to the commission.

(Code 1971, § 13½-14)

Secs. 28-45—28-75. Reserved.

ARTICLE III. DESIGNATION OF LANDMARKS[3]

Sec. 28-76. Adoption of ordinance of designation.

(a) *Generally.* Upon compliance with the procedures set out in subsection (d) of this section, the city council may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall describe each property designated therein, the name of the owner of the property, those elements of the property that are integral to its historical, architectural or prehistorical value, including the land area of the property so designated, and any other information the city council deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this chapter be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. No property may be designated as an historic landmark without the written consent of the property owner.

(b) *Criteria for commission's recommendation of designation.* No property shall be recommended for designation as a historic landmark unless it is deemed and found by the historic preservation commission to be of special significance in terms of its historical, prehistorical, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

(c) *Required procedures.* No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the commission or the city council, until the following procedural steps have been taken:

(1) The commission shall prepare and adopt rules of procedure and prepare and adopt principles and ~~guidelines~~ standards not inconsistent with state law or this chapter, for altering, restoring, moving or demolishing properties designated as landmarks.

(2) The commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. ~~Such investigation or report shall be submitted to the~~

[3]State law reference(s)—Designation of landmarks, G.S. ~~160A-400.5~~ 160D-946.

~~division of archives and history of the state department of cultural resources.~~ Such investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Cultural Resources.

(3) The ~~department of cultural resources, acting through the state historic preservation officer~~ Department of Cultural Resources, acting through the State Historic Preservation Officer, shall, either upon request of the department or at the initiative of the commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this chapter. Any comments shall be provided in writing. If the department of cultural resources does not submit its comments or recommendations in connection with any designation within 30 days following receipt by the department of the investigation and report of the commission, the commission and the city council shall be relieved of any responsibility to consider such comments.

(4) The commission and the city council shall hold a joint ~~public~~ legislative hearing or separate ~~public~~ legislative hearings on the proposed ordinance of designation. ~~Reasonable notice of the time and place thereof shall be given.~~Notice of each legislative hearing held by the city council or the commission, whether held jointly or separately, shall be given in accordance with the requirements of G.S. 160D-601. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. 143-318.9 et seq. ~~G.S. 160D-601.~~

(5) Following the joint ~~public~~ legislative hearing or separate ~~public~~ legislative hearings, the city council may adopt the ordinance of designation as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance of designation, the owners and occupants of each designated landmark shall be given written notification of such designation by the city council, insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the commission in the office of the register of deeds of the county. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the code enforcement officer. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the city and county for such period as the designation remains in effect.

(7) Upon adoption of an ordinance designating a landmark or any amendment thereto, it shall be the duty of the commission to give notice thereof to the county tax supervisor. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

(Code 1971, § 13½-21; Ord. No. 97-1075, § 1, 12-4-97)

State law reference(s)—Similar provisions, G.S. ~~160A-400.6~~ 160D-946.

Sec. 28-77. Designation reports.

(a) *Prepared by commission.* If the commission decides that a property should be considered for designation, the commission shall make or cause to be made an investigation and report meeting the minimum standards contained in subsection (c) of this section.

(b) *Prepared by owner.* To receive consideration for designation of a property as historic, a property owner must submit to the commission an application meeting the minimum standards contained in subsection (c) of this

section. Applications prepared by owners will be judged by the same criteria as those prepared by the commission. Owner applications shall be made on forms provided by the commission.

(c) *Contents.* Designation reports, whether prepared by the commission or submitted as applications by an owner, shall include the following:

(1) The name of the property, both common and historic names if they can be determined.

(2) The name and address of the current property owner.

(3) The location of the property and a justification of the land proposed to be designated historic. If located in an urban area, the street address shall be used; if located in a rural area, the approximate location in relation to state routes should be used.

(4) The date of construction and of any later alterations, if any.

(5) An assessment of the significance of the site or structure pursuant to the criteria established in G.S. ~~160A-400.5~~ 160D-946.

(6) An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant features will be designated, the report should contain a description of these elements.

(7) A historical discussion of the site or structure within its type, period and locality.

(8) An overall photograph that clearly depicts the property proposed to be designated and supplementary photographs showing facades, details and siting.

(9) A map showing the location of the property, including any outbuildings and appurtenant features. A tax map with the boundaries of the designated properties marked.

(10) A concise statement of all elements to be included in the designation.

(d) *Submission of reports.* A designation report prepared by or for the commission may be considered at any meeting of the commission provided the notification requirements contained in subsection (e) of this section are met. An application for designation prepared by the property owner and meeting all of the standards contained in subsection (c) of this section must be received at least 30 calendar days prior to the next meeting of the commission to be considered at the meeting.

(e) *Notification procedures.*

(i) When a designation report is prepared by the commission and is to be considered at a commissioners' meeting, the chairperson shall notify by certified mail, mailed not less than seven calendar days prior to the meeting at which the matter is to be heard, the owners of the property and the owners of abutting property. When an application for designation is submitted by the owner, the chairperson, using stamped, addressed envelopes provided by the owner, shall notify the abutting property owners by certified mail, mailed not less than seven calendar days prior to the meeting at which the matter is to be heard.

(ii) The designation report may be considered by the commission at the same time that the proposed ordinance of designation is considered. If both are considered at the same time, the notice required by Section 28-77(e)(i) shall not be required. In such a case of simultaneous consideration, the ordinance of designation and the designation report shall be considered after a legislative hearing of the commission, advertised in accordance with G.S. 160D-601 (see subsection 28-77(h) below).

(f) *Consideration of report.* Once the designation report has been prepared, either by the commission or by the owner, and once the notification required by subsection (e) of this section has been met, the commission shall consider the report. The commission may accept it, amend it, reject it or recommend further study.

Prior to final action on a designation report, the commission shall indicate the extent to which the property meets the criteria for designation contained in G.S. ~~160A-400.5~~ 160D-946.

(g) *Review by department of cultural resources.* A report accepted by the historic properties commission shall be submitted to the state department of cultural resources, division of archives and history, for comments pursuant to G.S. ~~160A-400.6~~ 160D-946. After the expiration of the 30-day comment period given the division of archives and history, the commission may recommend to the city council that the property be designated as an historic property subject to the requirements of G.S. ~~160A-400~~ 160D-946~~0~~.

(h) *Submission to city council.* The commissioners shall submit a copy of their report and a proposed ordinance of designation to the city council. The commission shall be required to hold a legislative hearing on the proposed ordinance prior to adoption of the proposed ordinance by city council. The council may hold its legislative hearing separately prior to submission of the proposed ordinance of designation to city council, or may hold its legislative hearing jointly with the legislative hearing required of city council. In either case, notice of the commission's legislative hearing shall be given in accordance with the requirements of G.S. 160D-601.

(i) ~~*Public*~~ *Legislative hearing.* When a proposed ordinance of designation is submitted, the city council shall hold a ~~*public*~~ *legislative* hearing on the proposed ordinance. Notice of the city council's legislative hearing shall be given in accordance with G.S. 160D-601.

(j) *Adoption of ordinance.* Following the joint or separate ~~*public*~~ *legislative* hearing, the city council may adopt the ordinance as proposed, adopt the ordinance with amendments or reject the ordinance.

(Code 1971, § 13½-22; Ord. No. 97-1075, § 2, 12-4-97)

Sec. 28-78. Denied applications.

If an application for historic property landmark designation is not approved by city council through the adoption of a designation ordinance, a copy of the minutes of the meeting shall be mailed forthwith to the owner.

(Code 1971, § 13½-23)

Secs. 28-79—28-110. Reserved.

ARTICLE IV. DESIGNATION OF HISTORIC DISTRICTS[4]

Sec. 28-111. Character of historic districts.

Historic districts established pursuant to this chapter shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture and/or culture, and to possess integrity of design, setting materials, feeling and association.

(Code 1971, § 13½-31)

[4]Cross reference(s)—Establishment of zoning districts, app. A, § 4-1Cross reference(s)— et seq.

State law reference(s)—Designation of historic districts, G.S. ~~160A-400.4~~ 160D-944.

Sec. 28-112. Procedures.

(a) *Investigation and recommendation by historic preservation commission.* The commission shall determine whether any areas within the zoning jurisdiction of the city possess the character of historic districts as specified in section 28-111. If the commission makes such a determination, it shall cause to be made an investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, including therein the boundaries of such proposed district.

(b) *Review by the department of cultural resources.* The historic preservation commission shall cause a copy of this report and the proposed boundaries of the new or amended historic district, along with a written request for an analysis thereof, to be provided to the department of cultural resources. The department, acting through the state historic preservation officer or his or her designee, shall make an analysis of and recommendations concerning such report and proposed boundaries. Failure of the department to submit its written analysis and recommendations to the city council within 30 calendar days, after receipt of the written request and report and proposed boundaries, shall relieve the city of any responsibility for awaiting such analysis, and the city council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance and thereby designate, or modify designation of, an historic district.

(c) *Review and comment by the planning board.* The historic preservation commission shall also cause a copy of this report to be provided the planning board who will review it and make comments upon it in accordance with the procedures set forth in the zoning ordinance. The planning board shall also consider and make a recommendation regarding the proposed adoption or amendment of any historic district prior to its being considered by city council, regardless of whether the district is approved through a zoning map amendment or by a separate development regulation.

(d) *Designation by city council.* The city council may, as part of a zoning or other ordinance enacted or amended pursuant to this chapter or G.S. Chapter 160D Article 7 or G.S. Chapter 160D Articles 6 and 9, designate and from time to time amend one or more historic districts within the zoning jurisdiction of the city. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the historic preservation commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration of the district. No historic district shall be designated until subsections (a), (b) and (c) of this section have been complied with.

(e) *Changes in district boundaries.* Proposed changes in the boundaries of a designated historic district must comply with the requirements of this section and with G.S. Chapter 160D Article 7 or G.S. Chapter 160D Articles 6 and 9, as appropriate.

(Code 1971, § 13½-32)

Secs. 28-113—28-145. Reserved.

ARTICLE V. CERTIFICATES OF APPROPRIATENESS[5]

[5]State law reference(s)—Certificates of appropriateness, G.S. ~~160A-400.9~~ 160D-102; 947.

Sec. 28-146. Required.

(a) *Activities requiring a certificate of appropriateness.* From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features), nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The city shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this chapter. A certificate of appropriateness shall be required whether or not a building or other permit is required. For purposes of this section, the term "exterior features" shall include the architectural style, general design and general arrangement of the exterior of the building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. Such exterior features shall include significant landscape, archaeological and natural features of the area.

(b) *Jurisdiction limited to exterior features.* Except as provided in subsection (c) of this section, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising, signs or other significant features in the district which would be incongruous with the special character of the landmark or district.

(c) *Regulation of interior features with landowner consent.* Notwithstanding subsection (b) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in public-owned landmarks and of privately owned historic landmarks for which consent for interior review has been given in writing by the owner. Such written consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in the grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(Code 1971, § 13½-41; Ord. No. 98-1164, § 1, 12-10-98)

Sec. 28-147. Relocation, demolition or destruction of designated properties.

(a) *Application for certificate of appropriateness.* An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within a designated historic district may not be denied except as provided in subsection (b) of this section. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be deprived of all beneficial use of or return from such

property by virtue of the delay. During such period the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within a district has no special significance or value toward maintaining the character of a district, it shall waive all or parts of such period and authorize earlier demolition or removal.

(b) *Denial of certificate.* An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(Code 1971, § 13½-42)

Sec. 28-148. Ordinary maintenance or repair.

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature when the building inspector certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition.

(Code 1971, § 13½-43)

Sec. 28-149. Issuance.

Consideration of a certificate of appropriateness shall be conducted as an evidentiary hearing by the commission, conducted in accordance with the requirements of G.S. § 160D-406.

(a) *Submission of application.* An application for a certificate of appropriateness shall be obtained from and, when completed, filed with the appropriate administrative official. An application for a certificate of appropriateness shall be considered by the historic preservation commission at its next regular meeting, provided it has been filed, complete in form and content, at least 30 calendar days before the regularly scheduled meeting of the commission; otherwise, consideration shall be deferred until the following meeting.

(b) *Contents of application.* The commission shall, by uniform rules in its rules of procedure, require data as are reasonably necessary to determine the nature of the application. The application for a certificate of appropriateness shall be signed by the record owner of the property or by an agent specifically authorized by the owner to sign such application. Where an agent signs the application, the applicant shall provide documentation acceptable to the city that the owner of the property has authorized the agent to sign in the owner's behalf. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted. Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

(c) *Notification of historic preservation commission.* Upon receipt of an application, the chairperson or their designee shall notify the commission members of the contents of the application at least seven calendar days before the regularly scheduled meeting.

(d) *Notification of affected property owners.* Prior to the evidentiary hearing to consider ~~issuance or denial of~~ a certificate of appropriateness, the commission shall ~~take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. The commission shall notify all adjacent property owners at least seven calendar days prior to the meeting for which the application is scheduled. A property shall be deemed adjacent notwithstanding the intervention of a street right-of-way that is 100 feet wide or less.~~ give notice of the evidentiary hearing as required by G.S. 160D-406, which requires mailed and posted notice.

(e) ~~Public hearing. In cases where the commission deems it necessary, it may hold a public hearing concerning the application.~~ *Reserved.*

(f) *Commission action.* The commission shall take action on the application and in doing so shall apply the requirements of this chapter and the design ~~guidelines~~ standards adopted by the commission pursuant to section 28-~~42(13)~~151. The commission's action on the application shall be approval, approval with modifications or disapproval. Prior to final action on an application, the commission, using the ~~guidelines~~ standards in section 28-~~42(13)~~151, shall make findings of fact indicating the extent to which the application is or is not in compliance with the review criteria.

(g) *Minutes to contain reasons for action.* The commission shall cause to be entered into the minutes of its meeting the reasons for its actions, whether it be approval, approval with modifications or denial.

(h) *Time limits.* The commission shall take final action on any application for a certificate of appropriateness in an expeditious manner, and, in any event, within 180 days from the date the application was filed. An applicant may at any time demand in writing that the commission take final action as soon as possible. Upon receipt of such written demand, the commission shall take final action at the next commission meeting which is at least 21 days in the future.

(i) *Written Decision.* The commission shall render a written decision as required by G.S. 160D-406(j). Notice shall be delivered as required by G.S. 160D-406(j), and the person required to provide the notice shall certify to the city that proper notice has been given, and the certificate shall be deemed conclusive in the absence of fraud.

(~~i~~j) *Submission of new application.* If the commission determines that a certificate of appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving. An application for a certificate of appropriateness for the relocation, demolition or destruction of a structure within a historic district, or otherwise designated as a historic landmark, may only be denied in accordance with Section 28-147 and G.S. 160D-949.

(Code 1971, § 13½-44; Ord. No. 02-0108, § 1, 1-10-02; Ord. No. 06-0836, §§ 1, 2, 8-10-06; Ord. No. 09-0943, §§ 1, 2, 9-10-09)

Sec. 28-150. Reserved.~~Appeals.~~

~~An appeal may be taken to the zoning board of adjustment from the commission's action in granting or denying any certificate, which appeals:~~

~~(1) May be taken by any aggrieved party;~~

~~(2) Shall be taken within 20 days of the commission's action; and~~

~~(3) Shall be in the nature of certiorari.~~

~~Any appeal from the zoning board of adjustment's decision in any such case shall be taken to the superior court of the county.~~

(Code 1971, § 13½-45; Ord. No. 97-1075, § 3, 12-4-97)

Sec. 28-151. Design ~~guidelines~~ standards.

In addition to the Secretary of the Interior's Standards for Rehabilitation (Department of Interior regulations, 36 CFR 67), the commission shall adopt and amend, as necessary, design ~~guidelines~~ standards which shall constitute the standards by which applications for certificates of authority shall be reviewed. Insofar as possible,

these ~~guidelines~~ standards are intended to insure that changes in designated properties shall be in harmony with the reasons for their designation.

(Code 1971, § 13½-46; Ord. No. 06-0836, § 3, 8-10-06)

Sec. 28-152. Authentic restoration or reconstruction not meeting zoning requirements.

If the historic preservation commission, in reviewing an owner's proposed plans, shall find that a building or structure for which a building permit is required is to be an authentic restoration or reconstruction of a building or structure which existed at the same location, but does not meet zoning requirements, such building or structure may be authorized to be restored or reconstructed at the same location where the original buildings or structures were located, provided the board of adjustment authorizes such restoration or reconstruction and no use other than that permitted in the district in which it is located is made of such property pursuant to Section 10-9 Variance or Section 6-2-1 Nonconforming Uses of the zoning ordinance, or the restoration or reconstruction would be permitted pursuant to Section 6-2-1 of the zoning ordinance with the approval of city staff. Such conditions as may be set by the commission and the zoning board of adjustment (as applicable) shall be conditions for the issuance of the building permit.

(Code 1971, § 13½-47)

Sec. 28-153. Administrative approval of minor works.

Minor works are defined as those exterior changes that do not involve a change to the visual character of the property and do not involve substantial alterations, additions, or removals that could impair the integrity of the property and/or district as a whole. The commission shall have the authority to delegate to their professional staff, hereafter referred to as their "coordinator," approval of minor works, as defined above.

Specific examples of minor works are described in the rules of procedure adopted, as amended from time to time, by the commission. The commission coordinator may approve but may not deny an application for a certificate of appropriateness for minor works. If the commission coordinator determines to not issue a certificate of appropriateness for minor works, the application shall be referred to the commission for action.

~~A decision by the commission coordinator to issue a certificate of appropriateness for minor works may be appealed in the same manner as other decisions made by the commission as described above.~~

(Ord. No. 06-0836, § 4, 8-10-06)

Sec. 28-154. Notification of Decisions, Approvals and Determinations

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

(1) Administrative Decision, Development Approval and Determinations by Staff. Written notice of Administrative Decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the Administrative Decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the Administrative Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

(2) Decisions Regarding Evidentiary Hearings by the Historic Preservation Commission. A copy the written decisions, development approvals and determinations made by the Historic Preservation Commission

following an Evidentiary Hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the commission shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

.

Secs. 28-1554—28-189. Reserved.

ARTICLE VI. DEMOLITION BY NEGLECT

Sec. 28-190. Standards.

The exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature), or any type of outdoor advertising sign either designated as an historic landmark or located within an historic district shall be preserved by the owner or such other person who may have legal possession, custody and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody and control, shall upon written request by the city repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to any of the following defects which have the effect of significantly impairing the integrity of such building or structure or the special character of such historic district:

(1) Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.

(2) Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.

(3) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.

(4) Deterioration or crumbling of exterior plasters or mortars.

(5) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.

(6) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.

(7) Rotting, holes, and other forms of decay.

(8) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.

(9) Heaving, subsidence, or cracking of sidewalks, steps, or pathways.

(10) Deterioration of fences, gates, and accessory structures.

(11) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the historic landmark.

(12) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-191. Petition and action.

The historic preservation commission may file a petition listing specific defects with the zoning administrator requesting that administrator act under the following procedures to require the correction of deterioration or making of repairs to any historic landmark or structure located within an historic district so that such structure shall be preserved and protected in accordance with the purposes of section 28-1 of this Code.

(1) Whenever a petition is filed with the zoning administrator charging that a structure is undergoing demolition by neglect, the administrator shall, if her preliminary investigation discloses a basis for such charges, within seven days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that an administrative hearing will be held before the administrator not less than 30 nor more than 45 days after the serving of such complaint; that the owner and/or parties in interest shall be given a right to answer to give testimony at the place and time fixed in the complaint; that the commission shall also be given notice of the hearing and that the rules of evidence prevailing in courts of law or equity shall not be controlling administrative hearings before the administrator. The purpose of the administrative hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wishes to petition the commission for a claim of undue economic hardship.

(2) If after such notice and administrative hearing, the administrator determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, according to the standards of section 28-190, the administrator shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the owner ~~an~~and/or other parties in interest wish to petition for a claim of undue economic hardship, the administrator's order shall be stayed until after the commission's determination in accordance with the procedures of section 28-193.

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-192. Methods of service.

Complaints or order issued by the administrator shall be served upon persons either personally or by registered or certified mail; but if the whereabouts of such persons are unknown and the same cannot be ascertained by the administrator in the exercise of reasonable diligence, and the administrator shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for two successive weeks in a newspaper generally circulated within the city. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-193. Safeguards from undue economic hardship.

(a) When a claim of undue economic hardship is made owing to the effects of this article, the administrator shall notify the commission within three days following the administrative hearing on the complaint. The commission shall schedule an evidentiary hearing on the claim at its next regular meeting, within the limitations of its procedures for application deadlines. The evidentiary hearing shall be conducted in accordance with, and notice shall be given as required by, G.S. 160D-406.

The petitioner shall present the information provided under subsection (b) to the commission. The commission may require that an owner and/or parties in interest furnish such additional information that is relevant to its determination of undue economic hardship. The commission may direct its staff to furnish additional information as the commission believes is relevant. The commission shall also state which form of financial proof it deems relevant and necessary to a particular case.

In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.

(b) When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship. The minimum evidence shall include for all property:

(1) Nature of ownership (individual, business, or non-profit) or legal possession, custody, and control.

(2) Financial resources of the owner and/or parties in interest.

(3) Cost of repairs.

(4) Assessed value of the land and improvements.

(5) Real estate taxes for the previous two years.

(6) Amounts paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.

(7) Annual debt service, if any, for previous two years.

(8) Any listing of the property for sale or rent, price asked, and offers received, if any.

For income producing property:

(9) Annual gross income from the property for the previous two years.

(10) Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management practices were followed.

(11) Annual cash flow, if any, for the previous two years.

(c) Within 60 days of the commission's hearing on the claim, the commission shall cause to be made a finding of undue or no undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the commission shall report such finding to the administrator, and the administrator shall cause to be issued an order for such property to be repaired within the time specified.

(d) In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the city, or other public, private or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable

zoning regulations, or relaxation of the provisions of the article sufficient to mitigate the undue economic hardship. The commission shall report such finding and plan to the administrator. The administrator shall cause to be issued an order for such property to be repaired within the time specified and according to the provisions of the recommended plan.

(e) A written decision shall be made and notice of such decision given and certified in accordance with the requirements of G.S. 160D-406(j).

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-194. Reserved~~Appeals~~.

~~Findings made by the administrator or by the commission may be appealed to the board of adjustment. To perfect such an appeal, application must be filed by an aggrieved party with the board of adjustment within ten days following receipt of the order for repair of the property or determination. Appeals shall be in the nature of certiorari.~~

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-195. Other city powers.

Nothing contained within this article shall diminish the city's power to declare an unsafe building or violation of the minimum housing code.

(Ord. No. 99-0218, § 1, 2-4-99)

Sec. 28-196. Penalties and remedies.

Enforcement of this article may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

(1) *Equitable remedy.* The city may apply for any appropriate equitable remedy to enforce the provisions of this article.

(2) *Order of abatement.* The city may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. In the event the city executes an order of abatement, the city shall have a lien, in the nature of a mechanic's and materialman's, on the property for the cost of executing such order.

(3) *Civil penalty. N*o civil penalty shall be levied unless and until the administrator shall deliver a written notice by personal service or by registered mail or be certified mail, return receipt requested, to the person responsible for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of an appeal if any by ~~the board of adjustment~~commission, corrective action has not been completed, a civil penalty shall be assessed in accordance with the provision for fines in section 1-6 of this Code.

(Ord. No. 99-0218, § 1, 2-4-99; Ord. No. 12-0722, § 1, 7-5-12)

Attachment D1

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

PROPOSED AMENDMENTS TO CONFORM WITH 160D

Hendersonville Historic Preservation Commission

Main Street Local Historic District Design ~~Guidelines~~ Standards



Adopted May 16, 2007
Revised September 15, 2010

Drafted by the members of the Proposed Main Street Local Historic District Design Guidelines Committee:

Steve Caraker, Chair, Historic Preservation Commission
Staci Blatt, Historic Preservation Commission
James Hall, Investors Realty Group
Lisa Lee Henderson-Hill, Downtown Hendersonville Inc.
Richard Parsons, Historic Preservation Commission
Luther E. Smith, Luther Smith and Associates
Sue Sneeringer, Main Street Property Owner

CONTENTS

1 Introduction
- 1.1 Historic Preservation in Hendersonville
- 1.2 Hendersonville Historic Preservation Commission
- 1.3 The Design Review Process
- 1.4 Certificate of Appropriateness Flow Chart
- 1.5 The Secretary of the Interior's Standards for Rehabilitation
- 1.6 Architectural Description of the Main Street Historic District

2 Site Features
- 2.1 Signage and Awnings
- 2.2 Parking and Paving
- 2.3 Landscape and Streetscape
- 2.4 Lighting

3 Changes to the Building Exterior
- 3.1 Storefronts
- 3.2 Upper Facades
- 3.3 Side and Rear Facades
- 3.4 Material and Details
  - 3.4.1 Architectural Ornamentation and Detail
  - 3.4.2 Windows and Doors
  - 3.4.3 Masonry
  - 3.4.4 Wood
  - 3.4.5 Architectural Metals
- 3.5 Paint
- 3.6 Safety and Accessibility
- 3.7 Utilities and Energy Retrofit
- 3.8 Artificial Materials

4 Additions and New Construction
- 4.1 New Construction
- 4.2 Additions to Historic Buildings
- 4.3 Rear Decks, Balconies, Terraces, & Rooftop Decks

5 Relocation and Demolition
- 5.1 Demolition
- 5.2 Relocation

6 Appendixes
- 6.1 Resources for Technical Information
- 6.2 Map of Downtown Hendersonville's Main Street Historic District

SECTION 1

INTRODUCTION

1.1 HISTORIC PRESERVATION IN HENDERSONVILLE

The historical heritage of the City of Hendersonville is a treasured asset--one which is enjoyed by residents and visitors alike. The Mayor and Council recognize the role that historic properties play in that heritage and believe that the preservation of historic properties stabilizes and increases property values and strengthens the overall economy of the City. For these reasons they have adopted a Historic Preservation Ordinance the purposes of which are as follows:

- To safeguard the City's heritage by preserving any property therein that embodies important elements of its culture, history, architectural history or prehistory;
- To identify properties which are of special historical significance and which possess integrity of design, setting, workmanship, materials, feeling and/or association and to designate such as historic landmarks or districts; and
- To promote the use and conservation of such landmarks or districts for the education, pleasure and enrichment of the residents of the city, county and state as a whole.

1.2 HENDERSONVILLE HISTORIC PRESERVATION COMMISSION

The Hendersonville Historic Preservation Commission serves the public both as a steward for historic properties and as a facilitator to people fortunate enough to own such properties. It provides assistance to owners and tenants, helps them plan the alterations that they are considering for their properties, and guides owners through the application process necessary to implement those changes.

The commission consists of nine members appointed by City Council for overlapping three-year terms. Included within its powers and responsibilities are the following: recommending to City Council the designation of historic landmarks and districts; granting requests for proposed changes to historic landmarks and properties situated within local historic districts; and conducting educational programs with respect to historic properties.

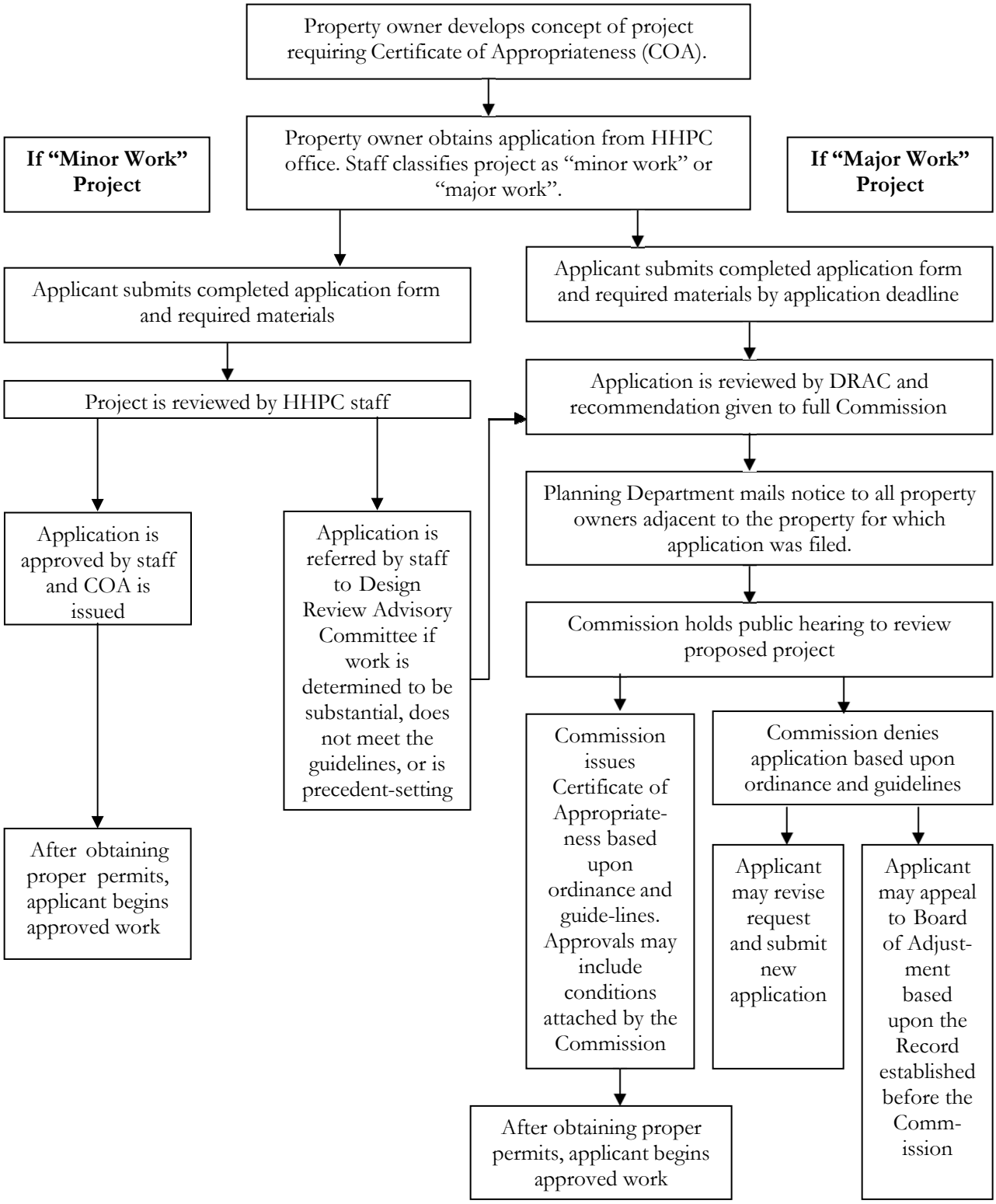
1.3 THE DESIGN REVIEW PROCESS

The designation of historic landmarks and local overlay districts is not intended to prevent change. Rather, the commission offers assistance to the property owner in shaping change while meeting the requirements of the ordinance. This will insure that property changes are within the spirit and character of the historic property. In this review process, plans are examined

before work is begun. The process does not require property owners to make changes to their properties, and it does not apply to interior alterations or routine maintenance that does not affect exterior appearance. However, any exterior alterations, new construction, demolition, significant landscape changes, or moving of buildings requires a ~~certificate of appropriateness~~ Certificate of Appropriateness from the commission prior to undertaking the change.

In deciding whether to issue a ~~certificate of appropriateness~~ Certificate of Appropriateness, the commission will apply these design guidelines, which are based on a common sense approach to the enhancement of historic landmarks and districts. They stress the importance of protecting and maintaining historic structures and districts, and they advocate repair over replacement. They are intended to guide, rather than mandate, the ways that changes should be accomplished.

1.4 CERTIFICATE OF APPROPRIATENESS FLOW CHART



1.5 THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

In 1976 the United States Department of the Interior developed national standards for the preservation of historic buildings. The ten standards for the rehabilitation of historic buildings, often referred to as the Secretary's Standards, are explicitly used by the State Historic Districts Commission in reviewing proposed changes to historic buildings owned by the State of North Carolina. Although Standard 1 applies to building use and the HHPC does not review building use, the design principles and criteria of these ten standards are inherent in the design guidelines applied by the commission in reviewing proposed changes to all district properties. The 1992 version of the Secretary of the Interior's Standards for Rehabilitation reads as follows:

.1 The property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

.2 The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

.3 Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

.4 Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

.5 New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

.6 New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

.7 Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

.8 Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

.9 Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

.10 Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

1.6 ARCHITECTURAL DESCRIPTION OF THE MAIN STREET HISTORIC DISTRICT

The Hendersonville Main Street Historic District is located in the center of the city limits of Hendersonville, Henderson County, North Carolina. The district runs in a north-south direction, along the Main Street corridor, with a portion of the district extending a block to the east. This designation includes all buildings and associated lots as shown on the accompanying map, as well as, historic landscape features associated with the district.

Though dating back to 1841, Hendersonville did not reach its development peak until the late nineteenth and early twentieth century. From that time period emerged today's Main Street Historic District. This district is significant as an example of a typical small town commercial center located in western North Carolina, representative of the boom times in the mountain area from when from the railroad arrived in 1879 through the end of the 1920's, and then continuing on a lesser scale through the middle of the twentieth century. As in most communities, there was minimal new development during the Depression years of the early 1930's, but the 1940s through the 1950s again witnessed an upsurge in development along Main Street. Architectural styles are typical of this type of district, including primarily one and two-story Commercial and Neo-classical Revival style buildings. The district is also significant for its association with two prominent architects of early twentieth century, Richard Sharp Smith and Erle Stilwell.

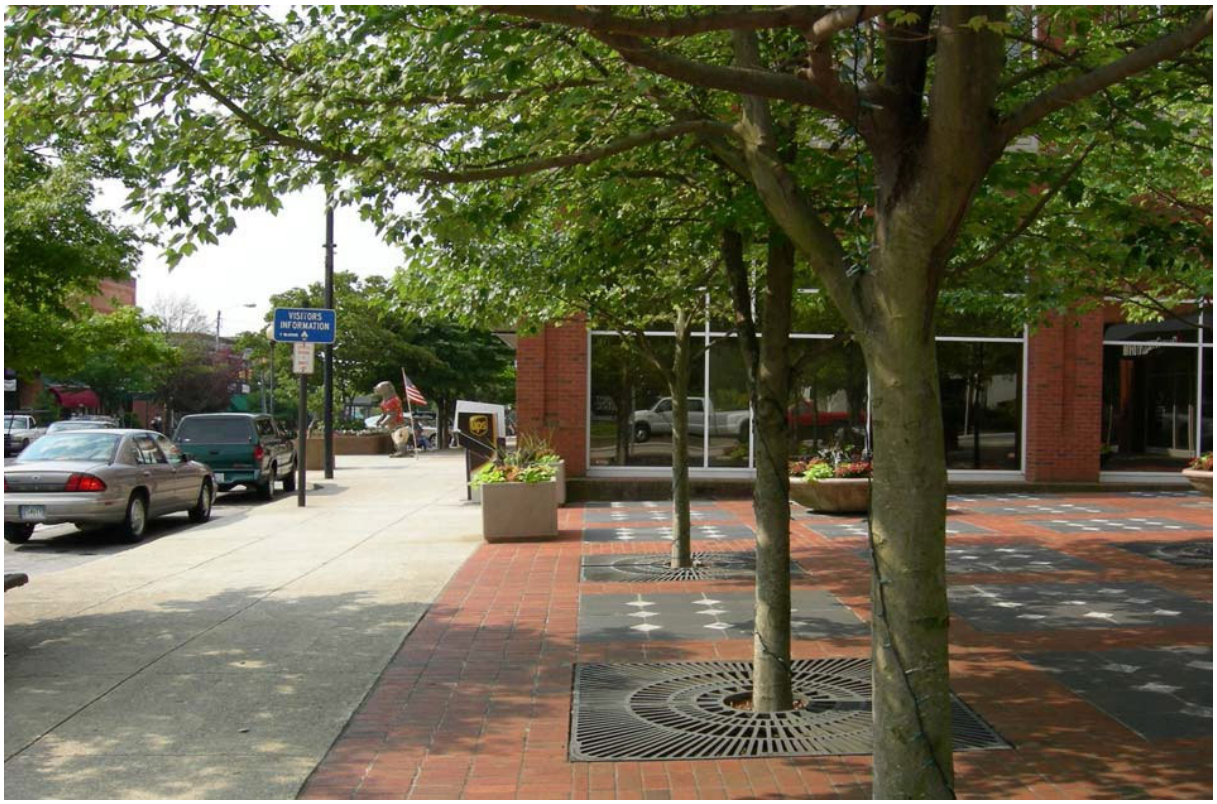
Original construction dates of the buildings located in the Main Street Historic District range from 1847 to the 1970's. Today, the district retains much of the character it has possessed since that time. Commercial and Neo-classical Revival building styles, mostly of brick or stone, are still the predominant feature along both sides of the Main Street between Allen Street on the south and Seventh Avenue on the north, reflecting the prosperity the community experienced in these time periods. Remnants of antebellum Hendersonville still exist on Main Street and are found in both the Ripley-Shepherd and Ripley Buildings. The typical pattern of commercial districts where buildings adjoin each other in distinct rows is clearly still evident in Hendersonville's downtown. Even newer buildings along Main Street maintain the same setback and pattern of buildings surrounding them. Only minimal changes to the historic pattern of Main Street's buildings have occurred over the years. This has been primarily in alteration of the buildings at the storefront level, with a few buildings being covered completely by false aluminum facades or other modern materials such as wood paneling.

The street plan of the central business district is basically a simple grid, a plan that has endured since the town was laid out in 1841. The heart of the business district is Main Street that runs in a general north-south direction. James Dyer Justice, the original surveyor of Hendersonville, laid the main street out at a remarkable 100 feet in width. The street remained this wide until the 1970's when the four lanes of Main Street were reworked into a two-lane serpentine configuration and brick planters, seating, and additional parking was added.

The Main Street block between First and Second Avenues West has always been the site of the Henderson County Courthouse, established 1905, remaining even today as a large green space in the downtown. The remainder of Main Street within the district forms a dense commercial district. Two major roads parallel Main Street one block to either side; King Street on the east, and Church Street on the west. Development along these roads is less dense than along Main Street with more vacant lots or parking areas. These roads now take the north-south through traffic on US 25, cutting down on the use of Main Street. The historic district lies along Main Street between First and Sixth Avenues, with a few buildings located one block to the east along Fifth Avenue. Residential areas adjoin the commercial district in all directions, with some newer commercial development in between.

SECTION 2

SITE FEATURES



2.1 SIGNAGE AND AWNINGS

Signs, as much as the buildings in which they serve, can contribute greatly to the overall sense of place of downtown Hendersonville—positively or negatively. The purpose of design review of signs and awnings is to ensure that design, location, materials, and colors are consistent with the character and scale of the building and are in keeping with the historic nature of downtown while also promoting and accommodating retail and street activity.

Sign design, overall size, location, and sign type is addressed under Article XIII of the Zoning Ordinance of the City of Hendersonville. Historic Preservation Commission review of signs is limited to anchored freestanding signs and illuminated signs.

Historic painted wall sign



Anchored freestanding sign



Illuminated sign



SIGN GUIDELINES

.1 Retain and preserve signage that is original or is important in defining the overall historic character of a building

.2 Signs should be compatible with the architectural character of the building in size, scale, materials and style. If possible, base new sign designs on historic documentation such as old photographs.

.3 Use traditional materials commonly found on turn-of-the century commercial buildings such as wood, metal, or stone or use modern materials that have the appearance of traditional.

.4 Signs should be placed in locations that do not obscure any historic architectural features of the building or obstruct any views or vistas of Hendersonville's historic downtown.

.5 Install anchored freestanding signs appropriately, such as on well-landscaped ground bases or low standards.

.6 Signs illuminated from within are generally not appropriate. Lighting for externally illuminated signs should be simple and unobtrusive and should not obscure the content of the sign or the building façade.

.7 Signs must meet the requirements of Article XIII of the City of Hendersonville's Zoning Ordinance.

AWNING GUIDELINES

.8 Awnings should be made of cloth or other woven fabric such as canvas or acrylic. Metal awnings are generally not appropriate, but can be used in some instances if they are compatible with the historic character of the building. Vinyl or plastic awnings are not appropriate.

.9 Base the design of new awnings on historic documentation of the building or examples from buildings of similar style and age. Awnings for new buildings should be of similar materials, size, and scale of that commonly found in the historic district.

.10 Mount awnings in a manner that does not obscure or damage historic architectural features of the building. Awnings should be placed appropriately above the transom and projecting over individual window or door openings. They should fit within the window or door opening. A continuous awning is not appropriate.

Fabric Awning



Metal Awning



.11 Back-lit awnings or those with interior illumination are not appropriate in the historic districts.
.12 Select awning colors that are appropriate to the design of the building.
.13 Must meet all encroachment regulations relating to public safety as outlined in Section 46-82 of Hendersonville City Code.

2.2 PARKING AND PAVING

Parking areas serve a utility function more than anything else. They provide vehicular access to the consumer while also facilitating various service functions and commercial deliveries. With appropriate paving materials, landscaping and screening, a parking area can be designed to minimize its impact on the historic downtown and, with some creativity, be an attractive area for parking, pedestrian and vehicular circulation, or even as a public gathering space for events and festivals.

The location of parking areas in downtown Hendersonville is a product of the orientation of the main building on the lot. Most off-street parking areas are either to the rear of buildings fronting on a street or are within an interior area of the block. There are, unfortunately, instances in downtown Hendersonville where a building may have a suburban orientation with the main structure set back far from the street with parking in the front. This is simply not appropriate in a historic downtown.

PARKING GUIDELINES

.1 Whenever possible, retain and preserve the historic configuration and materials of paved areas such as alleys and sidewalks.
.2 Parking in downtown should be located to the rear of the building. In certain cases, it may be appropriate for parking to be located to the side and rear of the structure. Parking lots should not be located on a corner lot.
.3 Appropriate materials that complement a historic district (such as brick pavers) are encouraged to be used in the design of a parking area. This would minimize the aesthetic impact of an expansive parking area while also facilitating more efficient pedestrian & vehicular circulation.
.4 Whenever possible, use effective screening methods for parking areas such as landscaping, wrought-iron or wooden fences, and masonry walls that are compatible with the adjacent structures and district.
.5 Gravel and unpaved parking areas or pedestrian walkways are not appropriate.
.6 Parking structures should be compatible with the district in design, materials, and fenestration. Structures should incorporate street level retail or offices with upper floors used for parking.

2.3 LANDSCAPE AND STREETSCAPE

Main Street planter box



Streetscape elements such as landscaping and street furniture can have a tremendous impact on an urban historic district. While they can be mostly functional, such as a shade tree or a sidewalk bench, they can also be an attractive, pedestrian-friendly element that helps define space and encourages commerce, dining, and interaction.

These elements should be considered in any design for new construction, parking areas, and sidewalk retail.

LANDSCAPING AND STREETCAPE GUIDELINES

Landscaping

.1 Retain and maintain specific landscape features that are character-defining elements of the historic district, including large trees, parks, hedges, foundation plantings, grassy lawns, and ground cover.
.2 New landscaping areas should use planting materials compatible with the historic district and appropriate in the urban environment.
.3 The removal of any tree larger than eighteen inches in diameter at four-and a-half feet above the ground requires a ~~certificate of appropriateness~~ Certificate of Appropriateness.
.4 Remove a diseased, mature tree only on a written certification of its condition by an arborist, a landscape architect, a cooperative agent, or a city-designated agent. If it is necessary to remove a large tree or a hedge because of storm damage, replace it with a new tree or hedge of the same species or with a similar appearance.
.5 Pruning techniques that promote the health and natural growth of the tree are encouraged. Unnatural pruning techniques such as topping, stubbing, dehorning or lopping are not appropriate. Tree pruning should follow accepted industry standards for arborists (ANSI 300A Standards).
.6 Plantings should not obstruct the view of historic structures, façades, or architectural details.
.7 Appropriate landscaping should be used to screen parking lots, utilities, garbage receptacles, and other service areas.
.8 If it is necessary to remove a large tree because of disease or storm damage, replace it with a new tree of the same species or with a similar appearance.

Streetscape

.9 Benches, trash receptacles, tree grates, etc. should be of a material and color that is compatible with a historic downtown. Brightly colored or contemporary streetscape improvements are not appropriate.
.10 Sidewalk dining must meet the requirements of Hendersonville City Code 46-86.
.11 Retain and preserve historic fences and walls. Modern fencing such as chain link is incompatible in the downtown historic district.
.12 Landscape elements such as fences, gates, and walls are appropriate in downtown to screen parking lots or service areas. They should be

compatible with the existing structure and be made of appropriate materials such as masonry, wrought iron, and wood.

2.4 LIGHTING

City Hall lighting



Lighting in downtown serves several purposes including security, facilitating vehicular and pedestrian traffic, illumination of signage and façades, and accentuating architectural details of buildings. Whenever designing lighting elements in downtown, it is important to consider the level of lighting as well as the scale and overall design of the lighting fixture.

.1 Introduce exterior lighting that is compatible with the historic nature of the structure, the property, and district. Compatibility of exterior lighting and lighting fixtures is assessed in terms of design, material, use, size, scale, color, and brightness.

.2 Whether lighting the street or parking areas, appropriate fixtures should be selected that are compatible with existing fixtures and the historic character of the district.

.3 When mounting lighting fixtures on buildings, select those that are as unobtrusive as possible and whose installation will not damage or conceal any historic architectural features.

.4 Rather than indiscriminately lighting areas, introduce subtle lighting qualities by carefully locating light sources.

.5 Introduce lighting levels that provide adequate safety, yet do not detract from or overly emphasize the structure or the property.

.6 Introduce directional lighting that does not spill light onto adjacent properties. Exterior lighting in parking lots should be directed into the parking area itself.

SECTION 3

CHANGES TO THE BUILDING EXTERIOR



A recent City Hall rehabilitation project, which was completed in 2005, included a major addition to the rear of the building along Sixth Avenue East.

3.1 STOREFRONTS

The storefront is the single most identifying characteristic of the historic commercial façade. Turn-of-the-century commercial buildings, the predominant building type in downtown Hendersonville, commonly included storefronts with large display windows, transom bars or windows, and recessed entryways.

The combination of these features, while attractive, are also quite functional in that they create an area for the display of goods and allow light to enter into the store. Other architectural features found in these storefronts include bulkheads below the display windows, columns or pilasters to support the façade above the storefront, and awnings.

As the years went by, these storefronts were commonly altered or covered-up and, unfortunately, Hendersonville was no stranger to this practice. However, in Hendersonville, with active preservation efforts along with historic tax credits, this trend has been reversed.

Due to fact that many of these original façades were effectively destroyed, the guidelines for storefronts and upper façades have been written to encourage preservation and reconstruction whenever possible, but also address new designs and their compatibility with the historic district.

The storefront is the first-floor commercial area of the historic commercial façade. It includes such elements as large display window, transoms, and recessed entryways.



Houston Furniture building with metal cladding



Houston Furniture building after metal cladding removed and façade restored



STOREFRONT GUIDELINES

Preservation

.1 Retain and preserve historic storefronts and storefront features such as entryways, display windows, doors, transoms, corner posts, etc.

.2 Whenever possible, retain and preserve historic materials. Avoid the removal of historic materials or architectural features.

.3 Whenever repairing or renovating, it is recommended that any non-historic storefront or façade treatments including metal cladding or other non-historic alteration be removed.

Reconstruction

.4 If replacement of a deteriorated storefront or storefront feature is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, texture and detail.

.5 When reconstructing a historic storefront, base the design on historical research and evidence. Maintain the original proportions, dimensions and architectural elements.

.6 Whenever changes are required to meet building or accessibility codes, they should be done in a way that is the least intrusive to the façade and without destroying historic materials and features.

New Design

.7 Where original or early storefronts no longer exist or are too deteriorated to save, retain the commercial character of the building through contemporary design which is compatible with the scale, design, materials, color and texture of the historic buildings.

.8 Whenever possible, incorporate research from the *Baker-Barber* collection to determine the original characteristics and architectural details of the building.

3.2 UPPER FACADES

The front elevation of turn-of-the-century commercial building is commonly made up of the storefront and the upper façade. In Hendersonville, many of our historic downtown buildings were designed for, and still used as, commercial on the street level and office or residential on the upper levels. Therefore, in a few cases, the façade treatment is quite different between the first and upper floors.

The upper façade is any area of the building above the first-floor commercial storefront.



While most buildings in downtown Hendersonville are two-stories, there are examples that are much larger, such as the Skyland Hotel building. The upper façades of Hendersonville's downtown buildings are constructed of brick with varying levels of detail including brick corbelling, quoins, arched windows, and window awnings. Some buildings use brick stringcourses or stonework to create accents in the overall design.

During the 1950s and 60s, there was an unfortunate trend where historic upper façades were covered in aluminum cladding or other non-historic treatments. Often this would include destroying key architectural features. Over the last several years here in Hendersonville, much of this metal cladding has been removed, usually uncovering an attractive, historic façade that can be restored.

UPPER FAÇADE GUIDELINES

Preservation

.1 Retain and preserve historic façades and façade details such as corbelled brick, stringcourses, cornices, windows, and stonework.

.2 The covering of upper façades is not appropriate. Whenever possible, remove metal or other non-historic covering from upper façades.

.3 It is not appropriate to remove or replace original upper façade windows with modern materials. The enclosing or bricking in of windows shall not be permitted.

.4 When upper floor windows must be replaced, match the original in configuration and materials.

The brick corbelling of the historic façade is still visible above the metal skin applied during a renovation.



Reconstruction

.5 If replacement of a deteriorated façade feature is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, texture and detail.

.6 It is only appropriate to use alternate materials when all the original windows are missing or destroyed. The installation of artificial materials shall follow the Artificial Materials guidelines (Section 3.8).

.7 When reconstructing a historic façade or feature, base the design on historical research and evidence. Maintain the original proportions, dimensions and architectural elements. If no evidence of the design of the feature exists, a new design, compatible with the overall character of the building, should be used.

New Design

.8 If new construction of an upper façade is necessary, make sure that the design is compatible with the existing structures in the district including size and spacing of windows or other fenestrations, proportion, scale, and detailing.

3.3 SIDE AND REAR FACADES

Many of Hendersonville's downtown commercial buildings have side façades that can be seen from public streets, parking lots, sidewalks, and alleyways. As with the primary front façade, these side elevations are important character-defining elements of the downtown historic district. Usually, these façades exist on corner buildings fronting on two streets, but can also occur mid-block where the adjacent property is vacant or is an alleyway.

Historic advertisement on side facade



The side façade generally carries the same design elements and details as the main elevation including fenestrations, brickwork, etc. They are likely to serve a more private utility in providing access to upper-floor office and residential uses and not engage the consumer or the pedestrian like the typical storefront. Still, some of these buildings take advantage of the additional frontage and use the side façade as additional display area, advertising, or even providing additional access for the customer.

The rear façade is also important to the historic character of the building and district. The rear elevation provides access for merchants, their workers, and in some cases, customers. It also continues the same general material treatments as front and side façades. More often than not, rear entrances on Hendersonville's downtown commercial structures serve as a service entry and, as a result, are the location of any necessary mechanical equipment and garbage receptacles. This translates into a less detailed design with a more private appearance than front and side façades that face public rights-of-way. There are some instances in downtown where the rear façade serves as public or semi-public access. Usually, the design of these façades reflects this public utility resulting in an elevation with similar detailing to its primary façade that is more inviting to the consumer or general public.

Treatment of side façade same as front.



SIDE AND REAR FACADES GUIDELINES

Preservation

.1 Retain and preserve historic façade details and materials on side and rear elevations.

.2 Historic painted advertisements represent an important historic element in downtown Hendersonville. While not required, it is recommended that they be preserved whenever possible.

.3 Whenever a side or rear façade can be seen from the public right-of-way or parking area, it is encouraged that any unnecessary utility lines, mechanical equipment, pipes, etc. be removed. Whenever introducing new utility or service features such as mechanical units and garbage receptacles, screen them from public view with fences, low walls, or landscaping whenever possible.

Restored rear façade used as private access to offices.



Reconstruction

.4 If replacement of a deteriorated façade feature is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, texture and detail.

.5 When reconstructing a historic façade or feature, base the design on historical research and evidence. Maintain the original proportions, dimensions and architectural elements.

.6 If there is historic evidence of a public entrance on a rear façade, rehabilitate the façade to provide for an attractive access from rear parking areas.

.7 Downtown buildings with rear access should use small signs or awnings to provide for visual identification.

.8 Storefronts on side or rear facades must comply with the Storefront Guidelines under Section 3.1.

New Design

.9 If new construction of a side or rear façade is necessary, make sure that the design is compatible with the existing side and rear facades in the district including size & spacing of windows or other fenestrations, proportion, scale, and detailing.

.10 Whenever possible, new designs for rear façades should provide access to the public from rear parking areas and alleyways.

Relief detail on upper facade



3.4 MATERIAL AND DETAILS

3.4.1 ARCHITECTURAL DETAILS AND ORNAMENTAION

Architectural details in downtown Hendersonville include everything from simple masonry treatments such as corbelled brick and stringcourses to very detailed ornamentation like cast iron, stone relief, and wooden & masonry cornices. Variations in material, fenestration, and paint color all contribute to the level of ornamentation on the individual structure.

ARCHITECTURAL DETAILS AND ORNAMENTATION GUIDELINES

.1 Retain and preserve any architectural features and details that are character-defining elements of downtown structures, such as cornices, columns, piers, brickwork, stringcourses, quoins, etc.

.2 If replacement of an architectural element is necessary, use new materials that match the historic materials in composition, size, shape, color, pattern, and texture. Consider substitute materials only if the original materials are not technically feasible.

.3 If the entire architectural detail is missing, design the replacement feature based on historic documentation. If there is no documentation, but evidence that the element was originally on the building, any new design should be compatible with the historic character of the building and district.

.4 It is not appropriate to remove or cover any original detail or ornamentation. If original features are currently covered, it is encouraged that these features be uncovered, exposed, and repaired.

This building displays multiple examples of ornamentation.



3.4.2 WINDOWS AND DOORS

Windows and doors by their proportion, shape, positioning, location, pattern, and size can contribute significantly to a building's historic character and are particularly indicative of stylistic periods. These openings in a building's exterior also provide opportunities for natural light, ventilation, and visual connections to the interior.

WINDOWS AND DOORS GUIDELINES

.1 Retain and preserve original windows and doors.

.2 Retain and preserve openings and details of windows and doors, such as trim, sash, glass, lintels, sills, thresholds, shutters, and hardware.

.3 If replacement of a window or door element is necessary, replace only the deteriorated element to match the original in size, scale, proportion, pane or panel division, material, and detail.

.4 It is not appropriate to replace windows or doors with stock items that do not fill the original openings or duplicate the unit in size, material, and design.

.5 Protect and maintain existing windows and doors in appropriate ways:

- Maintain caulking and glazing putty to prevent air or water infiltration around glass.
- Weatherstrip windows and doors to prevent moisture and air infiltration.
- Check sills and thresholds to ensure that water run off does not collect.
- Maintain a sound paint film on all wooden windows and doors.
- Monitor the condition of wooden windows and doors.
- Note: Both the peeling of paint and the widening of joints may create the false appearance of deteriorated wood.

.6 Repair original windows, doors, and frames by patching, splicing, consolidating, or otherwise reinforcing deteriorated sections.

.7 Construct replacement shutters of wood, size them to window openings, and mount them so that they are operable. It is not appropriate to introduce window shutters where no evidence of earlier shutters exists.

.8 The use of reflective or highly tinted glass is discouraged.

.9 It is not appropriate to fill in existing window or door openings or to replace or cover them with plywood.

.10 It is not appropriate to introduce new windows or doors if they would diminish the original design of the building or damage historic materials and features. Keep new windows and doors compatible with existing units in proportion, shape, positioning, location, size, materials, and details.

.11 If a new window or door is required to meet building and safety codes, it should be done in a way that is the least intrusive to the façade and without destroying historic materials and features.

.12 If exterior storm windows are desired, they should have little visual impact. Storms windows should be painted to match the building and the color of the window sash. Storm windows should match the existing in size and proportion. Install them so that existing windows and frames are not damaged or obscured.

Retain and preserve original windows and doors.



.13 It is not appropriate to use snap-in muntins to create a false divided-light appearance.

.14 In accordance with the Artificial Materials guidelines (Section 3.8), it is not appropriate to replace existing vinyl windows with new vinyl windows on contributing structures.

.15 Existing windows and doors on non-contributing structures should be replaced in-kind.

3.4.3 MASONRY

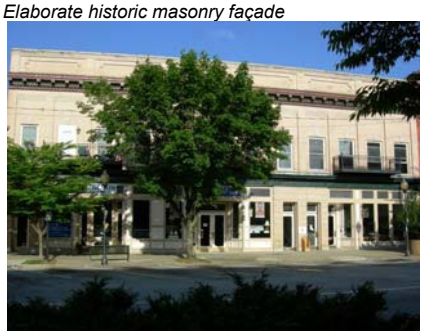
By far, the primary construction material in the downtown historic district is brick. Brick, stone, terra-cotta, concrete, stucco, and mortar are all typical masonry materials found on the exterior of historic buildings. The texture, the scale, the color, the bonding pattern, the joints, and the detail of masonry surfaces can all contribute significantly to the overall character of the historic building. Masonry features such as chimneys, arches, quoins, lintels, sills, cornices, and pediments further define a building's historic character.

Maintenance and Repair

Masonry surfaces are relatively long-lasting and require little maintenance. Moisture is the most common cause of deterioration in masonry. If water can enter the wall, the roof, or the foundation through loose masonry joints or cracks, it will cause additional damage as it works its way through the structure. Typically, mortar joints slowly deteriorate over a period of years because of exposure to the elements. The deterioration allows moisture to penetrate brick walls or foundations. Consequently, the life of a brick or stone wall depends on proper maintenance of its mortar joints. The process of replacing deteriorated mortar joints with new mortar is called repointing. All loose and deteriorated mortar is carefully raked out of the joint by hand, and new mortar is inserted. To maintain the historic character and the structural integrity of the wall, the original mortar should be matched in composition, color, texture, and strength. The dimension and the profile of the original mortar joint should also be duplicated.

Heavy soiling or vegetation that allows moisture to remain on a masonry surface contributes to the deterioration of masonry elements. If cleaning is necessary, the gentlest method possible should be used. Periodic cleaning with simple techniques such as steam cleaning or low-pressure water washing with or without a mild detergent, complemented by scrubbing the surface with a natural bristle brush where needed, is generally all that is necessary. If these techniques are not successful, chemical masonry cleaners may be indicated. Chemical cleaners should always be tested on an inconspicuous area well in advance to determine if they cause any discoloration or damage to the masonry. High-pressure cleaning techniques such as sandblasting and waterblasting, because of their abrasive nature, permanently damage the surface of historic masonry and accelerate its deterioration. Consequently, such techniques are not appropriate in the historic district.

Elaborate historic masonry façade



MASONRY GUIDELINES

Preservation

.1 Retain and preserve original masonry walls, foundations, and roofs.

.2 Retain and preserve all masonry construction features that are character-defining elements of historic buildings, including walls, foundations, roofing materials, corbels, chimneys, piers, arches, quoins, cornices, and lintels.

.3 Retain and preserve historic masonry materials whenever possible. If replacement is necessary, use new masonry materials and mortar that match the historic materials in composition, size, shape, color, pattern, and texture. Consider substitute materials only if the original materials are not technically feasible.

.4 It is not appropriate to apply paint or other coatings to unpainted masonry elements that were historically not coated.

.5 Paint previously painted masonry elements in colors that best reflect the color of the masonry material.

.6 It is not appropriate to apply nontraditional masonry coatings such as waterproofing and water repellents to masonry as a substitute for repointing or repair. Use such coatings only if masonry repairs have failed to eliminate water-penetration problems.

.7 Removal of paint from masonry surfaces is encouraged when the brick is of high quality and was intended to be exposed. Undertake removal only with a chemical paint remover specifically formulated for masonry. Always test the remover on an inconspicuous area or a test panel first.

.8 When removing paint from a masonry surface, use the gentlest means possible. High-pressure water cleaning (greater than 500 PSI) or other harsh methods can destroy the surface of historic brick and damage the mortar between bricks.

Maintenance

.9 Protect and maintain historic masonry in appropriate ways:

- Monitor masonry for cracks and signs of moisture damage.
- Ensure that water does not collect at the base of a masonry foundation or chimney.
- Clean masonry only if necessary to remove heavy soiling or prevent deterioration.
- Eliminate any vegetation that may cause structural damage or hinder ventilation and surface drainage of a masonry element.
- Use the gentlest means possible to clean historic masonry. Cleaning with a low-pressure (500 pounds per square inch or less) water wash, using detergents and natural bristle brushes, is preferred over harsher methods.
- Test any proposed cleaning method on an inconspicuous sample area first.

.10 If cracks in mortar joints, crumbling mortar, loose bricks, damp walls, or damaged plaster indicate deterioration, repoint mortar joints of masonry surfaces in appropriate ways:

- Carefully remove deteriorated mortar by hand-raking the joints. Using electric saws or hammers can damage the masonry.
- Duplicate the strength, the composition, the texture, and the color of the original mortar. Replacing a softer mortar with one high in portland-cement content can cause serious damage to existing masonry.
- Duplicate the width and the joint profile of the original mortar joints.

.11 It is not appropriate to use high-pressure cleaning methods such as sandblasting and waterblasting on historic masonry surfaces. Such cleaning techniques permanently damage the masonry surface and accelerate deterioration by removing the outer edge and exposing the softer inner core of the brick.

3.4.4 WOOD

Window sashes, doors, bulkheads below display windows, and cornices are the most common wooden design elements found in downtown. The functional and decorative detailing wood provides is an important part of the historic character of the building and district.

Maintenance and Repair
Wood is a traditional building material with good insulating qualities. It will last indefinitely if it is kept properly caulked and painted. Because wood expands with the introduction of moisture, caulks and flexible sealants are typically used to seal wood joints and prevent the entry of water beneath the wood surface. Paints and coatings on the wood surface protect it from deterioration due to ultraviolet light as well as moisture. The guidelines for paint provide additional information on the preparation and the maintenance of painted surfaces.

Stains or evidence of mildew indicates that a wood surface is remaining damp, inviting insect and fungal attacks as well as wet rot. Wooden elements should be sloped to shed water, and roof and gutter systems should provide additional protection to the surface. Chemical treatment of wooden members either during manufacture or following installation can enhance wood's ability to resist rot and insect infestation. Some chemical treatments result in an initial resistance to surface paint films, requiring a weathering period of a few months before painting. Chemical treatment is particularly advantageous if the wooden element is to remain unpainted or is in direct contact with the ground.

This new storefront uses traditional wood materials and detailing.



The repair of deteriorated wooden elements or details may require partial replacement of the original wood or the introduction of a wood consolidant to stabilize the deteriorated section and prevent further decay. Wood consolidants are particularly appropriate when they prevent the removal of decorative details and trim that cannot easily be replicated or when replacement of the deteriorated section of a larger element would be difficult to achieve in place.

WOOD GUIDELINES (Within the regulations of the NC Fire Prevention Code guidelines for safety where applicable)

Preservation

.1 Retain and preserve all wooden features that are character-defining elements of a historic building, such as siding, shingles, brackets, cornices, balustrades, columns, pediments, and architraves.

.2 Retain and preserve historic wooden fabric whenever possible. If replacement is necessary, use new wood that matches the original in dimension, shape, detail, and texture.

.3 Repair original wooden elements and details by patching with wood or epoxy, splicing, consolidating, or otherwise reinforcing deteriorated sections.

.4 If replacement of a wooden element or detail is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, and detail.

.5 It is not appropriate to replace wooden siding, trim, or window sash with contemporary substitute materials such as vinyl or aluminum.

Maintenance

.6 Protect and maintain wood surfaces and elements in appropriate ways:

- Inspect wood surfaces and features regularly for signs of damage from moisture, insects, fungi, or mildew.
- Monitor the condition of wood surfaces and features. Note: Both the peeling of paint and the widening of wood joints may create the false appearance of deteriorated wood.
- Keep wooden joinery adequately sealed to avoid water penetration.
- Maintain a slope on horizontal wood surfaces, such as porch flooring or window sills, to ensure that water does not collect but runs off.
- Maintain roofs, gutters, and downspouts to protect wood surfaces and features from water damage.
- Prime all exposed wood surfaces before painting.
- Maintain a sound paint film or other coating on wood to prevent damage from ultraviolet light and moisture.

.7 It is not appropriate to clean wood surfaces with high-pressure methods, such as sandblasting and waterblasting.

.8 It is not appropriate to overexpose wood surfaces to caustic chemical strippers that will raise the grain of the wood and roughen the surface texture.

This unique historic storefront combines brick, wood and metal.



3.4.5 ARCHITECTURAL METALS

Cast iron, wrought iron, copper, tin, sheet metal, aluminum, steel, and bronze are all traditional architectural metals that contribute to the architectural character of historic buildings through their distinctive forms, finishes, and details.

A protective paint film is essential for metals that corrode, or rust, when exposed to air and moisture. Consequently, routine maintenance of painted

metal surfaces includes prompt attention to any signs of deterioration of the paint film and subsequent corrosion. If the metal surface has begun to flake and rust, it must be thoroughly cleaned before repainting. Because the corrosion continues as long as the metal is exposed to air, immediate painting with a metal primer after cleaning is essential to prevent deterioration of the metal.

Cleaning techniques vary according to the specific metal. Chemical solutions are typically used on soft metals such as lead, tin, copper, zinc, and terneplate. Copper and bronze surfaces develop a protective greenish patina over time, and it is generally desirable to maintain that patina and the protection that it provides.

Wire brushing and handscraping are appropriate techniques for cleaning hard metals, such as steel and cast or wrought iron. A more abrasive technique, such as low-pressure dry-grit blasting, should be used only if gentler techniques are unsuccessful and if a test area reveals no damage to the metal surface.

If repair of a deteriorated metal element requires replacement of a metal section, it is important to match the original metal in kind to avoid corrosive galvanic reactions where the metals join.

ARCHITECTURAL METAL GUIDELINES

Preservation

.1 Retain and preserve original architectural metals, including cast iron, wrought iron, steel, pressed tin, copper, aluminum, and zinc, as well as their finishes and colors.

.2 Retain and preserve architectural metal features that are character-defining elements of a historic building or site, including fences, gates, cornices, rails, roofs, gutters, downspouts, and hardware.

.3 Retain and preserve historic metal fabric whenever possible. If replacement is necessary, use new metal that matches the original in composition, dimension, shape, detail, and texture. Consider substitute material only if the original material is not technically feasible.

.4 If replacement of an architectural metal element or detail is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, and detail.

.5 Repair original architectural metal elements and details by patching, splicing, consolidating, or otherwise reinforcing deteriorated sections.

Maintenance

.6 Protect and maintain historic architectural metals in appropriate ways:

- Monitor metal for cracks and signs of deterioration or corrosion.
- Clean metal when necessary to remove corrosion before repainting or coating.
- Maintain a sound paint film or other coating on metals that corrode.

.7 It is not appropriate to clean soft metals, such as lead, tin, copper, zinc, and terneplate, using a high-pressure technique like sandblasting. If wire brushing and hand scraping prove ineffective in cleaning hard metals, such as steel, cast iron, and wrought iron, use low-pressure dry-grit blasting if it will not damage the metal surface.

.8 Use the gentlest means possible to clean historic architectural metals, including appropriate chemical solutions for soft metals and wire brushing or hand scraping for hard metals.

3.5 PAINT

Masonry, the primary building material in downtown Hendersonville, was historically not painted. Therefore, most of the brick or stone structures in downtown are unpainted and take on the natural color of the brick, granite or other masonry material of which it is constructed. There are instances, however, where a brick wall has been painted - sometimes in order to provide a protective coating to deteriorated brick.

Although painting of unpainted masonry surfaces is not recommended, repainting of previously painted masonry and stucco using compatible paint coatings after proper cleaning and preparation is recommended. Some painted brick structures have been restored to their original, natural brick finish.

Generally, the painted surfaces in Hendersonville's downtown structures tend to be window trim, ornamentation, metal details, or any other architectural feature that provides a visual accent to the masonry façade. While this painting often serves a protective role to the underlying material, it also provides an opportunity to reinforce a historic building's architectural style and accentuate its significant features through the appropriate selection of paint color.

Paint Application and Maintenance

Proper preparation and application of paint films is critical in preserving most historic exterior wood and metal surfaces. Although copper, bronze, and stainless steel surfaces are intended for direct exposure to the elements, paint protects all other metal surfaces from corrosion due to exposure to air and water. Also, paint helps protect wood surfaces from the effects of weathering due to moisture and ultraviolet light. Consequently, maintaining a sound paint film on most metal and wood surfaces is essential to their long-term preservation.

Maintaining wood surfaces that were previously painted requires routine cleaning of the surface. Often the perceived need to repaint may be eliminated with the removal of the surface dirt film through conventional washing. However, repainting is called for if the paint film itself is deteriorated or damaged. Proper preparation includes removal of all loose or detached paint down to the first sound paint layer. It is unnecessary and undesirable to remove additional sound paint layers to expose bare wood, particularly if the wood will remain uncoated for any length of time. It is always best to remove loose paint layers with the gentlest methods possible. Hand scraping and hand sanding are often all that is needed. Destructive

methods such as sandblasting or waterblasting and the use of propane or butane torches are never appropriate for historic wood surfaces because of the permanent damage that they will cause to the wood surface itself. Electric heat plates, hot air guns, and chemical paint strippers are appropriate only if gentler techniques have failed.

Before it is repainted, any exposed wood should always be primed with a compatible primer coating. If a surface is damp or soiled, the new paint film will not adhere correctly, and the wet surface may take up to two weeks to dry out completely. Once the surface is clean and dry, the application of a compatible paint coating will result in continued protection of the wood surface.

Painted metal surfaces require similar inspection and routine cleaning before repainting. However, for metals, it is critical that all corrosion be removed and a primer coat be applied immediately to protect the surface from additional corrosion. If cleaning loose paint and corrosion from hard metals such as cast iron, wrought iron, and steel by hand scraping and wire brushing is unsuccessful, low-pressure grit blasting may be necessary. It is always best to test such techniques in an unobtrusive area first to determine if there will be any damage to the metal surface.

PAINT GUIDELINES

.1 It is not appropriate to paint unpainted brick and stone, or to paint copper and bronze.

.2 If the repainting of a previously painted masonry surface is necessary, use appropriate masonry paint and choose a color that matches that of the original masonry as closely as possible.

.3 Protect original building material that was painted by maintaining a sound paint film.

.4 Maintain previously painted surfaces in appropriate ways:

- Inspect painted surfaces to determine if repainting is necessary or if cleaning the surfaces will suffice.
- Use the gentlest techniques possible, such as hand scraping and handsanding with wood or brick, and wire brushing and handsanding with metals, to remove loose paint layers down to a sound paint layer. Employ electric heat guns, heat plates, and chemical paint strippers only when gentler methods are not successful and more thorough removal is necessary, and use them with caution.
- Follow proper surface preparation, applying compatible paint-coating systems, including priming all exposed wooden surfaces.
- Apply new paint only to clean, dry surfaces to ensure that it will properly bond.

.5 While specific colors are not addressed in these guidelines for downtown buildings, it is encouraged that selected paint colors be appropriate to Main Street historic buildings and downtown Hendersonville.

.6 Enhance the architectural character of a historic building through appropriate placement of exterior paint colors.

.7 Spray-on vinyl coatings are not an appropriate substitute for paint.

3.6 SAFETY AND ACCESSIBILITY

A new use or a substantial rehabilitation of a historic building can result in requirements to meet contemporary standards for both life safety and accessibility to people with disabilities. The North Carolina State Building Code and the federal guidelines for adhering to the Americans with Disabilities Act of 1990 both provide some flexibility in compliance when dealing with historic buildings. Review of proposed exterior alterations to meet life safety and accessibility standards is based on whether the alteration will compromise the architectural and historic character of the building and the site.

Introducing a large feature on the exterior of a historic building without destroying or diminishing significant architectural features is clearly a challenge. Likewise, adding an exterior fire stair or fire exit requires careful study of all alternatives. Regardless of the magnitude of an alteration to a historic building, temporary and reversible changes are preferred over permanent and irreversible ones.

The Main Street Historic District is part of the Primary Fire Limits as outlined by G.S. ~~160-435~~ 160D-1128. Additional regulations may apply to signage, awnings, storefronts, facades, balconies and other changes to buildings.

SAFETY AND ACCESSIBILITY GUIDELINES

.1 Review proposed new uses for existing historic buildings to determine if related building code and accessibility requirements are feasible without compromising the historic character of the building and the site.
.2 Meet health and safety code and accessibility requirements in ways that do not diminish the historic character, features, materials, and details of the building.
.3 Where possible, locate fire exits, stairs, landings, and decks on rear or inconspicuous side elevations where they will not be visible from the street.
.4 It is not appropriate to introduce new fire doors if they would diminish the original design of the building or damage historic materials and features. Keep new fire doors as compatible as possible with existing doors in proportion, location, size, and detail.
.5 When introducing reversible features to assist people with disabilities, take care that the original design of the porch or the entrance is not diminished and historic materials or features are not damaged.

3.7 UTILITIES & ENERGY RETROFIT

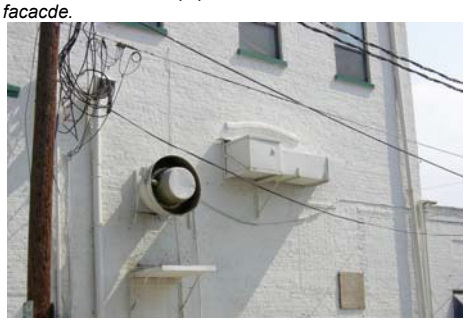
Many features of historic buildings are inherently energy efficient. For example, operable transoms, windows, awnings, and shutters provide opportunities for conserving energy. Capitalizing on energy-efficient historic features and sensitively retrofitting historic buildings can maximize their energy-conserving potential.

Often, the energy efficiency of older windows is compromised when the weatherstripping around the sash is not maintained and the glazing

compound that seals the glass panes within the wooden sash deteriorates. Weatherstripping around doors must be maintained as well, to prevent air infiltration. Once existing windows have been repaired as needed, storm windows can be installed to provide a second barrier to the elements. Care must be taken not to damage or obscure the windows and the doors in the process. Interior storm windows are encouraged as an alternative to exterior storm windows. However, exterior storm windows with a painted or baked-enamel finish in a color appropriate to the color of the building are acceptable. Stained or painted wooden storm doors with large glass panels are also acceptable.

Utility work on the public right-of-way or on private property may require a ~~certificate of appropriateness~~ Certificate of Appropriateness. For example, the installation of a new mechanical box on the sidewalk in downtown would require a certificate.
When introducing new mechanical and electrical equipment and lines, care must be taken that historic features of the building are not damaged or obscured. All such equipment should be located in the least visible location and appropriately screened.

Locate mechanical equipment and utilities on rear facacde.



Large antennas, satellite dishes, and communication equipment are intrusive, but would be appropriate if installed in inconspicuous areas on the building or lot and screened from view – such as on a rooftop behind a parapet wall.

UTILITIES AND ENERGY RETROFIT GUIDELINES

.1 Retain and preserve the inherent energy-conservation features of a historic building, such as operable windows, transoms, awnings, and shutters.
.2 Improve thermal efficiency by installing weatherstripping, storm windows, caulk, and if they are historically appropriate, awnings and shutters.
.3 It is not appropriate to replace transparent glass in windows and doors with tinted or mirrored glass.
.4 It is not appropriate to replace multiple-paned doors or window sashes with thermal sashes using snap-in, false muntins, or muntins between the glass.
.5 Generally, it is not appropriate to replace operable windows or transoms with fixed glass.
.6 Install storm windows so that the existing windows and frames are not damaged or obscured. Select exterior storm windows that are coated with paint or a baked-enamel finish in a color appropriate to the color of the building. Storm windows should be of an appropriate size and proportion so that they match the existing window.
.7 If awnings are historically appropriate, install them in door or window openings so that architectural features are not concealed or historic materials damaged. Select colors appropriate to the color of the building.
.8 If wooden shutters are historically appropriate, install them sized to window openings and mounted so that they are operable.
.9 Locate roof ventilators, hardware, antennas, and solar collectors inconspicuously on roofs where they will not be visible from the street whenever possible.

.10 Install mechanical equipment, including heating and air conditioning units, ventilator hood, etc., in areas and spaces requiring the least amount of alteration to the appearance and the materials of the building such as roofs. Screen the equipment from view whenever possible.

.11 Locate exposed exterior pipes, wires, meters, and fuel tanks on rear elevations or along an inconspicuous side of the building. Screen them from view whenever possible.

.12 Locate window air-conditioning units on rear or inconspicuous elevations whenever possible.

.13 It is not appropriate to install large antennas and satellite dishes in the historic district. Small, digital satellite dishes should not be visible from a public street and should be screened from view whenever possible.

3.8 ARTIFICIAL MATERIALS

The majority of the structures in the City's local historic districts were built using traditional materials. In order to preserve the character of Hendersonville's local historic districts, the Historic Preservation Commission prefers the use of traditional materials in restoration and new construction projects. Since vinyl and other artificial materials were not utilized to construct most buildings in the historic districts, the Historic Preservation Commission intends to limit the use of artificial materials in order to preserve the architectural integrity and overall character of the district.

Properties and structures in a historic district are categorized as either contributing or non-contributing by the local designation report prepared for each district. Contributing properties contain structures that were typically over 50 years old at the time the designation report was prepared and add to the historic integrity or architectural qualities that make a district significant. Non-contributing properties contain structures that are generally less than 50 years old or have been altered so that their architectural qualities have been lost.

The Historic Preservation Commission may consider whether a structure is listed as contributing or non-contributing on the district's local designation report when reviewing an application to install artificial materials. The following guidelines apply to the use of artificial materials on contributing or non-contributing properties:

.1 Artificial materials are not appropriate on buildings on contributing properties. Existing artificial materials on contributing properties should be replaced with traditional materials.

.2 Replace windows, doors, siding, trim and other exterior materials on non-contributing structures in-kind.

.3 The use of artificial materials in new construction shall be limited so that the new building is compatible with the surrounding contributing properties.

SECTION 4

ADDITIONS AND NEW CONSTRUCTION



4.1 NEW CONSTRUCTION

The face of downtown Hendersonville has constantly been in a state of change. While most of this change has been due to the alterations or restoration of historic structures, there have also been a few new construction projects. The contemporary design of these buildings has not been entirely compatible within the historic fabric of downtown.

The design of this building is not historically accurate.



There remain a number of potential sites in downtown that are suitable for infill or redevelopment in downtown. The development of these sites is encouraged if the design of the new structure and site is compatible with the surrounding buildings and the overall character of the historic district. When siting new construction, compatibility with existing setbacks, the spacing of buildings, and the orientation of buildings should be considered. Compatibility of proposed landscaping, lighting, paving, signage, and accessory buildings is also important.

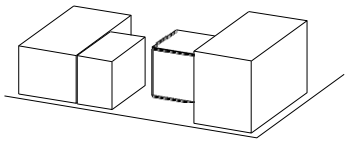
Guidelines for new construction are to ensure that the district's architectural and material vocabulary is respected. The height, the proportion, the roof shape, the materials, the texture, the scale, the details, and the color of the proposed building must be compatible with existing historic buildings in the district. However, compatible contemporary designs rather than historic duplications are encouraged.

NEW CONSTRUCTION GUIDELINES

Building Setbacks and Orientation on Lot

Perhaps one of the most important considerations of a new design is that it continue the building line of the existing streetscape by using similar setbacks as adjacent structures. Most of Main Street Historic District is zoned with zero-setback lines. Therefore, structures can not only be built directly to the right-of-way, but also can abut adjacent structures. The accommodation of an automobile dependent society has resulted in downtown commercial development that is oriented to the car and not the pedestrian. This type of development with buildings setback far from the road and paved parking areas in front of the structure is entirely incompatible in a historic downtown.

Building set back too far in a continuous blockface. Downtown Hendersonville has been historically developed with structures being built out to the property line.



.1 Keep the setback of the proposed building consistent with the setback of adjacent district buildings or nearby district buildings fronting on the same street. Buildings should be built close to the property line to continue the overall building line of the streetscape.

.2 Make the distance between the proposed building and adjacent buildings compatible with the spacing between existing district buildings. Most buildings in downtown share interior walls.

.3 In downtown, buildings should be oriented toward the street with the main pedestrian access in the front.

.4 If parking is to be included in the design of a new construction project, it should be located in the rear of the building or in an interior portion of the block. Access to parking can be from alleyways, side streets, or

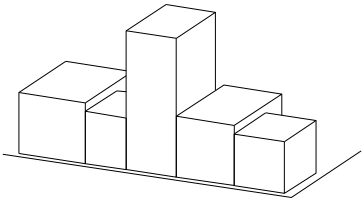
other parking areas. If possible, allow for pedestrian access from the parking areas at the rear of the building.

.5 If parking abuts a street, it should be screened from view by landscaping and/ or a low brick wall.

Size and Scale

A new building in the downtown should respect the size and scale of existing historic structures within the streetscape where it is proposed. Most buildings in downtown Hendersonville are two stories, but there are some that are smaller and only a few that are significantly larger – such as the Skyland Hotel building at the north end of the district.

Inappropriate scale



Most of downtown has a continuous block face with buildings of similar size and proportions relative to adjacent structures. However, there also exist buildings on the fringes of the district that are of a much larger scale but are separated from other structures by an appropriate distance which essentially minimizes the impact of the change in scale. This is usually the case with civic or religious buildings. For instance, the Henderson County Courthouse is built to a much larger scale than other buildings in the block, but is separated from adjacent structures by large pedestrian amenities and green space.

.6 Design the height of the proposed building to be compatible with the height of historic buildings on the block or the street. There is a variety of heights of downtown buildings, so flexibility in height is appropriate as long as the overall scale of the new building and adjacent buildings are compatible.

Skyland Hotel



.7 Buildings on the interior of a continuous blockface should be no more than one story taller than the adjacent structures. Buildings on corners can be larger in scale than adjacent structures.

.8 A building's overall proportion (ratio of height to width) should be consistent with existing historic structures.

.9 Variations in the scale of buildings may be appropriate only on larger lots on the fringes of the district. Buildings of different scale should be separated by an appropriate distance as to minimize the relative impact.

.10 Buildings of larger scale should provide for various landscaping and pedestrian amenities. Pedestrian access should be provided in and through the site.

.11 In addition to all other applicable Sections of the Zoning Ordinance, no structure at its highest point shall exceed 2,208.2 feet above mean sea level within the Main Street Local Historic Overlay District.

Materials, Design Elements, and Rhythm

The large scale of the Historic Courthouse is Softened by the landscaping and open spaces provided.



Design elements of the building itself should also be a consideration in the appropriateness of new construction in the historic district. Materials, architectural features, and the scale and rhythm of façade elements should be similar to that of existing historic structures.

Contemporary compatible designs are encouraged instead of historic copies or reproductions.

.12 Use materials that are similar to those commonly found in the district such as brick, stone, and metal.

.13 Contemporary substitute materials that closely imitate historic materials may be used on a limited basis, but should not make up the majority of the finish materials on a project. In order to qualify for use in new construction, substitute materials must have a demonstrated record of overall quality and durability. The physical properties of substitute materials must be similar to those of the historic materials they mimic. When considering substitute materials, the closer an element is to the viewer, the more closely the material and craftsmanship should match the original. The appropriateness of substitute materials shall be reviewed on an individual basis.

.14 Architectural details such as windows, arches, and cornices should complement that of existing historic structures.

.15 Aluminum cladding, vinyl and plastic siding and details are not appropriate.

.16 The size and rhythm of a building's fenestration (doors and windows) should be compatible with existing structures in the district.

.17 New windows and doors should be compatible in proportion, shape, position, location, pattern, and size with windows and doors of contributing structures in the district.

.18 Contemporary construction that does not directly copy from historic buildings in the district but is compatible with them in height, proportion, roof shape, material, texture, scale, detail, and color, is strongly encouraged.

4.2 ADDITIONS

The introduction of additions compatible with historic buildings in the district is acceptable if the addition does not visually overpower the original building, compromise its historic character, or destroy any significant features and materials. By placing additions on inconspicuous elevations and limiting their size and height, the integrity of the original buildings can be maintained. It is important to differentiate the addition from the original building so that the original form is not lost. Additions should be designed so that they can be removed in the future without significant damage to the historic building or loss of historic materials. Also, as with any new construction project, the addition's impact on the site in terms of loss of important landscape features must be considered.

Exterior materials and design for the Historic Courthouse addition are compatible with original design.



The compatibility of proposed additions with historic buildings will be reviewed in terms of the mass, the scale, the materials, the color, the roof form, and the proportion and the spacing of windows and doors. Additions that echo the style of the original structure and additions that introduce compatible contemporary design are both acceptable.

ADDITIONS GUIDELINES

.1 Locate additions as inconspicuously as possible, on the rear or least character-defining elevation of historic buildings.

.2 Construct additions so that there is the least possible loss of historic fabric. Also, ensure that character-defining features of the historic building are not obscured, damaged, or destroyed.

.3 Limit the size and the scale of additions so that they do not visually overpower historic buildings.

.4 Design additions so that they are differentiated from the historic building. It is not appropriate to duplicate the form, the material, the style, and the detail of the historic building so closely that the integrity of the original building is lost or compromised.

.5 Design additions so that they are compatible with the historic building in mass, materials, color, and proportion and spacing of windows and doors. Either reference design motifs from the historic building, or introduce a contemporary design that is compatible with the historic building.

.6 Contemporary substitute materials that closely imitate historic materials may be used on a limited basis, but should not make up the majority of the finish materials on a project. In order to qualify for use in new construction, substitute materials must have a demonstrated record of overall quality and durability. The physical properties of substitute materials must be similar to those of the historic materials they mimic. When considering substitute materials, the closer an element is to the viewer, the more closely the material and craftsmanship should match the original. Careful consideration should be given to the placement of substitute materials in relation to historic materials on the original structure to ensure that the transition is differentiated but not distracting or otherwise visually unattractive. Substitute materials should not result in unnecessary damage to adjacent historic materials during installation or over time. The appropriateness of substitute materials shall be reviewed on an individual basis.

.7 Design additions so that they can be removed in the future without damaging the historic building.

.8 It is not appropriate to construct an addition that is taller than the original building.

4.3 REAR DECKS, BALCONIES, TERRACES, & ROOFTOP DECKS

With some commercial buildings having upper-floors used for residential uses, Hendersonville has historically seen a healthy amount of downtown living. Also, with recent renovations of structures such as the Houston Furniture building and various apartments above commercial, downtown residential population has continued to rise.

Rear Deck for Patron Use



In an urban environment such as downtown Hendersonville, especially with the amount of residential, property owners may wish to construct rear/rooftop decks, balconies, and terraces. This type of residential amenity is certainly encouraged and is an important element to the success of the downtown community and livability. Decks, balconies, and terraces are appropriate provided that they do not damage or alter any historic architectural features of the existing building.

REAR DECKS, BALCONIES, TERRACES, & ROOFTOP DECKS GUIDELINES

.1 Locate street level decks and terraces as inconspicuously as possible, on the rear or least character-defining elevation of historic buildings

.2 Base the design of new balconies on historic documentation of the building or examples from buildings of similar style and age.

.3 Construct decks, balconies, terraces, and rooftop decks so that there is the least possible loss of historic fabric. Also, ensure that character-defining features of the historic building are not obscured, damaged, or destroyed.

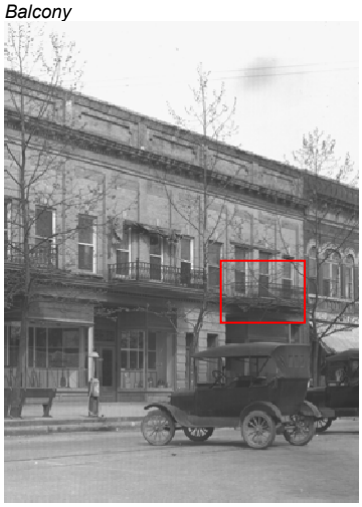
.4 Screen rear decks and terraces from public view with appropriate landscaping whenever possible.

.5 If a new deck or balcony is to be constructed, its design should be compatible in materials and detail with the main building.

.6 When adding a rear deck to a historic structure, it should be designed so that it could be removed in the future without any loss to the historic fabric of the existing building.

.7 For uncovered decks, composite materials are appropriate for decking only.

Balcony





Restored balcony reflects the size and material of historic balcony.

SECTION 5

DEMOLITION AND RELOCATION



5.1 DEMOLITION

Demolition of a structure in the historic district is an irreversible step and should be carefully deliberated. Once they are destroyed, historic resources can never be replaced. In considering demolition, the property owner and the Commission should give careful thought to the following questions:

- Could another site serve the purpose equally well?
- Could the existing building be adapted to meet the owner's needs?
- Could the property be sold to someone willing to use the existing building?
- Could the existing building be moved to another site?

In reviewing a request to demolish a building in the district, the Commission also considers whether the proposed demolition will adversely affect other historic buildings in the district or the overall character of the district. The Commission discourages demolition when no subsequent use has been proposed for the site. When considering demolition of a historic building, the property owner is encouraged to work closely with the Commission in reviewing all alternatives.

Denial of Authorization to Demolish

An application for a ~~certificate of appropriateness~~ Certificate of Appropriateness authorizing the demolitionor the destruction of a building, a site, or a structure determined by the State Historic Preservation Officer to have statewide significance as defined in the criteria of the National Register of Historic Places, may be denied except when—

- The Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property by virtue of the denial, or
- The city has adopted a demolition ordinance under the minimum housing code.

Delay of Demolition

An application for a ~~certificate of appropriateness~~ Certificate of Appropriateness authorizing the demolitionor the destruction of a designated landmark, building, site, or structure in the historic district may be delayed for up to 365 days from the date of approval. If the Commission has voted to recommend designation of a property as a landmark or a historic district and final designation has not been made by theCity Council, then demolition may also be delayed up to 365 days or until theCity Council takes final action on the designation, whichever comes first. The intent of the delay is to provide sufficient time to exhaust all possibilities of saving the building. During the delay, the Commission should actively seek to negotiate with the owner or other interested parties to find a means of preserving the building or the site. The Commission should also make it widely known that a significant building is threatened with demolition and that alternatives are sought.

The Commission may waive all or part of the delay period if it finds that the structure is of little historic or architectural value. Also, the Commission may

reduce the maximum period of delay when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property by virtue of the delay.

DEMOLITION GUIDELINES

.1 Work with the Historic Preservation Commission to seek alternatives to demolition.

.2 If all alternatives have been exhausted, follow these guidelines for demolition:

- Make a permanent record of a significant structure before demolition. The record shall consist of black-and-white photographs and other documents, such as drawings, that describe the architectural character and the special features of the building. The Commission determines on a case-by-case basis the precise documentation of a specific building that is required and the person who is responsible for producing that documentation. The documentation must be submitted for review by the Commission before the demolition. The record is retained by the City of Hendersonville.
- Work with the Commission to identify salvageable materials and potential buyers or recipients of salvaged materials. The removal of all salvageable building materials before demolition is encouraged, and may be required depending on the significance of the building.
- Clear the structure quickly and thoroughly.
- Submit a site plan illustrating proposed landscaping and any other site development to be completed after demolition.
- Plant the site or appropriately maintain it until it is reused. If the site is to remain vacant for over one year, it should be improved to reflect an appearance consistent with other open areas in the district.

5.2 RELOCATION

Relocation of a structure within the historic district should be carefully deliberated. A historic building should be moved only if all other preservation options have been exhausted. Relocation often results in a loss of integrity of setting and environment that compromises the significance of the relocated building. Consequently, relocation of a property on the National Register of Historic Places may result in its removal from the register. However, relocation of a building or a portion of a building to the extent that it is practical may be a desirable alternative to demolition.

In reviewing a request to move a building within the district, the Commission considers whether the proposed relocation will adversely affect other historic buildings in the district or the overall character of the district.

Moving buildings into the historic district or relocating them within it should be based on thorough planning and meet the guidelines for new construction with regard to architectural compatibility, sitting, orientation, and landscaping.

RELOCATION OF BUILDINGS GUIDELINES

.1 Document the original site conditions before moving the structure. Use photographs and other written or graphic items such as site plans to record the original setting.

.2 Assess the structural condition of the building before moving it, to minimize damage during the move.

.3 Protect the building from weather damage and vandalism during the relocation.

.4 If a structure is moved to a site within the historic district:

- Assess the architectural compatibility of the relocated structure with adjacent buildings according to the guidelines for new construction.
- Review the proposed sitting, setback, landscaping, and other site-specific treatments according to pertinent guidelines.
- Ensure that the relocation will not damage existing historic buildings or the character of the district. Work with contractors experienced in successfully moving historic structures.

SECTION 6

APPENDIXES



6.1 RESOURCES FOR TECHNICAL INFORMATION

Local Resources
Hendersonville Historic Preservation Commission
City Hall, 145 Fifth Avenue
PO Box 1670
Hendersonville, North Carolina 28793

For more information on ~~certificates of appropriateness~~ Certificates of Appropriateness and technical assistance, contact HPC staff at (828) 697-3000.

State Resources
North Carolina Department of Cultural Resources
Western Office
1 Village Lane Suite 3
Asheville, NC 28803-2677
(828) 274-6995
fax (828) 274-6995

For information on state tax credits for restoration and/or rehab of buildings on the National Register.

State Historic Preservation Office
North Carolina Division of Archives and History
4617 Mail Service Center
Raleigh, North Carolina 27699-4617 www.hpo.dcr.state.nc.us

For information on historic structures and the National Register, contact the Survey and Planning Branch at (919) 733-6545

For information on preservation tax credits and technical restoration assistance, contact the Restoration Branch at (919) 733-6547

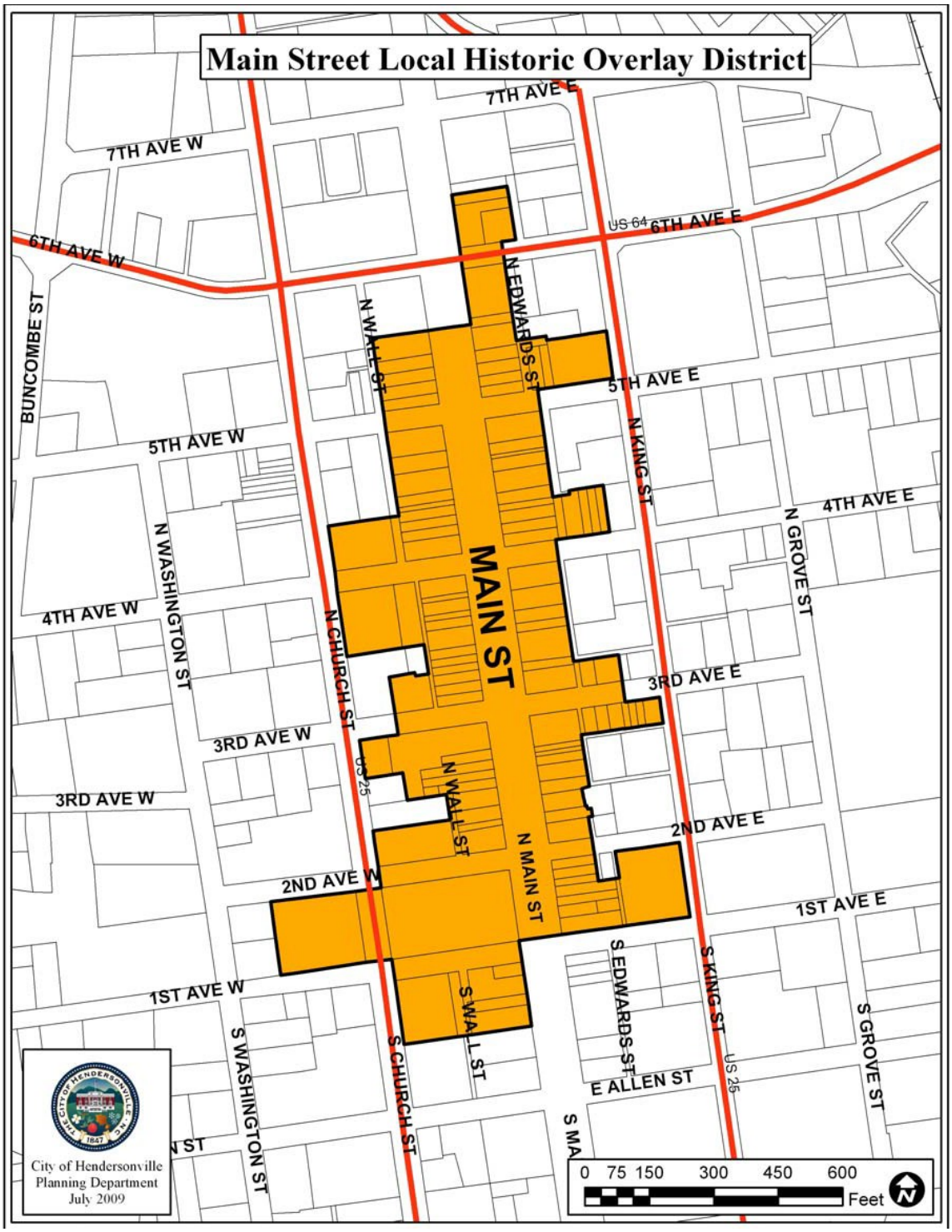
Office of State Archaeology
North Carolina Division of Archives and History
4619 Mail Service Center
Raleigh, North Carolina 27699-4619 www.arch.dcr.state.nc.us/fosa.htm

For information on archaeological sites, resource protection, and volunteer opportunities, contact the Office of State Archaeology at (919) 733-7342

National Resources
U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, DC 20240

Office of the Director (202) 208-4621
Office of Communications (202) 208-6843
Cultural Resource Stewardship and Partnership (202) 208-7625
Heritage Preservation Services www2.cr.nps.gov

6.2 MAP OF DOWNTOWN HENDERSONVILLE'S MAIN STREET HISTORIC DISTRICT



Attachment D2

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER 160D

Hendersonville Historic Preservation Commission

Design ~~Guidelines~~ Standards



Adopted October 20, 2004
Revised September 15, 2010

CONTENTS

1 Introduction

1.1 Historic Preservation in Hendersonville
1.2 Hendersonville Historic Preservation Commission
1.3 The Design Review Process
1.4 Certificate of Appropriateness Flow Chart
1.5 The Secretary of the Interior's Standards for Rehabilitation

2 District and Site Character

2.1 Archaeology
2.2 Site Features and Plantings
2.3 Fences and Walls
2.4 Walkways, Driveways, and Off Street Parking
2.5 Garages and Accessory Structures
2.6 Lighting
2.7 Signage

3 Changes to the Building Exterior

3.1 Wood
3.2 Masonry
3.3 Architectural Metals
3.4 Paint and Paint Color
3.5 Roofs
3.6 Exterior Walls
3.7 Windows and Doors
3.8 Entrances, Porches, and Balconies
3.9 Storefronts
3.10 Utilities and Energy Retrofit
3.11 Accessibility, Health, and Safety Considerations
3.12 Artificial Materials Policy

4 Additions and New Construction

4.1 Decks
4.2 Additions to Historic Buildings
4.3 New Construction

5 Relocation or Demolition

5.1 Relocation
5.2 Demolition

6 Appendixes

6.1 Resources for Technical Information
6.2 Keys to Identifying Architectural Styles
6.3 Hendersonville's Local Historic Districts

SECTION 1

INTRODUCTION



1.1 HISTORIC PRESERVATION IN HENDERSONVILLE

The historical heritage of the City of Hendersonville is a treasured asset--one which is enjoyed by residents and visitors alike. The Mayor and Council recognize the role that historic properties play in that heritage and believe that the conservation of historic properties stabilizes and increases property values and strengthens the overall economy of the City. For these reasons they have adopted a Historic Preservation Ordinance the purposes of which are as follows:

- To safeguard the City's heritage by preserving any property therein that embodies important elements of its culture, history, architectural history or prehistory;
- To identify properties which are of special historical significance and which possess integrity of design, setting, workmanship, materials, feeling and/or association and to designate such as historic landmarks or districts; and
- To promote the use and conservation of such landmarks or districts for the education, pleasure and enrichment of the residents of the city, county and state as a whole.

1.2 HENDERSONVILLE HISTORIC PRESERVATION COMMISSION

The Hendersonville Historic Preservation Commission serves the public both as a steward for historic properties and as a facilitator to people fortunate enough to own such properties. It provides assistance to owners and tenants, helps them plan the alterations that they are considering for their properties, and guides owners through the application process necessary to implement those changes.

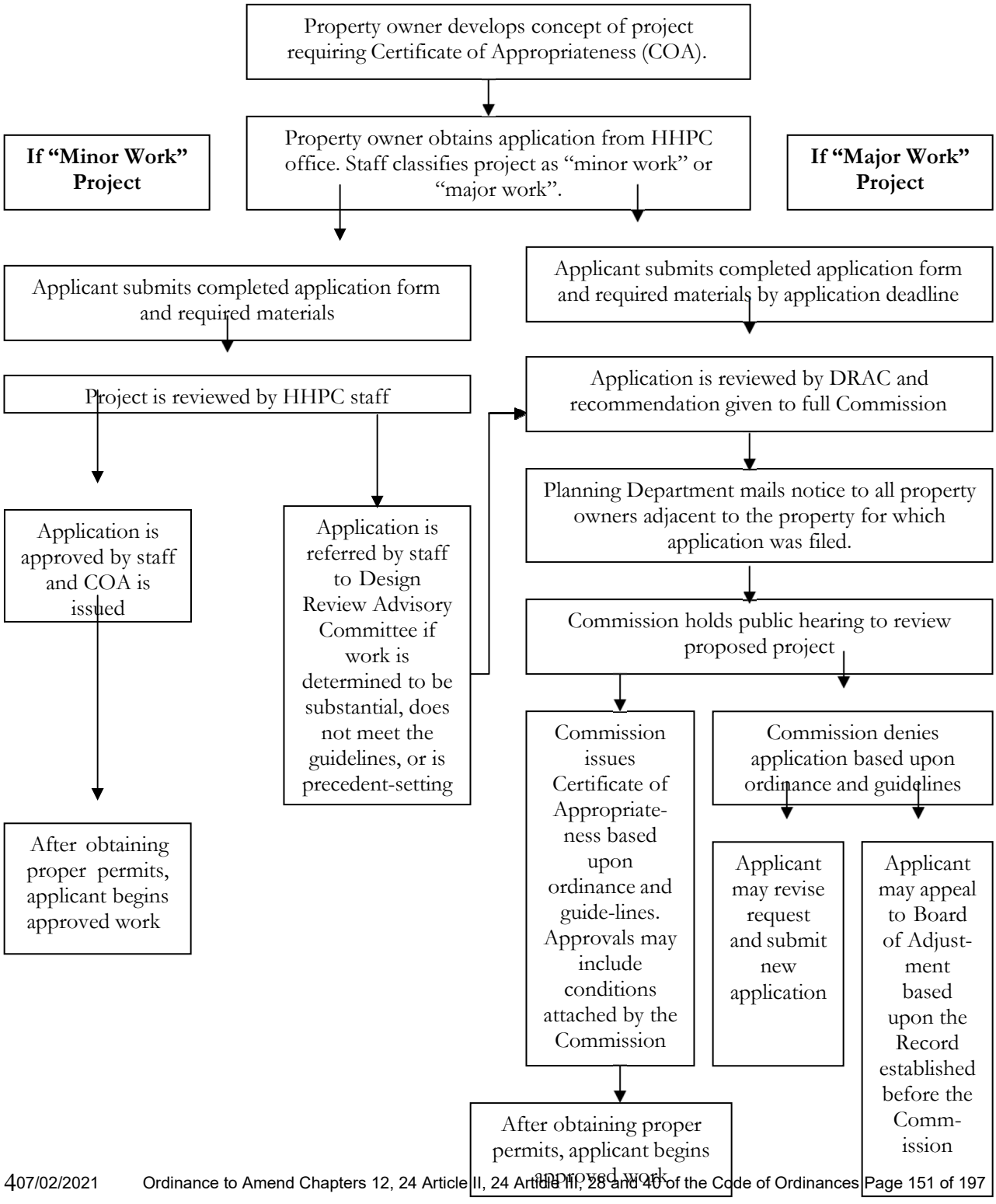
The commission consists of nine members appointed by City Council for overlapping three-year terms. Included within its powers and responsibilities are the following: recommending to City Council the designation of historic landmarks and districts; granting requests for proposed changes to historic landmarks and properties situated within historic districts; and conducting educational programs with respect to historic properties.

1.3 THE DESIGN REVIEW PROCESS

The designation of historic landmarks and districts is not intended to prevent change. Rather, the commission offers assistance to the property owner in shaping change while meeting the requirements of the ordinance. This will insure that property changes are within the spirit and character of the historic property. In this review process, plans are examined before work is begun. The process does not require property owners to make changes to their properties, and it does not apply to interior alterations or routine maintenance that does not affect exterior appearance. However, any exterior alterations, new construction, demolition, significant landscape changes, or moving of buildings requires a ~~certificate of appropriateness~~ Certificate of Appropriateness from the commission prior to undertaking the change.

In deciding whether to issue a ~~certificate of appropriateness~~ Certificate of Appropriateness, the commission will apply these design ~~guidelines~~ standards, which are based on a common sense approach to the enhancement of historic landmarks and districts. They stressthe importance of protecting and maintaining historic structures and districts,and they advocate repair over replacement. They are intended to guide, rather than mandate, the ways that changes should be accomplished.

1.4 CERTIFICATE OF APPROPRIATENESS FLOW CHART



1.5 THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

In 1976 the United States Department of the Interior developed national standards for the preservation of historic buildings. The ten standards for the rehabilitation of historic buildings, often referred to as the Secretary's Standards, are explicitly used by the Raleigh Historic Districts Commission in reviewing proposed changes to historic buildings owned by the State of North Carolina. Although Standard 1 applies to building use and the HHPC does not review building use, the design principles and criteria of these ten standards are inherent in the design ~~guidelines~~ standards applied by the commission in reviewing proposed changes to all district properties. The 1992 version of the Secretary of the Interior's Standards for Rehabilitation reads as follows:

.1 The property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

.2 The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

.3 Each property shall be recognized as physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

.4 Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

.5 New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

.6 New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

.7 Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

.8 Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

.9 Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

.10 Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

SECTION 2

DISTRICT AND SITE CHARACTER

Keith Park in the Druid Hills Historic District



2.1 ARCHAEOLOGY

.1 Protect and preserve known, significant archaeological resources in place.
.2 Minimize disturbance of terrain in the district to reduce the possibility of destroying or damaging significant archaeological resources.
.3 If a site is to be altered, survey and document the terrain in advance to determine the potential impact on significant archaeological resources.
.4 If preservation of significant archaeological resources in place is not feasible, use professional archaeologists and modern archaeological methods in planning and executing any necessary investigations.
.5 It is not appropriate to use heavy machinery or equipment on sites where doing so may disturb significant archaeological resources.

2.2 SITE FEATURES AND PLANTINGS

.1 Retain and preserve the building and landscape features that contribute to the overall historic character of the district or landmark, including trees, gardens, yards, arbors, ground cover, fences, accessory buildings, patios, terraces, fountains, fish ponds, and significant vistas and views.
.2 Retain and preserve the historic relationship between buildings and landscape features of the setting, including site topography, retaining walls, foundation plantings, hedges, streets, walkways, driveways, and parks.
.3 Protect and maintain historic building materials and plant features through appropriate treatments, including routine maintenance and repair of constructed elements and pruning and vegetation management of plantings according to accepted horticultural or arboricultural practice.
.4 Replace missing or deteriorated site features with new features that are compatible with the character of the site and the historic district, if applicable.
.5 Replace a seriously diseased or severely damaged tree or hedge with a new tree or hedge of a similar or identical species. In the absence of a substantial threat to person or property, it is not appropriate to remove, damage or disfigure healthy, mature trees or established hedges or large shrubs.
.6 Design new construction or additions so that large trees and other significant site features such as vistas and views are preserved.
.7 Protect large trees and other significant site features from immediate damage during construction and from delayed damage due to construction activities, such as loss of root area or compaction of the soil by equipment.
.8 In residential historic districts, is not appropriate to alter the residential character of the district by significantly reducing the proportion of built area to open space on a given site through new construction, additions, or surface paving.
.9 It is not appropriate to introduce contemporary equipment or incompatible site features, including satellite dishes, solar collectors, playground equipment, mechanical units, storage units, and swimming pools, in locations that compromise the historic character of the building site or the district streetscape. Screen such features from view.

The hedges around this home have not been pruned and now may compromise the integrity of the exterior materials.



The treatment of site plantings can be very prominent or simply provide a place where the structure takes center stage as seen in the photos below.





1125 Highland Avenue

.10 It is not appropriate to alter the topography of a site substantially through grading, filling, or excavating, nor is it appropriate to relocate drainage features.

.11 It is not appropriate to use heavy machinery or equipment on sites where doing so may disturb significant archaeological resources.

2.3 FENCES AND WALLS

.1 Retain and preserve fences and walls that contribute to the overall historic character of a building or a site, including such functional and decorative elements as gates, decorative rails and pickets, pillars, posts, and hardware.

.2 Retain and preserve exterior wall materials that contribute to the overall historic character of a building or a site, including brickwork, stucco, stone, concrete, wood, cast iron, and wrought iron.

.3 Protect and maintain the wooden, masonry, and metal elements of fences and walls through appropriate surface treatments:

- Inspect regularly for signs of moisture damage, corrosion, structural damage or settlement, vegetation, and fungal or insect infestation.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements or along wall foundations.
- Clean exterior fences and walls as necessary to remove heavy soiling or corrosion or to prepare them for repainting. Use the gentlest means possible.
- Retain protective surface coatings such as paint to prevent deterioration or corrosion.
- Reapply protective surface coatings such as paint when they are damaged or deteriorated.
- Follow the guidelines for masonry, architectural metals, and wood where applicable.

.4 Repair fences and walls using recognized preservation repair methods for the material or the surface coating.

.5 If replacement of a deteriorated detail or element of a fence or a wall is necessary, replace only the deteriorated portion in kind rather than the entire feature. Match the original in design, dimension, detail, texture, pattern and materials. Consider compatible substitute materials only if using the original materials is not technically feasible.

.6 If replacement of an entire fence or wall is necessary because of deterioration, replace it in kind, matching the original in design, dimension, detail, texture, pattern, material, and color. Consider compatible substitute materials only if using the original material is not technically feasible.

.7 If a fence or wall is completely missing, replace it with a new wall or feature based on accurate documentation of the original or a new design compatible with the historic character of the building and the district.

.8 Introduce compatible new fences and walls only in locations and configurations that are characteristic of the historic landmark or district. Keep the height of new fences and walls consistent with the height of traditional fences and walls in the district. It is preferred that new fences and walls should be constructed of traditional materials.

.9 It is not appropriate to cover historic fence or wall material, including wood, stone, brick, stucco, concrete, or cement block, with contemporary substitute coatings or materials.

Example of an appropriate, historic, stone retaining wall



223 Ashwood Avenue

This new wood fence picks up on the curved detailing of the entry roof.



1629 Kensington Road

This courtyard wall shares the half-timbering and stucco detailing of the main house.



223 Ashwood Avenue

The use of chain link fencing at the front corner of the house is not appropriate



2.4 WALKWAYS, DRIVEWAYS, AND OFF STREET PARKING

.1 Retain and preserve the topography, patterns, configurations, features, dimensions and materials of existing walkways, driveways, and off street parking areas that contribute to the overall historic character of individual building sites, the streetscape, and the historic district, if applicable.

.2 Protect and maintain existing walkways, driveways, and off street parking areas through routine inspection and appropriate maintenance and repair procedures.

.3 If replacement of a deteriorated section or element of an existing walkway, driveway, or off street parking area is necessary, replace only the deteriorated portion in kind rather than the entire feature. Match the original section or element in design, dimension, texture, color, and material.

.4 If a walkway or a driveway is completely missing, replace it with a new feature based on accurate documentation of the original design or a new design compatible in location, configuration, dimension, scale and materials with the historic building site, streetscape, and district, if applicable.

.5 Design new walkways, driveways, and off street parking areas to be compatible in location, patterns, spacing, configurations, dimensions and materials with existing walkways, driveways, and off street parking areas that contribute to the overall historic character of the streetscape and the district, if applicable.

.6 Locate new walkways, driveways, and off street parking areas so that the topography of the building site and significant site features, including mature trees, are retained.

.7 It is not appropriate to locate a new off street parking area in a district with residential character where it is visible from the street, where it will significantly alter the proportion of built area to green area on the individual site, or where it will directly abut the principal structure.

.8 Maintain the continuity of sidewalks in the public-right-of-way when introducing new driveways.

.9 Protect large trees and other significant site features from immediate damage during construction and from delayed damage due to construction activities, such as loss of root area or compaction of the soil by equipment.

.10 Introduce perimeter plantings, hedges, fences, or walls to screen and buffer new off street parking areas from adjacent properties. Subdivide new large parking areas with interior planting islands to break up any large paved area.

.11 In lighting walkways, driveways, and off street parking areas, follow the guidelines for lighting.

Brick pavers add warmth and character to this entry walk.



1654 Druid Hills Avenue

The ivy-covered curved stone stairs leading to the entry of this home are beautifully executed.



2.5 GARAGES AND ACCESSORY STRUCTURES

.1 Retain and preserve garages and accessory structures that contribute to the overall historic character of the individual building site or the district.

.2 Retain and preserve the character-defining materials, features, and details of historic garages and accessory buildings, including foundations, roofs, siding, masonry, windows, doors, and architectural trim.

.3 Maintain and when necessary repair the character-defining materials, features, and details of historic garages and accessory buildings according to the pertinent guidelines.

.4 If replacement of a deteriorated element or detail of a historic garage or accessory building is necessary, replace only the deteriorated portion in kind rather than the entire feature. Match the original element or detail in design, dimension, texture, color, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.5 If a historic garage or accessory building is missing or deteriorated beyond repair, replace it with a design based on accurate documentation or a new design compatible in form, scale, size, materials, and finish with the principal structure and other historic garages and accessory buildings in the district. Maintain the traditional height and proportion of garages and accessory buildings in the district.

.6 Locate and orient new garages and accessory buildings in locations compatible with the traditional relationship of garages and accessory buildings to the main structure and the site in the district.

.7 It is not appropriate to introduce a prefabricated accessory building if it is not compatible in size, form, height, proportion, materials, and details with historic accessory structures in the historic district, or unless screened from view from the street.

.8 It is not appropriate to introduce a new garage or accessory building if doing so will detract from the overall historic character of the principal building and the site, or require removal of a significant building element or site feature, such as a mature tree.

.9 It is not appropriate to introduce features or detail to a garage or an accessory building in an attempt to create a false historical appearance.

The garage structures in the following two photos match the style of the home and add to the overall character of the site.





The prefabricated metal carport located next to this home may have been inexpensive but adds little value to the home.



2.6 LIGHTING

.1 Retain and preserve exterior lighting fixtures that contribute to the overall historic character of a building, site, or streetscape.
.2 Maintain and repair historic exterior lighting fixtures through appropriate methods.
.3 If replacement of a missing or deteriorated historic exterior lighting fixture is necessary, replace it with a fixture that is similar in appearance, material, and scale to the original, or with a fixture that is compatible in scale, design, materials, color, finish, and historic character with the building and the streetscape.
.4 Introduce new site and street lighting that is compatible with the human scale and the historic character of the district. Consider the location, design, material, size, color, finish, scale, and brightness of a proposed fixture in determining its compatibility.
.5 In residential historic districts, introduce low-level lighting to provide for safety and security where needed. Install recessed lights, footlights, lights on posts of human scale, or directional lights in unobtrusive locations.
.6 Locate low-level or direction site lighting and motion detectors with care to ensure that the light does not invade adjacent properties.
.7 It is not appropriate to introduce indiscriminate area lighting in historic districts.
.8 It is not appropriate to introduce new security lighting on standard-height power poles in residential historic districts.
.9 It is not appropriate to illuminate the facades of houses in residential historic districts with harsh floodlights.
.10 It is not appropriate to introduce or eliminate exterior lighting fixtures if doing so will detract from the overall historic character of the building, site, or streetscape.
.11 It is not appropriate to introduce period lighting fixtures from an era that predates the structure in an historic district in an attempt to create a false historical appearance.
.12 It is not appropriate to diminish the historic character of a site by introducing incongruous lighting, such as creating a runway effect with multiple footlights along front walks.

This yard light and hanging basket clearly identify the house number and the start of the walk that leads to the front door.



2.7 SIGNAGE

.1 Refer to the City Sign Ordinance. All signs must meet the ordinance before being submitted for a COA.

.2 Retain and preserve original signs that contribute to the overall historic character of the building or the district.

.3 Introduce new signage that is compatible in material, size, color, scale, and character with the building or the district. Design signage to enhance the architectural character of a building.

.4 For commercial and institutional buildings, design building signs to be integral to the overall building facade. It is not appropriate to cover a large portion of a facade or any significant architectural features with signage.

.5 Introduce new signs as well as graphics for windows or awnings that are easily read and of simple design. Keep the size of graphics on windows or awnings in scale with the feature. It is not appropriate to obscure the view through a large portion of a window with graphics.

.6 If desired, install small identification signs and bronze historic plaques for residential buildings so that no architectural features or detail are obscured or damaged.

.7 Construct new signs of traditional sign materials, such as wood, stone, and metal. It is not appropriate to introduce an incompatible contemporary sign material, such as plastic, in the historic districts.

.8 Mount flush signboards in appropriate locations on facades so that no architectural details or features are obscured or damaged.

.9 Install freestanding signs in appropriate locations on low standard or ground bases.

.10 Light signs in a manner compatible with the historic character and the pedestrian scale of the historic district. Internally illuminated awnings and signs are not appropriate in the historic districts.

.11 It is not appropriate to install a large, out-of-scale, projecting sign on a building facade.

The material and design of the sign for this historic inn add both to the character of the inn and to the streetscape itself.



908 4th Avenue West

This tile sign set into the sidewalk adds a very unique quality to the entry of this Main Street store.



SECTION 3

CHANGES TO THE BUILDING EXTERIOR

Hendersonville City Hall is currently undergoing a thorough renovation the will affect both the interior and exterior.



3.1 WOOD

.1 Retain and preserve wooden features that contribute to the overall historic character of a building and a site, including such functional and decorative elements as siding, shingles, cornices, architraves, brackets, pediments, columns, balustrades, and architectural trim.

.2 Protect and maintain wooden surfaces and features through appropriate methods:

- Inspect regularly for signs of moisture damage, mildew, and fungi or insect infestation.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements.
- Keep wooden joints properly sealed or caulked to prevent moisture infiltration.
- Treat traditionally unpainted, exposed wooden features with chemical preservatives to prevent or slow their decay and deterioration.
- Retain protective surface coatings, such as paint, to prevent damage from ultraviolet light and moisture.
- Clean painted surfaces regularly by the gentlest means possible, and repaint them only when the paint film is damaged or deteriorated.

.3 Repair historic wooden features using recognized preservation methods for patching, consolidating, splicing, and reinforcing.

.4 If replacement of a deteriorated detail or element of a wooden feature is necessary, replace only the deteriorated detail or element in kind rather than the entire feature. Match the original detail or element in design, dimension, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.5 If replacement of an entire wooden feature is necessary, replace it in kind, matching the original in design, dimension, detail, material, and texture. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If a wooden feature is completely missing, replace it with a new feature based on accurate documentation of the original feature or a new design compatible in scale, size, material, and color with the historic building and district.

.7 It is not appropriate to clean wooden features and surfaces with destructive methods such as sandblasting, power washing, and using propane or butane torches unless other methods are proven to be ineffective. Use chemical strippers only if gentler methods such as low-pressure washing with detergents and natural bristle brushes are ineffective.

.8 It is not appropriate to strip historically painted surfaces down to bare wood and apply clear stains or finishes to create a natural wood appearance.

.9 It is not appropriate to replace painted wooden siding that is sound with new siding to achieve a uniformly smooth wooden surface.

.10 It is not appropriate to introduce wooden features or details to a historic building in an attempt to create a false historical appearance.

The wood in this entry feature has been beautifully detailed



The elaborate wood features on this home are being painstakingly restored.



3.2 MASONRY

.1 Retain and preserve masonry features that contribute to the overall historic character of a building and a site, including walls, foundations, roofing materials, chimneys, cornices, quoins, steps, buttresses, piers, columns, lintels, arches, and sills.

.2 Protect and maintain historic masonry materials, such as brick, terra-cotta, limestone, granite, stucco, slate, concrete, cement block, and clay tile, and their distinctive construction features, including bonding patterns, corbels, water tables, and unpainted surfaces.

.3 Protect and maintain historic masonry surfaces and features through appropriate methods:

- Inspect surfaces and features regularly for signs of moisture damage, vegetation, structural cracks or settlement, deteriorated mortar, and loose or missing masonry units.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces, collecting on decorative elements or along foundations and piers, and rising through capillary action.
- Clean masonry only when necessary to remove heavy soiling or prevent deterioration. Use the gentlest means possible.
- Repaint painted masonry surfaces when needed.

.4 Repair historic masonry surfaces and features using recognized preservation methods for piecing-in, consolidating, or patching damaged or deteriorated masonry.

.5 Repoint masonry mortar joints if the mortar is cracked, crumbling, or missing or if damp walls or damaged plaster indicate moisture penetration. Before repointing, carefully remove deteriorated mortar using hand tools. Replace the mortar with new mortar that duplicates the original in strength, color, texture, and composition. Match the original mortar joints in width and profile.

.6 If replacement of a deteriorated detail, module, or element of a masonry surface or feature is necessary, replace only the deteriorated portion in kind rather than the entire surface or feature. Consider compatible substitute materials only if using the original material is not technically feasible.

.7 If replacement of a large masonry surface or entire feature is necessary, replace it in kind, matching the original in design, detail, dimension, color, pattern, texture, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.8 If a masonry feature is completely missing, replace it with a new feature based on accurate documentation of the original feature or a new design compatible with the scale, size, material, and color of the historic building and district.

.9 Test any cleaning technique, including chemical solutions, on an inconspicuous sample area well in advance of the proposed cleaning to evaluate its effects. It is not appropriate to clean masonry features and surfaces with destructive methods.

The massive stone columns give this bungalow a distinctive character.



The stucco on this small cottage has been neglected and now the wood structure is exposed to the elements.



3.3 ARCHITECTURAL METALS

.1 Retain and preserve architectural metal features that contribute to the overall historic character of a building and a site, including such functional and decorative elements as roofing, flashing, storefronts, cornices, railings, hardware, casement windows, and fences.

.2 Retain and preserve architectural metals, such as copper, tin, brass, cast iron, wrought iron, lead, and terneplate, that contribute to the overall historic character of the district.

.3 Protect and maintain architectural metal surfaces and features through appropriate methods:

- Inspect regularly for signs of moisture damage, corrosion, structural failure or fatigue, galvanic action, and paint film failure.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements.
- Clear metal roofs and gutters of leaves and debris.
- Retain protective surface coatings, such as paint and lacquers, to prevent corrosion.
- Clean when necessary to remove corrosion or to prepare for recoating. Use the gentlest effective method.
- Repaint promptly when paint film deteriorates.

.4 Repair deteriorated architectural metal features and surfaces using recognized preservation methods for splicing, patching, and reinforcing.

.5 If replacement of a deteriorated detail or element of an architectural metal feature is necessary, replace only the deteriorated portion in kind rather than the entire feature. Match the original detail or element in design, dimension, texture, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If replacement of an entire architectural feature is necessary, replace it in kind, matching the original feature in design, dimension, detail, texture, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.7 If an architectural metal feature is completely missing, replace it with a new feature based on accurate documentation of the original design or a new design compatible in scale, size and material with the historic building and district.

.8 Clean soft metals, including lead, tin, terneplate, and copper, with chemical solutions after pretesting them to ensure that they do not damage the color and texture of the metal surface. It is not appropriate to clean soft metal surfaces with destructive methods like grit blasting without demonstrating that to do so will enhance preservation of the structure.

.9 Clean hard metals such as cast iron, wrought iron, and steel using the gentlest means possible.

.10 It is not appropriate to introduce architectural metal features or details to a historic building in an attempt to create a false historical appearance.

.11 It is not appropriate to patch metal roofs or flashing with tar or asphalt products.

The decorative metal railing leading to the entry porch adds to the overall character of the home.



Metal pipes and fittings were often used in retrofit situations for railings but are not historically accurate and detract from the otherwise fine craftsmanship on many historic structures.



The paint on this decorative metal fence has been well maintained.



3.4 PAINT AND PAINT COLOR

.1 Preserve and protect original exterior building surfaces and site features that were painted, by maintaining a sound paint film on them.

.2 Protect and maintain previously painted exterior surfaces in appropriate ways:

- Inspect painted surfaces regularly for signs of discoloration, moisture damage, mildew, and dirt buildup.
- Clean painted surfaces regularly to avoid unnecessary repainting. Use the gentlest means possible.
- Remove deteriorated and peeling paint films down to the first sound paint layer before repainting. Use the gentlest means possible, such as hand scraping and hand sanding. Use electric heat guns and plates with caution and only if gentler methods are ineffective.
- Many surfaces in older structures are painted with lead paint, which is toxic. Seek professional advice before disturbing lead-painted surfaces.
- Ensure that surfaces to be repaired are clean and dry, and that any exposed wood or metal surface has been primed so that new paint will bond properly.
- Repaint previously painted surfaces with compatible paint systems.

.3 When repainting, paint colors appropriate to the historic building and district are recommended. Enhance the architectural style and features of a building through appropriate selection and placement of paint color.

.4 Brick, stone, copper, bronze, concrete, or cement block surfaces should be left in their historically unfinished condition.

.5 It is not appropriate to strip wooden surfaces that were historically painted down to bare wood and apply clear stains or sealers to create a natural wood appearance.

.6 It is not appropriate to replace painted wooden siding that is sound with new siding to achieve a uniformly smooth wooden surface.

.7 It is not appropriate to remove paint films through destructive methods such as sandblasting, water blasting, power washing, or the use of propane or butane torches before repainting.

The wood siding on this home was in good condition but unless the poor condition of the paint is corrected, the wood will quickly deteriorate.



3.5 ROOFS

.1 Retain and preserve roofs and roof forms that contribute to the overall historic character of a building, including their functional and decorative features, such as roofing materials, cresting, dormers, chimneys, cupolas, and cornices.

.2 Protect and maintain the metal, wooden, and masonry elements of historic roofs through appropriate methods:

- Inspect regularly for signs of deterioration and moisture penetration.
- Clean gutters and down spouts to ensure proper drainage.
- Replace deteriorated flashing with first-quality flashing as necessary.
- Reapply protective coatings to metal roofs as necessary.
- Maintain adequate ventilation of roof sheathing to prevent moisture damage.
- Ensure that roofing materials are adequately anchored to resist wind and water.

.3 Repair historic roofs and their distinctive features through recognized preservation methods for resetting or reinforcing.

.4 If replacement of a partially deteriorated roof feature is necessary, replace only the deteriorated portion in kind to match the original feature in design, dimension, detail, color, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.5 If full replacement of a deteriorated historic roofing material or feature is necessary, replace it in kind, matching the original in scale, detail, pattern, design, material, and color. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If a roof feature is completely missing, replace it with a new feature based on accurate documentation of the original feature or a new design compatible in scale, size, material, and color with the historic building and district.

.7 It is not appropriate to remove a roof feature that is important in defining the overall historic character of a building, rather than repair or replace it.

.8 If new gutters and down spouts are needed, install them so that no architectural features are lost or damaged. Retain the shape of traditional half-round gutters and down spouts if replacing them.

.9 It is not appropriate to replace concealed, built-in gutter systems with exposed gutters.

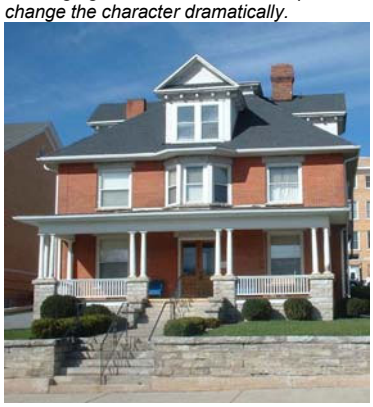
.10 It is not appropriate to introduce new roof features such as skylights, dormers, or vents if they will compromise the historic roof design or damage character-defining roof materials.

.11 It is not appropriate to install ventilators, solar collectors, antennas, skylights or mechanical equipment in locations that compromise character-defining roofs or on roof slopes visible from the street.

.12 It is not appropriate to install exposed tar paper rolls as a finished roofing material or roofing tar as a replacement for valley flashing.

.13 Patching slate or metal roofs or flashing should be done with compatible products.

The large gabled dormers on this hip roof change the character dramatically.



5th Avenue West

The glazed tile roof on this home is uncommon.



622 4th Avenue West

The character of this Spanish Colonial Revival house was greatly diminished when the original terra-cotta tile roof was removed due to its dilapidated condition.



1649 Kensington Avenue

3.6 EXTERIOR WALLS

.1 Retain and preserve exterior walls that contribute to the overall historic form and character of a building, including their functional and decorative features, such as cornices, foundations, bays, quoins, arches, water tables, brackets, entablatures, and storefronts.

.2 Retain and preserve exterior wall materials that contribute to the overall historic character of a building, including brickwork, stucco, stone, wooden shingles, wooden siding, asbestos siding, and metal, wooden, or masonry trimwork.

.3 Protect and maintain the material surfaces, details, and features of exterior walls through appropriate methods:

- Inspect regularly for signs of moisture damage, vegetation, fungal or insect infestation, corrosion, and structural damage or settlement.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements or along foundations.
- Clean exterior walls as necessary to remove heavy soiling or to prepare for repainting. Use the gentlest methods possible.
- Retain protective surface coatings, such as paint or stain, to prevent deterioration.
- Reapply protective surface coatings, such as paint or stain, when they are damaged or deteriorated.

.4 Repair exterior wall surfaces, details, and features using recognized preservation repair methods for the surface material or coating.

.5 If replacement of a deteriorated detail or element is necessary, replace only the deteriorated portion in kind rather than the entire feature. Match the original in design, dimension, detail, texture, pattern, color, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If full replacement of an entire exterior wall or feature is necessary because of deterioration, replace it in kind, matching the original in design, dimension, detail, texture and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.7 If an exterior wall or feature is completely missing, replace it with a new wall or feature based on accurate documentation of the original or a new design compatible with the historic character of the building and district.

.8 The original architectural character of exterior walls should be maintained when adding window or door openings, bays, vents, balconies, or chimneys.

.9 It is not appropriate to remove or cover any material detail associated with exterior walls, including decorative shingles, panels, brackets, barge boards, and corner boards, unless an accurate restoration requires it.

.10 It is not appropriate to cover historic wall material, including wooden siding, wooden shingles, stucco, brick, and stonework, with coatings or contemporary substitute materials.

.11 It is not appropriate to introduce features or details to an exterior wall in an attempt to create a false historical appearance.

.12 In accordance with the Artificial Materials guidelines (Section 3.12), it is not appropriate to replace existing artificial siding with new artificial

The brick corbelling of the historic façade is still visible above the metal skin applied during a renovation.



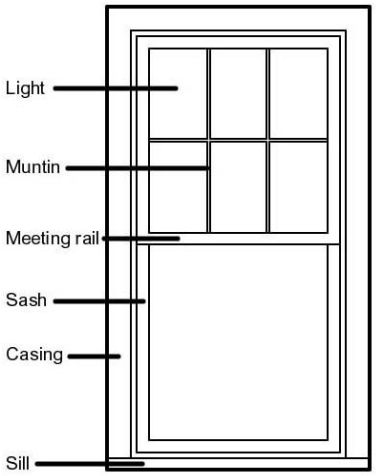
Over the course of several renovations, different exterior materials were used without consideration of the original character of the structure.



siding on contributing structures. Existing artificial siding should be removed and the exterior walls should be restored using traditional materials as appropriate for the structure.

.13 Existing artificial siding on non-contributing structures may be replaced in-kind.

3.7 WINDOWS AND DOORS

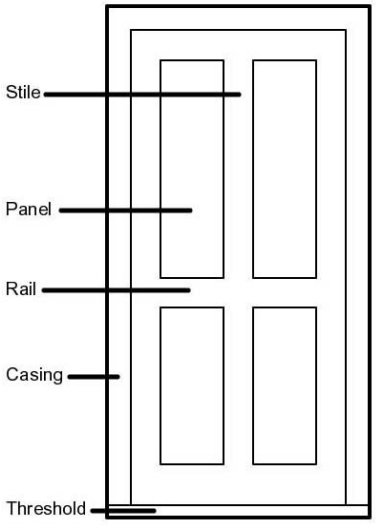


.1 Retain and preserve windows that contribute to the overall historic character of a building, including their functional and decorative features, such as frames, sash, muntins, sills, heads, moldings, surrounds, hardware, shutters, and blinds.

.2 Retain and preserve doors that contribute to the overall historic character of a building, including their functional and decorative features, such as frames, glazing, panels, sidelights, fanlights, surrounds, thresholds, and hardware.

.3 Protect and maintain the wooden and architectural elements of historic windows and doors through appropriate methods:

- Inspect regularly for deterioration, moisture damage, air infiltration, paint failure, and corrosion.
- Clean the surface using the gentlest methods possible.
- Limit paint removal and reapply protective coatings as necessary.
- Reglaze sash as necessary to prevent moisture and air infiltration.
- Weatherstrip windows and doors to increase energy efficiency.



.4 Repair historic windows and doors and their distinctive features through recognized preservation methods for patching, consolidating, splicing, and reinforcing.

.5 If replacement of a deteriorated window or door feature or detail is necessary, replace only the deteriorated feature in kind rather than the entire unit. Match the original in design, dimension, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If replacement of a deteriorated window or door unit is necessary, replace the unit in kind, matching the design and the dimension of the original sash or panels, pane configuration, architectural trim, detailing, and materials. Consider compatible substitute materials only if using the original material is not technically feasible.

.7 If a window or door is completely missing, replace it with a new unit based on accurate documentation of the original or a new design compatible with the original opening and the historic character of the building.

.8 Replace deteriorated or missing wooden shutters with wooden shutters sized to fit the opening and mounted as the originals were. Early hardware should be retained. It is not appropriate to introduce shutters on a historic building if no evidence of earlier shutters exists.

.9 If additional windows or doors are necessary for a new use, install them on a rear or non-character-defining elevation of the building, but only if they do not compromise the architectural integrity of the building. Design such units to be compatible with the overall design of the building, but not to duplicate the original.

.10 If desired, introduce narrow-profile exterior or interior storm windows so that they do not obscure or damage the existing sash and frame. Select exterior storm windows with a painted or baked-enamel finish color that is compatible with the sash color. For double-hung windows, select operable storm windows with dividers that align with existing sash.

.11 If desired, introduce full-light storm doors constructed of wood or aluminum with a baked-enamel finish that do not obscure or damage the existing door and frame. Select storm doors with a painted, stained, or baked-enamel finish color that is compatible with the color of the existing door. Bare aluminum storm doors are not appropriate.

.12 If desired and where historically appropriate, install fabric awnings over window, door, storefront, or porch openings with care to ensure that historic features are not damaged or obscured.

This storefront awning has classic lines and adds to the overall character of the street.



.13 It is not appropriate to remove original doors, windows, shutters, hardware, and trim from a character-defining facade.

.14 It is not appropriate to remove any detail material associated with windows and doors, such as stained glass, beveled glass, textured glass, or tracery, unless an accurate restoration requires it.

.15 It is not appropriate to use snap-in muntins to create a false divided-light appearance.

.16 It is not appropriate to replace clear glazing with tinted or opaque glazing.

.17 In accordance with the Artificial Materials guidelines (Section 3.12), it is not appropriate to replace existing vinyl windows with new vinyl windows on contributing structures.

.18 Existing windows and doors on non-contributing structures should be replaced in-kind.

3.8 ENTRANCES, PORCHES, AND BALCONIES

.1 Retain and preserve entrances, porches, and balconies that contribute to the overall historic character of a building, including such functional and decorative elements as columns, pilasters, piers, entablatures, balustrades, sidelights, fanlights, transoms, steps, railings, floors, and ceilings.

.2 Protect and maintain the wooden, masonry, and architectural metal elements of entrances, porches, and balconies through appropriate surface treatments:

- Inspect regularly for signs of moisture damage, rust, structural damage or settlement, fungal or insect infestation.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements or along foundations.
- Clean soiled surfaces using the gentlest methods possible.
- Recaulk wooden joints properly to prevent moisture penetration and air infiltration.
- Retain protective surface coatings, such as paint or stain, to prevent damage from ultraviolet light or moisture.
- Reapply protective coatings, such as paint or stain, when they are damaged or deteriorated.

Care has been taken in the detailing of these new metal balconies to ensure that they add to the character of the Main Street facades.



This two-story porch is a significant feature on this grand home.



705 4th Avenue west

.3 Repair historic entrances, porches, and balconies and their distinctive features and materials using recognized preservation methods for patching, consolidating, splicing, and reinforcing.

.4 If replacement of a deteriorated detail or element of an entrance, porch, or balcony feature is necessary, replace only the deteriorated detail or element in kind rather than the entire feature. Match the original in design, dimension, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.5 If replacement of an entire entrance, porch, or balcony feature is necessary because of deterioration, replace it in kind, matching the original in design, dimension, detail, texture, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If a feature or an entire entrance, porch, or balcony is missing, replace it with a new feature based on accurate documentation of the original or a new design compatible with the original opening and the historic character of the building.

.7 Consider the enclosure of a historic porch to accommodate a new use only if the enclosure can be designed to preserve the historic character of the porch and the building. It is not appropriate to enclose a front porch or a front balcony.

.8 It is not appropriate to remove any detail material associated with entrances and porches, such as graining, spindle work, beveled glass, or beaded board, unless an accurate restoration requires it.

.9 Original porches should be screened in a manner that supports the architectural character of the original feature.

.10 Original entrances or porches shall be retained. New entrances or porches on a primary facade shall support the architectural character of the original structure.

.11 It is not appropriate to introduce features or details to a historic entrance, porch, or balcony in an attempt to create a false historical appearance.

The screen porch on the side of this home matches the main structure in proportion and detailing.



1648 Druid Hills Avenue

The detailing of this new entry feature was researched and well executed.



1249 Hyman Avenue

3.9 STOREFRONTS

.1 Retain and preserve storefronts that contribute to the overall historic character of a building, including such functional and decorative features as transoms, display windows, doors, entablatures, pilasters, recessed entries, and signs.

.2 Protect and maintain historic storefront features and materials through appropriate methods:

- Inspect regularly for signs of moisture damage, rust, structural damage or settlement, rust, and fungal or insect infestation.
- Provide adequate drainage to prevent water from standing on flat, horizontal surfaces and collecting on decorative elements.
- Clean painted surfaces regularly using the gentlest methods possible, and repaint only when the paint film is damaged or deteriorated.
- Retain protective surface coatings, such as paint or stain, to prevent damage to storefront materials from ultraviolet light or moisture.

.3 Repair historic storefront features using recognized preservation methods for patching, consolidating, splicing, and reinforcing.

This new storefront uses traditional materials and detailing.



511 Main Street

This unique historic storefront combines brick, wood and metal.



104 Main Street

.4 If replacement of a deteriorated detail or element of a storefront feature is necessary, replace only the deteriorated detail or element in kind rather than the entire feature. Match the original in design, dimension, color, and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.5 If replacement of an entire storefront feature is necessary, replace it in kind, matching the original in design, dimension, detail, texture and material. Consider compatible substitute materials only if using the original material is not technically feasible.

.6 If a storefront feature or an entire storefront is missing, replace it with a new feature or storefront based on accurate documentation of the original or a new design compatible in size, scale and material with the building and the district.

.7 If desired, introduce new signage that is compatible with the storefront in material, scale, and color. It is not appropriate to install signage that damages, obscures, or diminishes the character-defining features of the storefront. Applicants must meet all requirements of the City of Hendersonville Sign Ordinance.

.8 If desired and historically appropriate, introduce fabric awnings that are compatible with the storefront in scale, form, and color. It is not appropriate to install awnings that damage or compromise the storefront's character-defining features. The City Sign Ordinance and the Downtown Sign Ordinance are made a part of these Guidelines by reference.

.9 It is not appropriate to clean storefronts with destructive methods such as sandblasting, power washing, and using propane or butane torches unless other methods are proven to be ineffective. Use chemical strippers only if gentler methods, such as low-pressure washing with detergents and natural bristle brushes are ineffective.

.10 It is not appropriate to strip wooden storefront surfaces that were historically painted down to bare wood and apply clear stains or sealers to create a natural wood appearance, unless a natural wood appearance is historically appropriate.

.11 It is not appropriate to replace or cover wooden storefront and entry elements with contemporary substitute materials such as aluminum or vinyl.

.12 It is not appropriate to introduce storefront features or details to a historic building in an attempt to create a false historical appearance.

This new storefront stands out because of its asymmetrical layout and bold color but is not historically accurate.



The utility meters should have been located on the side wall rather than the street façade.



3.10 UTILITIES AND ENERGY RETROFIT

.1 Retain and preserve the inherent energy-conserving features of historic buildings and their sites, including shade trees, porches, awnings, and operable windows, transoms, shutters, and blinds.

.2 Increase the thermal efficiency of historic building by observing appropriate traditional practices, such as weatherstripping and caulking, and by introducing energy-efficient features, such as awnings, operable shutters, and storm windows and doors, where appropriate.

.3 If a new mechanical system is needed, install it so that it causes the least amount of alteration to the building's exterior elevations, historic building fabric, and site features.

.4 If desired, introduce narrow-profile exterior or interior storm windows so that they do not obscure or damage the existing sash and frame. Select exterior storm windows with a painted or baked-enamel finish color that is compatible with the sash color. For double-hung windows, select operable storm windows with dividers that align with the existing sash.

.5 If desired, introduce full-light storm doors constructed of wood or aluminum with a baked-enamel finish that do not obscure or damage the existing door and frame. Select storm doors with a painted, stained, or baked-enamel finish that is compatible with the existing door.

.6 Replace deteriorated or missing wooden shutters with matching new units sized to fit the opening and mounted so that they can be operated if the originals were operable.

.7 If desired and where historically appropriate, install fabric awnings over window, door, storefront, or porch openings with care to ensure that historic features are not damaged or obscured.

.8 Locate new mechanical equipment and utilities, including heating and air-conditioning units, meters, exposed pipes, and fuel tanks, in the most inconspicuous area, usually along a building's rear elevation. Screen them from view.

.9 In general, the introduction of underground utility lines to reduce the intrusion of additional overhead lines and poles is encouraged. However, in trenching, take care to protect the roots of large trees and archaeological resources.

.10 Where possible, locate portable window air-conditioning units on rear elevations or inconspicuous side elevations.

.11 It is not appropriate to install ventilators, solar collectors, antennas, satellite dishes, or mechanical equipment in locations that compromise character-defining roofs, or on roof slopes that are visible from the street.

.12 It is not appropriate to introduce contemporary communication equipment that is inconsistent with the historic character of the landmark, including large-scale antennas and satellite dishes, in locations visible from the street.

Although dishes must be located to provide an unobstructed signal from the satellite, care should be taken to keep them out of view from the street.



3.11 ACCESSIBILITY, HEALTH, AND SAFETY CONSIDERATIONS

.1 In considering changes to a historic building, review accessibility and life-safety code implications to determine if the proposed change is compatible with the building's historic character and setting or will compromise them.

.2 Meet accessibility and life-safety building code requirements in such a way that the historic site and its character-defining features are preserved.

.3 Meet accessibility and life-safety building code requirements in such a way that the historic building's character-defining facades, features, and finishes are preserved.

.4 Determine appropriate solutions to accessibility with input from historic preservation specialists and local disability groups.

Even though the railings are not in character with the structure, the ramp was done in a way that minimally impacts the front facade.



.5 If needed, introduce new or additional means of access that are reversible and that do not compromise the original design of a historic entrance or porch.
.6 Work with code officials in exploring alternative methods of equal or superior effectiveness in meeting safety code requirements while preserving significant historic features.
.7 Locate fire doors, exterior fire stairs, or elevator additions on rear or non-character-defining elevations. Design such elements to be compatible in character, materials, scale, proportion, and finish with the historic building.
.8 Required safety additions to historic structures may be screened with shrubbery, etc.

This ramp dominates the front façade and uses materials that are not in keeping with the original structure.



3.12 ARTIFICIAL MATERIALS POLICY

The majority of the structures in the City's local historic districts were built using traditional materials. In order to preserve the character of Hendersonville's local historic districts, the Historic Preservation Commission prefers the use of traditional materials in restoration and new construction projects. Since vinyl and other artificial materials were not utilized to construct most buildings in the historic districts, the Historic Preservation Commission intends to limit the use of artificial materials in order to preserve the architectural integrity and overall character of the district.

Properties and structures in a historic district are categorized as either contributing or non-contributing by the local designation report prepared for each district. Contributing properties contain structures that were typically over 50 years old at the time the designation report was prepared and add to the historic integrity or architectural qualities that make a district significant. Non-contributing properties contain structures that are generally less than 50 years old or have been altered so that their architectural qualities have been lost.

The Historic Preservation Commission may consider whether a structure is listed as contributing or non-contributing on the district's local designation report when reviewing an application to install artificial materials. The following guidelines apply to the use of artificial materials on contributing or non-contributing properties:

.1 Artificial materials are not appropriate on buildings on contributing properties. Existing artificial materials on contributing properties should be replaced with traditional materials.
.2 Replace windows, doors, siding, trim and other exterior materials on non-contributing structures in-kind.
.3 The use of artificial materials in new construction shall be limited so that the new building is compatible with the surrounding contributing properties.

SECTION 4

ADDITIONS AND NEW CONSTRUCTION



1249 Hyman Avenue

4.1 DECKS

.1 Locate and construct decks so that the historic fabric of the structure and its character-defining features and details are not damaged or obscured. Install decks so that they are structurally self-supporting and may be removed in the future without damage to the historic structure.

.2 Introduce decks in inconspicuous locations, usually on the building's rear elevation and inset from either rear corner, where they are not visible from the street.

.3 Design and detail decks and associated railings and steps to reflect the materials, scale, and proportions of the building.

.4 Align decks generally with the height of the building's first-floor level. Visually tie the deck to the building by screening its structural framing and posts with compatible foundation materials such as skirt boards, lattice, masonry panels, and dense evergreen foundation plantings.

.5 It is not appropriate to introduce a deck if doing so will require removal of a significant building element or site feature such as a porch or a mature tree.

.6 It is not appropriate to introduce a deck if the deck will detract from the overall historic character of the building or the site.

.7 It is not appropriate to construct a deck that significantly changes the proportion of built area to open space for a specific property.

.8 For uncovered decks, composite materials are appropriate for decking only.

This deck combines careful placement, nice detailing and plantings to create a delightful outdoor environment.



This deck is easily seen from the street and lacks a level of detail consistent with the structure.



4.2 ADDITIONS TO HISTORIC BUILDINGS

.1 Construct new additions so that there is the least possible loss of historic fabric and so that the character-defining features of the historic building are not destroyed, damaged, or obscured.

.2 Design new additions so that the overall character of the site, site topography, character-defining site features, and significant district vistas and views are retained.

.3 Survey in advance and limit any disturbance to the site's terrain during construction to minimize the possibility of destroying unknown archaeological resources.

.4 Protect large trees and other significant site features from immediate damage during construction and from delayed damage due to construction activities, such as loss of root area or compaction of the soil by equipment.

.5 Locate a new addition on an inconspicuous elevation of the historic building, usually the rear one.

.6 Limit the size and the scale of an addition in relationship to the historic building so that it does not diminish or visually overpower the building.

.7 Design an addition to be compatible with the historic building in mass, materials, and relationship of solids to voids in the exterior walls, yet make the addition discernible from the original.

.8 It is not appropriate to construct an addition if it will detract from the overall historic character of the principal building and the site, or if it will require the removal of a significant building element or site feature, such as a mature tree.

The siding material and windows on this addition are not appropriate for this building.



The addition on this home would have been more successful with a roofline that related to the original structure.



.9 It is not appropriate to construct an addition that significantly changes the proportion of built mass to open space on the individual site.

4.3 NEW CONSTRUCTION

.1 Site new construction to be compatible with surrounding buildings that contribute to the overall character of the historic district in terms of setback, orientation, spacing, and distance from adjacent buildings.

.2 Design new construction so that the overall character of the site, site topography, character-defining site features, and significant district vistas and views are retained.

.3 Survey in advance and limit any disturbance to the site's terrain during construction to minimize the possibility of destroying unknown archaeological resources.

.4 Protect large trees and other significant site features from immediate damage during construction and from delayed damage due to construction activities, such as loss of root area or compaction of the soil by equipment.

.5 Conform to the pertinent guidelines regarding district character in developing a proposed site plan.

.6 Design new buildings to be compatible with surrounding buildings that contribute to the overall character of the historic district in terms of height, form, size, scale, massing, proportion and roof shape.

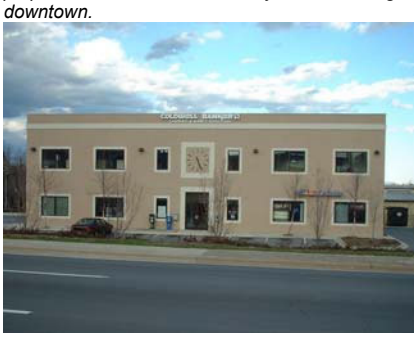
.7 Design the proportion of the proposed new building's front elevation to be compatible with the front elevation proportion of surrounding historic buildings.

.8 Design the spacing, placement, scale, orientation, proportion, and size of window and door openings in proposed new construction to be compatible with the surrounding buildings that contribute to the overall character of the historic district.

.9 Select materials and finishes for proposed new buildings that are compatible with historic materials and finishes found in the historic district in terms of composition, scale, module, pattern, detail, texture, finish and sheen.

.10 Design new buildings so that they are compatible with but discernible from historic buildings in the district. It is not appropriate to design new buildings that attempt to duplicate historic buildings.

Located at the edge of historic downtown, this new building lacks the level of detail and proportion characteristic of many of the buildings downtown.



SECTION 5

RELOCATION OR DEMOLITION



5.1 RELOCATION

.1 Before moving a historic structure, document its original setting and context. Use photographs, site plans, and other graphic or written statements to record the existing site conditions.

.2 Enlist contractors experienced in moving historic buildings to do the following:

- Determine the structural condition of the property before the move.
- Coordinate the move with utilities companies and appropriate City departments.
- Protect the structure from vandalism or weather damage before, during, and after the move.
- Minimize structural damage during the move.

.3 Relocate a structure within an historic district only if it is determined to be architecturally compatible with adjacent buildings according to the guidelines for new construction.

.4 Ensure that the relocation of a structure will not diminish or damage existing historic district buildings or the overall character of the district.

.5 If the original site of the structure to be relocated is within an historic district, before the move, submit to the commission a site plan for proposed site features and plantings of the original site after the relocation.

.6 Provide the HHPC with site plan information for proposed site features and plantings of the new setting, including information on accessory buildings, driveways, site lighting, and parking areas.

.7 Protect significant site features of the original site, the new site, and the route of the move during the relocation.

5.2 DEMOLITION

.1 Before demolition, work with the commission to pursue all alternatives to demolition.

.2 Before demolishing a historic structure, document its original setting and context. Use photographs, site plans, and other graphic or written statements to record the existing site conditions.

.3 Before demolition, work with the commission or other interested parties to salvage usable architectural materials and features.

.4 Before demolition, submit a site plan to the commission illustrating proposed site development or plantings to follow demolition.

.5 During demolition, ensure the safety of any adjacent properties and historic resources. Also, during and after demolition, take care to protect trees on the site from damage due to compaction of the soil by equipment.

.6 After demolition, clear the site promptly and thoroughly.

.7 After demolition, plant or develop the site promptly as approved in the proposed site plan.

6.1 RESOURCES FOR TECHNICAL INFORMATION

Local Resources
Hendersonville Historic Preservation Commission
145 Fifth Avenue
Hendersonville, North Carolina 28792

For more information on ~~certificates of appropriateness~~ Certificates of Appropriateness andtechnical assistance, contact HPC staff at (828) 697-3000.

State Resources
State Historic Preservation Office
North Carolina Division of Archives and History
4617 Mail Service Center
Raleigh, North Carolina 27699-4617 www.hpo.dcr.state.nc.us

For information on historic structures and the National Register, contact the Survey and Planning Branch at (919) 733-6545

For information on preservation tax credits and technical restoration assistance, contact the Restoration Branch at (919) 733-6547

Office of State Archaeology
North Carolina Division of Archives and History
4619 Mail Service Center
Raleigh, North Carolina 27699-4619 www.arch.dcr.state.nc.us/fosa.htm

For information on archaeological sites, resource protection, and volunteer opportunities, contact the Office of State Archaeology at (919) 733-7342

National Resources
U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, DC 20240

Office of the Director (202) 208-4621
Office of Communications (202) 208-6843
Cultural Resource Stewardship and Partnership (202) 208-7625
Heritage Preservation Services www2.cr.nps.gov

Southeast Regional Office of the National Park Service
100 Alabama St., SW
NPS/Atlanta Federal Center
Atlanta, GA 30303

Regional Director's Office (404) 562-3100

6.2 KEYS TO IDENTIFYING ARCHITECTURAL STYLES

Georgian c.1700 - c.1800
Keys; paneled door with entablature, transom or fanlight over door, panes of glass are usually small separated by thick muntins
Appearance: often heavy or substantial

Federal (sometimes called Adam) c.1700 – c.1830
Keys: semi-circular or elliptical fanlight over the front door sometimes with sidelights, small entry porch or entablature at door, often has double hung sash windows with six pane in each sash, muntins separating the panes are often more narrow than Georgian
Appearance: more delicate, slender and light than Georgian

Greek Revival c.1825 – c.1865
Keys: large columned portico often with wide parapet entablature rather than "Tara-style" pediment, more common on North Carolina are simple houses with entablatures at the entrance, entry stop or small porch, transom extending over door and sidelights, and wide cornices at the eaves
Appearance: simple, rectilinear with clean lines

Gothic Revival c.1840 – c.1880
Keys: gothic arches in windows or doors, steeply pitched gables, steeply pitched gable dormers on front façade, often has vertical board and batten siding
Appearance: picturesque; after the work of A.J. Downing

Italianate c.1850 – c.1880
Keys: round-head arches at windows or in panels of front door, heavy hoods or molding over windows, sometimes has tower or cupola, heavy brackets or modillions at cornice, low-pitch (often hip) roof
Appearance: may be either Mediterranean or more Victorian in character

Second Empire c.1870 – c.1890
Keys: mansard roof, heavy ornament, often has tower or turret
Appearance: looks like something that would be in an old scary movie

Stick Style c.1870 – c.1890
Keys: half timbering (or applied boards infilled with stucco, shingles, or brick) to resemble Old English (Tudor) architecture; the "sticks" expressed and celebrated the light frame construction of the building
Appearance: closely resembles Queen Anne with a variety of ornament though principally focused on the use of the "stick"

Queen Anne c.1880 – c.1910
Keys: asymmetry, multitude of type and quantity of ornament, various porches, turrets, stained glass, machine made ornament such as spindle-work, turned posts, and sawn brackets, multi-level/multi-shape roof
Appearance: nothing less than exuberant – keep looking and you'll see something else on it

Folk Victorian c.1880 – c.1915
Keys: simple/traditional form decorated with machine ornament such as spindle-work, turned posts, and sawn brackets
Appearance: more rural and subdued in feel; this is the vernacular interpretation of the Queen Anne

Italianate



1609 Druid Hills Avenue

Classical Revival Bungalow



1641 Druid Hills Avenue

Neoclassical Revival c.1890 – c.1930
Keys: often large houses with full-height front portico coupled with one-story porch, full-height columns, balustrades at the roofline or on the portico, elaborate column capitals
Colonial Revival c.1890 – c.1960
Keys: varies in size, but will always have references to Early American architecture (classical motifs) such as gabled dormers, pediment at central front entry, sidelights and transom, and small panes of glass in the windows, symmetrical arrangement
Appearance: very traditional
Dutch Colonial Revival c.1920 – c.1940
Keys: gambrel (barn-shape) roof line with any of above features
Appearance: subset of Colonial Revival with traditional appearance
Tudor Revival c.1920 – c.1940
Keys: use of half-timbering with stucco or brick infill, prominent location of large chimney on front façade, elaborate chimney design, steeply pitched front gables, asymmetry
Appearance: reminiscent of Old English architecture
English Cottage (sometimes called Period Cottage) c.1930 – c.1945
Keys: use of brick and stone (often in a rustic manner), prominent location of large (often highly detailed) chimney, round-head door, front gable entry projection (often asymmetrical with one swooping leg) on side gable house
Appearance: small scale, popular interpretation of more elaborate (high style) Tudor Revival
Spanish Eclectic c.1915 – c.1940
Keys: smooth stucco exterior, tile roof, use of arches; Mission variation usually has a tower and curvilinear parapet like a California mission
Appearance: southwestern
American Four-Square c.1910 – c.1930
Keys: related to the low-slung Prairie Style developed by Frank Lloyd Wright, this house often has a hip roof, central entry, large porch, hip roof attic dormer, very simple classical or sometimes craftsman details; it is almost always two stories
Appearance: cube-like
Craftsman c.1910 – c.1930
Keys: usually, but not always associated with the bungalow house type, displays prominent use of natural materials such as stone and wood, knee braces at eaves, exposed rafter tails or decorative beam ends, deep eaves, porches, tapered (battered) columns on brick or stone piers supporting porch
Appearance: classic bungalow; can have Asian influences
Art Moderne c.1920 – c.1940
Keys: use of smooth plaster, smooth curves at corners, glass block, horizontal boands, corner window arrangements, "port-hole" windows
Appearance: reminds one of a 1920s steam ship
International c.1920 – c.1950
Keys: smooth exterior, usually white, boxy shape, no eaves, flat roof, corner windows
Appearance: less streamlined than Art Moderne
Modernist c.1945 – c.1965
Keys: low pitch or flat roof, ribbon windows, corner windows, use of more than one material, use of lots of glass, very wide eaves

Colonial Revival



1620 Norwood Avenue

Dutch Colonial Revival



Tudor Revival



1615 Druid Hills Avenue

American Four-Square



1619 Druid Hills Avenue

Craftsman

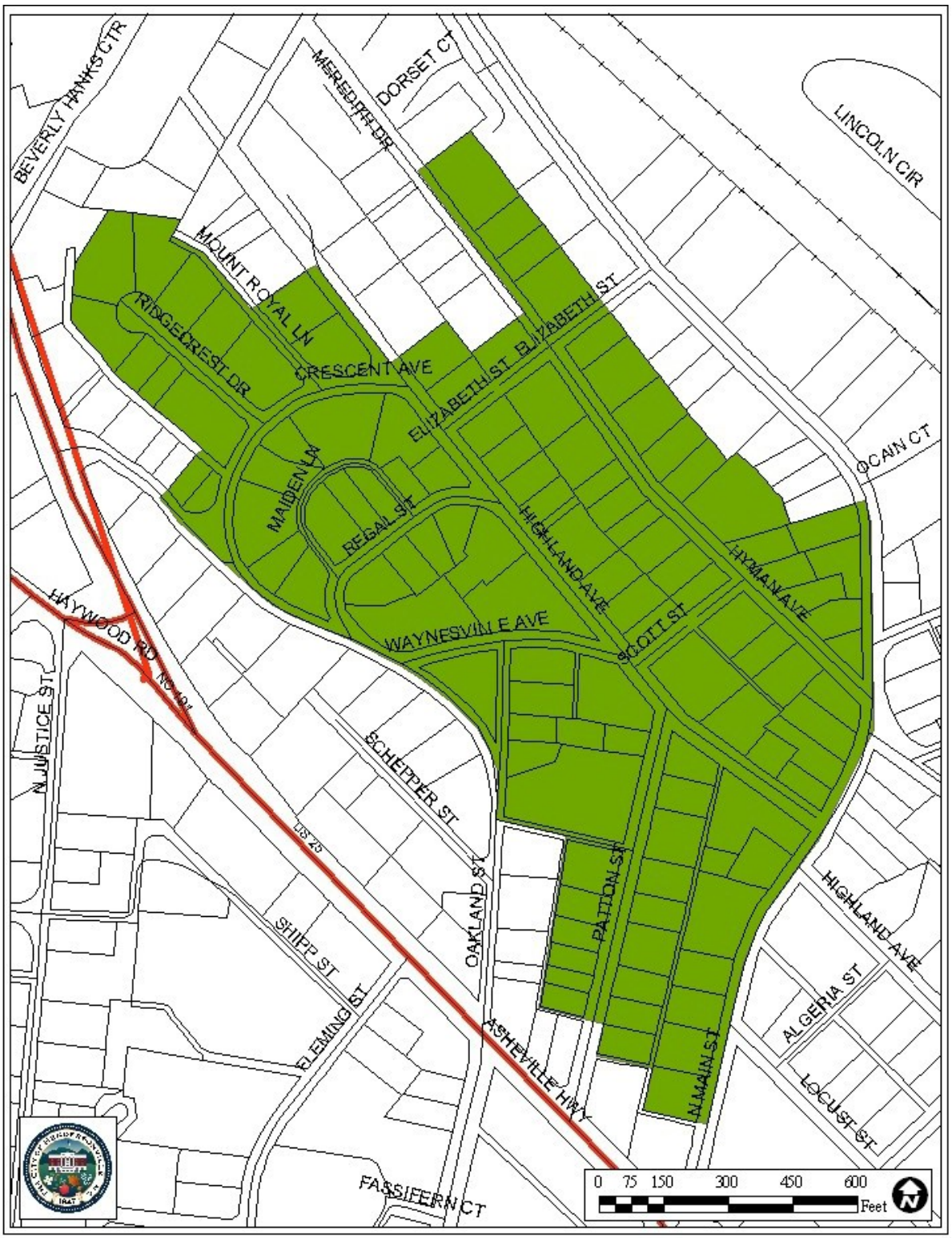


510 4th Avenue West

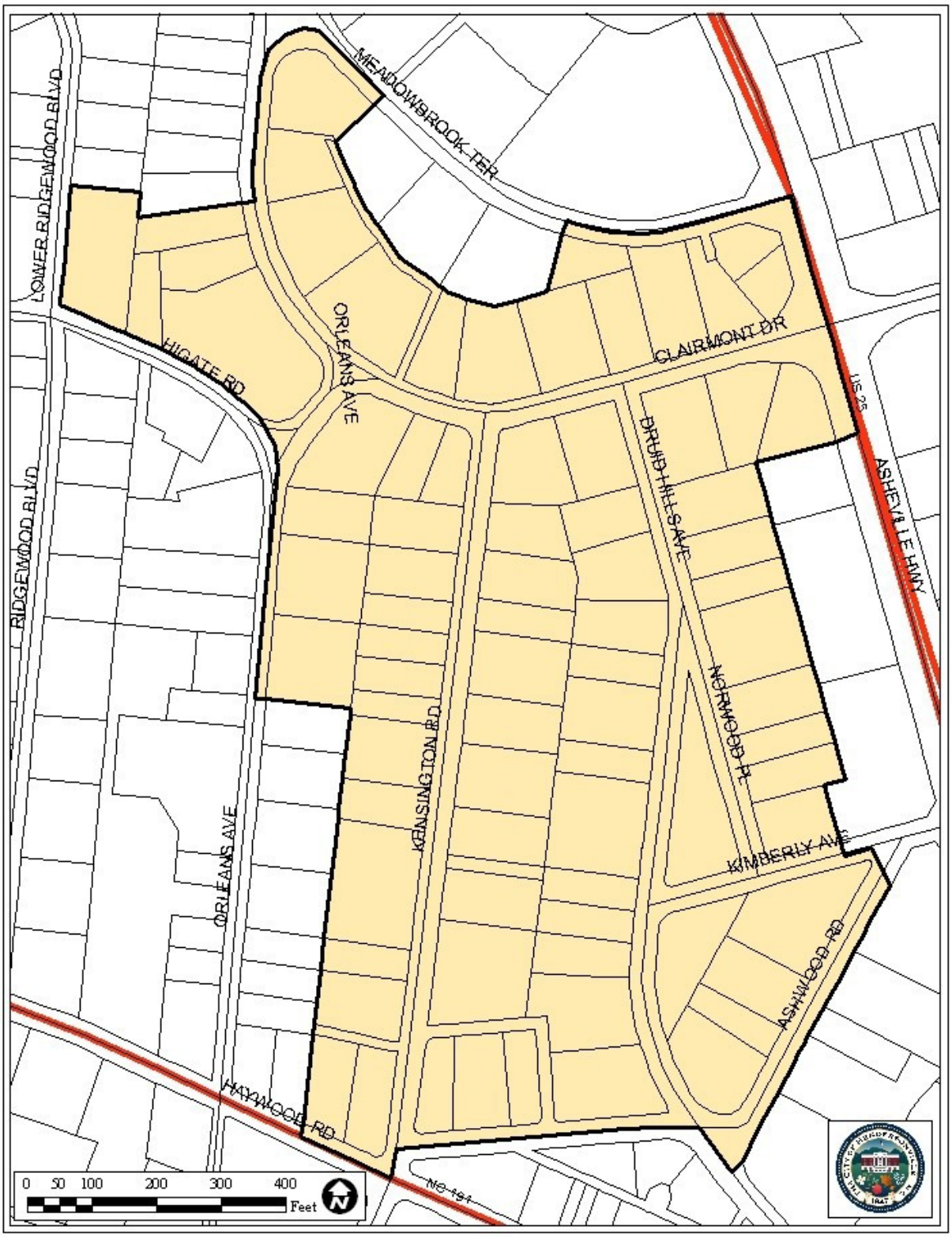
Minimal Traditional c.1940 – c.1955
Keys: small, usually one-story, lack of ornamentation or detail
Appearance: traditional
Ranch c.1945 – c.1985
Keys: one-story, often brick, wide eaves

6.3 HENDERSONVILLE'S HISTORIC DISTRICTS

Hyman Heights



Druid Hills


MEADOWBROOK TER
LOWER RIDGEWOOD BLVD
HIGATE RD
ORLEANS AVE
CLAIRMONT DR
US 25
ASHEVILLE HWY
DRUID HILLS AVE
RIDGEWOOD BLVD
KENSINGTON RD
NORWOOD PL
KIMBERLY AVE
ASHWOOD RD
ORLEANS AVE
HAYWOOD RD
NC 191
0 50 100 200 300 400
Feet

Attachment E

to the

ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 12, CHAPTER 24 ARTICLE II, CHAPTER 24 ARTICLE III, CHAPTER 28, AND CHAPTER 40, OF THE CODE OF ORDINANCES FOR HENDERSONVILLE, NC, FOR CONFORMANCE WITH CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

Chapter 40 PLANNING AND DEVELOPMENT[1]

~~ARTICLE I. IN GENERAL~~

~~Sec. 40-1. Statement as to vested rights in petitions for annexation of noncontiguous areas.~~

~~All petitions for annexation of noncontiguous properties shall have attached a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1 or any successor statue. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 or any successor statute shall be binding on the landowner and any such vested rights shall be terminated.~~

~~(Ord. No. 11-0104, § 1, 1-6-11)~~

Secs. 40-12—40-30. Reserved.

ARTICLE ~~I~~II. PLANNING BOARD[2]

Sec. 40-31. Created.

A planning board for the city is hereby created.

(Code 1971, § 23-16; Ord. of 12-10-96, § 1)

Sec. 40-32. Composition.

The planning board shall consist of ten members, seven of whom shall be citizens and residents of the city and the other three shall be citizens and residents of the city's extraterritorial jurisdiction. The members who reside in the extraterritorial jurisdiction shall be entitled to equal rights, privileges and duties with other members of the board regardless of whether the matters at issue arise within the city or within the extraterritorial area.

---

[1]Cross reference(s)—Administration, ch. 2Cross reference(s)—; buildings and building regulations, ch. 12Cross reference(s)—; environment, ch. 20Cross reference(s)—; floods, ch. 24Cross reference(s)—; historic preservation, ch. 28Cross reference(s)—; housing, ch. 30Cross reference(s)—; manufactured homes and trailers, ch. 34Cross reference(s)—; streets, sidewalks and other public places, ch. 46Cross reference(s)—; utilities, ch. 52Cross reference(s)—; ~~zoning ordinance~~land development regulation, app. A; subdivision, app. B.

State law reference(s)—Planning and regulation of development, G.S. 160D-200; 202; 903~~160A-360~~ et seq.

[2]Cross reference(s)—Boards, commissions and committees, § 2-226 et seq.

State law reference(s)—Authority to create a planning agency, G.S. 160D-301~~160A-361~~.

(Code 1971, § 23-17; Ord. of 12-10-96, § 1)

Sec. 40-33. Appointment of members.

The members of the planning board required to be residents of the city shall be appointed by the Hendersonville~~city~~ City ~~council~~Council. The other members shall be appointed by the Henderson County ~~board~~ Board of ~~county commissioners~~Commissioners; provided, however, that should such county board fail to make such appointments within 90 days following receipt of a resolution from the city board requesting such appointments, the Hendersonville ~~city~~ City ~~council~~ Council may make such appointments.

(Code 1971, § 23-18; Ord. of 12-10-96, § 1)

Sec. 40-34. Terms of members.

The members of the planning board shall serve for terms of three years; provided, however, appointed terms may be adjusted from time to time as stated in this section. It is the intention that terms of members shall be staggered in a balanced fashion. To that end, terms may be modified by the appointing authority, as necessary, so that all terms shall commence on such date as the Hendersonville~~city~~ City ~~council~~ Council shall from time to time provide and so that no fewer than three and no more than four terms shall expire in any given year. Should it occur that any member no longer resides in the jurisdiction from which appointed, that member shall no longer be entitled to serve on the planning board and the position shall immediately be deemed vacant. Notwithstanding the foregoing, the Hendersonville~~city~~ City ~~council~~ Council may remove any member of the planning board for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the commission to carry out its designated functions.

(Code 1971, § 23-19; Ord. of 12-10-96, § 1; Ord. No. 00-1166, § 1, 11-9-00; Ord. No. 07-0526, § 2, 5-3-07; Ord. No. 17-1079, § 10-5-17)

Sec. 40-35. Filling of vacancies.

Vacancies occurring for reasons other than the expiration of terms shall be filled as they occur for the period of the unexpired term.

(Code 1971, § 23-20; Ord. of 12-10-96, § 1)

Sec. 40-36. Officers.

In January of each year, the planning board shall elect a chairman and any other officers specified in its rules of procedure. The chairman and other officers shall hold office for one year and shall be eligible for reelection.

(Code 1971, § 23-21; Ord. of 12-10-96, § 1)

Sec. 40-37. Rules and regulations.

The planning board shall adopt rules of procedure for the conduct of its business and is authorized to adopt such further rules and regulations as are reasonable and necessary to the fulfillment of the duties delegated to it under this article.

(Code 1971, § 23-22; Ord. of 12-10-96, § 1)

Sec. 40-38. Quorum.

There shall be a quorum of a simple majority of the members of the planning board for the purpose of taking any official action required of the board.

(Code 1971, § 23-23; Ord. of 12-10-96, § 1)

Sec. 40-39. Powers and duties generally.

Except as limited in this article, the planning board shall have all the powers and duties provided by the General Statutes of North Carolina for municipal planning agencies.

(Code 1971, § 23-25; Ord. of 12-10-96, § 1)

Sec. 40-40. Hearings.

The planning board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the land development plan. Before adopting any such plan, it shall hold at least one public hearing thereon. The planning board ~~shall also~~may conduct such hearings ~~as are necessary~~ for the purpose of considering applications for rezoning, site plan approval and ~~special~~ Special ~~use~~ Use ~~permits~~Permits.

(Code 1971, § 23-28; Ord. of 12-10-96, § 1)

Sec. 40-41. Publicity generally.

The planning board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

(Code 1971, § 23-29; Ord. of 12-10-96, § 1)

Sec. 40-42. Records of proceedings.

The planning board shall keep a record of its findings and recommendations, which record shall be public.

(Code 1971, § 23-30; Ord. of 12-10-96, § 1)

Section 40-43. Conflict of Interest

A Planning Board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct,substantial, and readily identifiable financial impact on them or the applicant or other person subject to the decision is a person with whom the Planning Board member has a close familial, business, or other associational relationship, in accordance with G.S. 160D-109(c).

Secs. 40-4~~3~~—40-75. Reserved.

ARTICLE I~~I~~I. PERMIT CHOICE AND VESTED RIGHTS[3]

Sec. 40-76. Purpose of article.

The purpose of this article is to implement the provisions of ~~G.S. 160A-385.1~~G.S. 160D-108, G.S. 160D-108.1 and G.S. 143-755 pursuant to which rules regarding (1) the period of validity for a completed pending application for development approval, and (2) the establishment of a statutory ~~zoning~~ vested right ~~is established~~under a development regulation adopted by Hendersonville City Council. ~~upon the approval of a site-specific development plan.~~ To the extent that this Article conflicts with or omits provisions of G.S. 160D-108, 160D-108.1, or G.S. 143-755, the G.S. statutory provisions shall control. Nothing in this Article shall be deemed to limit the right of an Applicant to obtain a common law vested right in accordance with applicable law.

Part I Generally Applicable Provisions~~(Code 1971, § 23-51)~~

Sec. 40-77. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this ~~section~~Article II, except where the context clearly indicates a different meaning. Words, terms and phrases which are not defined below shall have the meanings ascribed to them by the applicable land development regulation:

Applicant means a person who has submitted a Application for review under a land development regulation.

Application means the form or forms and all accompanying documents, exhibits, and fees required of an Applicant as part of the development review processes.

Application, Complete or Completed means an Application containing all of the required the form or forms and all required accompanying documents, exhibits, and fees required of an Applicant as part of the development review processes.

Application, Incomplete means and Application that does not contain all of the required form or forms and all required accompanying documents, exhibits, and fees required of an Applicant as part of the development review processes.

Approving authority means the person or board ~~entity~~ which is authorized by a land development regulation ~~pursuant to article VII of the zoning ordinance to grant the specific zoning or land use permit or approval that constitutes a site-specific development plan~~to approve a development permit.

Completeness determination means the process of determining if an Application for a development approval is or isnot complete.

Development means any of the following (This definition does not alter the scope of regulatory authority granted by any state, federal or City law or ordinance.):

[3]State law reference(s)—Vested rights, ~~G.S. 160A-385.1.~~G.S. 160D-108 and 160D-108.1

a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
b. The excavation, grading, filling, clearing, or alteration of land.
c. The subdivision of land as defined in G.S. 160D-802.
d. The initiation or substantial change in the use of land or the intensity of use of land.

Development permit or *Development approval* means an administrative or quasi-judicial approval made pursuant to a land development regulation that is written and that is required prior to commencing development or undertaking a specific activity, project or development proposal, including any of the following:

a. Zoning permits.
b. Site plan approvals.
c. Special use permits.
d. Variances.
e. Certificates of appropriateness.
f. Plat approvals.
g. Development agreements.
h. Building permits.
i. Plat approvals for the Subdivision of land.
j. State agency permits for development.
k. Driveway permits.
l. Erosion and sedimentation control permits.
m. Sign permit.
n. Stormwater permit.
o. Floodplain permit.

G.S. means the North Carolina General Statutes, as amended or replaced.

Initial development ~~approval~~ permit means the ~~approval pursuant to article VII of the zoning ordinance whereby a development receives its initial approval~~first development permit received for a project. ~~For projects undergoing special use review, this will be the issuance of a special use permit for the project. For projects undergoing site plan review, this will be at the time of preliminary site plan approval unless the development is not required to go through preliminary site plan review, in which case the initial development approval will be final site plan approval. For projects undergoing zoning compliance review, the initial development approval will be the issuance of a zoning compliance certificate.~~

Land development regulations or Development Regulations means any State statute, rule or regulation, or local ordinance affecting the development or use of real property, including any of the following:

a. Zoning regulation, including zoning maps.
b. Subdivision regulation.
c. Erosion and sedimentation control regulation.
d. Floodplain or flood damage prevention regulation.

e. Mountain ridge protection regulation.

f. Stormwater control regulation.

g. Wireless telecommunication facility regulation

h. Historic preservation or landmark regulation.

i. Housing code.

j. Building code.

k. Nonresidential building and structure code.

Landowner means the holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the landowner. As used herein, "landowner" refers to all holders of the title in fee simple of a parcel of real property. The land owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.~~any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan under this article.~~

Permit choice means the right to choose to apply the land development regulations in effect at the time of the Completed Application for the initial development permit, to all applications for development approvals submitted within the eighteen (18) month period following the date of the Completed Application for the initial development permit. Permit choice also refers to the right of an Applicant to choose to apply the land development regulation in effect at the time of a Completed Application following a successful legal challenge to the wrongful denial of, or illegal, permit decision associated with the Completed Application if the land development regulation was amended between the time of the Completed Application and the successful legal challenge.

Site specific vested right means a vested right granted pursuant to the approval of a site specific vesting plan.

Site~~-~~ specific ~~development~~ vesting plan means a plan which has been submitted to the ~~city by a landowner, pursuant to article VII of the zoning ordinance,~~city in which an Applicant requests vesting pursuant to Sections through and which describes~~ing~~ with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. A variance shall not constitute a ~~site-specific development plan~~site specific vesting plan, and approval of a ~~site-specific development plan~~site specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. In order to be considered a site specific vesting plan, a plan must include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan under this Article that would trigger a site specific vested right is listed below, or is otherwise identified specifically in a land development regulation. The document that triggers the statutory vesting shall be so identified at the time of its approval.

~~Zoning~~Statutory vested right means a right pursuant to G.S. 160A-~~385.1~~108 to undertake and complete the development and use of property under the ~~terms and conditions of an approved site-specific development plan.~~land development regulation in place at the time of the application for the development permit. If a development regulation is amended between the time of submission of the Completed application for a

development permit and approval of the development permit, and the applicant chooses to apply the land development regulation in effect at the time of submission of the completed application, the statutory vested right shall confer a vested right to develop under the chosen land development regulation for the period of validity.

Vested means the right to develop in accordance with the land development regulations in place at the time of the submission of a Complete Application for a development approval.

Sec. 40-78. Completeness Determination.

(a) Applicants shall submit applications to the land development regulation administrator or designated person or entity in accordance with terms of the applicable land development regulation. Until an application is determined to be complete in accordance with the requirements of the applicable land development regulation, an application has not been submitted.

(b) On receiving a development application, the land development regulation administrator or designated person or entity shall, within determine whether the application is complete or incomplete.

(c) Application Incomplete. On determining that the application is incomplete, the land development regulation administrator or designated person or entity shall, as appropriate, provide the applicant written notice of the submittal deficiencies. The applicant may correct the deficiencies and resubmit the application for a completeness review. If the applicant fails to resubmit an application within thirty (30) consecutive calendar days after being first notified of submittal deficiencies, the application submittal shall be considered abandoned. The thirty (30) day period may be extended by the land development regulation administrator or other designated person or entity.

(d) Application Complete. On determining that the application is complete, the land development regulation administrator or other designated person or entity shall:

(1) Accept the application as submitted in accordance with the procedures and standards of land development regulation in effect at the time of the submittal; and

(2) Provide the applicant written notice of application submittal acceptance.

Part 2. Statutory Vested Rights.

~~(Code 1971, § 23-52)~~

~~Cross reference(s)—Definitions generally, § 1-2Cross reference(s)—.~~

Sec. 40-78. Establishment of ~~zoning~~statutory vested right.

~~(a)~~ A statutory vested right may be established by the issuance of any of the following development permits stated in the table below, and each shall have the period of validity, expiration and applicability as stated.

Type of Development permit	Period of Validity*	Expiration and applicability
Building permit	6 months	As required by G.S. 160D-1111, work must begin within 6 months or the building permit will expire. Notwithstanding the foregoing, for any building permit issued for a project which has established a site specific vested right, the building permit shall not expire while the site specific vested right is valid and in effect.
Development permit	12 months	Development permits are valid for a period of twelve months, unless specifically provided otherwise in a land development regulation.
Site Specific Vesting Plan	24 months	Must be established as provided in Section below. The qualifying development permit must be identified as a site specific vesting plan at the time of approval
Multi-phased project	7 years from initial site plan approval	The entire project is vested for the period of validity if the project meets the meeting the following criteria: 1. Minimum of 25 acres in size 2. Subject to a master plan with committed elements showing the type and intensity of use of each phase. 3. Submitted for development permit approval to occur in more than 1 phase.
Development agreement	Per the agreement	Ref G.S. 160D-108 and 160D-1007.

*Period of validity refers to the time period during which the permit will not expire due to the passage of time without work being substantially commenced. If work substantially commences during the period of validity, the development permit will not expire due to the passage of time, unless work is intentionally and voluntarily discontinued for a period of 24 months (for building permits 12 months). The period of discontinuance is tolled during an appeal or legal challenge. Period of validity is also sometimes referred to as the vesting period.

Sec. 40-79. Establishment of site specific vested right.

(a) The following development permits shall qualify as a site specific vesting plan upon approval if they have the required level of detail shown (ref definitions above)

(1) Final Plat for a minor subdivision.

(2) Preliminary Plat or Final plat for a conservation subdivision.

(3) Preliminary Plat or Final plat for a major subdivision.

(4) Final Plat for an expedited subdivision.

(5) Final Site Plan

(b) No separate application shall be required for a site specific vesting plan. The Application for the underlying development approval for the development permits identified in Sec. 40-78(a) may serve as the application for site specific vesting plan approval if the application specifically requests that the underlying development approval be considered a site specific vesting plan

(c) The Application for the underlying development approval shall be processed in the manner required by the applicable land development regulation.

The approved development permit must specify that the development permit has also been approved as a site specific vesting plan at the time of the approval in order for the development permit to qualify as a site specific vesting plan under this Article.~~An application for site-specific development plan approval shall be processed in accordance with the procedures established in article VII of the zoning ordinance.~~

(d)

~~(a) (b) A~~A ~~zoning~~site specific vested right shall be deemed established as of the date of the initial development approval pursuant to ~~article VII of the~~a ~~zoning ordinance~~land development regulation.

(e)

~~(b) (c)~~ The approving authority may approve a ~~site-specific development plan~~site specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare if the underlying approval is obtained through an evidentiary hearing.

(f)

~~(c) (d)~~ Notwithstanding anything stated in this Article, ~~subsections (a) and (b) of this section,~~ approval of a ~~site-specific development plan~~site specific vesting plan with the condition that a variance be obtained shall not confer a ~~zoning vested right~~site specific vested right unless and until the necessary variance is obtained.

(g)

~~(d) (e)~~ The establishment of a ~~zoning~~site specific vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, nor does it preclude the application of ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the city, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a ~~site-specific development plan~~site specific vesting plan upon the expiration or termination of the vested right in accordance with this article.

(h)

(i) ~~(f)~~ A ~~zoning~~site specific vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a ~~site-specific development plan~~site specific vesting plan, all successors to the original landowner shall be entitled to exercise such right, while applicable.

~~(Code 1971, § 23-53)~~

Sec. 40-~~79~~80. Effect of ~~site-specific development plan~~a statutory vested right ~~approval~~.

(a) Except where a longer period of time is authorized pursuant to ~~article VII of~~ the ~~zoning ordinance~~land development regulation, a ~~zoning vested right~~statutory vested right that has been vested as provided in this A~~a~~rticle shall remain vested for ~~a period of two years~~the period of validity specified in Sec. above without regards to whether the work has substantially commenced or not. This vesting shall not be extended by any amendments or modifications to ~~a site-specific development plan~~the underlying development approval unless expressly provided by the approving authority at the time the amendment or modification is approved.

(b) Unless extended by the approving authority in accordance with the provisions of ~~article VII of~~ the applicable ~~zoning ordinance~~land development regulation, the right to construct improvements ~~development plan~~ shall terminate at the end of the vesting period unless the work has substantially commenced. ~~-~~Anyone desiring to develop property in accordance with a lapsed ~~site-specific development plan~~development approval, that is, one for which the ~~vesting~~ period of validity has ~~terminated~~expired, must submit a new application for the

underlying development approval and, for site specific vesting plans, designate the new application as an application for ~~new site-specific development plan~~site specific vesting plan.~~ application under article VII of the zoning ordinance.~~

(c) Work shall be determined to be substantially commenced if substantial progress has been made in the physical commencement of the work. Substantial commencement may include, but not be limited to the following:

(1) The project has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;

(2) The project has installed substantial on-site infrastructure; or

~~(d)~~ Upon issuance of a building permit, the expiration provisions of G.S. 160DA-1111~~418~~ and the revocation provisions of G.S. 160DA-1115~~422~~ shall apply, except that a building permit shall not expire or be revoked because of the running of time while a ~~zoning vested right~~site specific vested right under this section is outstanding.

(d)

~~(e) (d)~~ Following approval or conditional approval of a ~~site-specific development plan~~site specific vesting plan, nothing in this article shall exempt such a 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.

(e)

(f) ~~(e) F~~Failure to abide by the terms and conditions of a ~~site-specific development plan~~site specific vesting plan approval will result in a forfeiture of vested rights. Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the ~~zoning ordinance~~land development regulation.

~~(Code 1971, § 23-54)~~

Sec. 40-8~~1~~0. Termination of a site specific vested right.

A ~~zoning~~site specific vested right that has been ~~vested,~~established as provided in this article, shall terminate:

(1) At the end of the applicable ~~vesting period~~period of validity ~~with respect to buildings and uses for which no valid building permit applications have been filed~~if the work on the project has not substantially commenced;

(2) With the written consent of the affected landowner;

(3) Upon findings by the Hendersonville ~~city~~ City ~~council~~council, by ordinance after notice and an evidentiary ~~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-specific development plan~~site specific vesting plan;

(4) Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the 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 city, 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 action);

(5) Upon findings by the Hendersonville ~~city~~ City ~~council~~Council, by ordinance after notice and an evidentiary ~~hearing~~, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approving by the approving authority of the ~~site-specific development plan~~site specific vesting plan; or

(6) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the ~~site-specific development plan~~site specific vesting plan, in which case the approving authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

~~(Code 1971, § 23-56)~~

Sec. 40-82~~1~~. Voluntary annexation.

A petition for annexation filed with the city under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any ~~zoning vested right~~site specific vested right with respect to the properties subject to the petition has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~160D-108.1. A statement that declares that no ~~zoning vested right~~site specific vested right has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~160D-108.1, or the failure to sign a statement declaring whether or not a ~~zoning vested right~~site specific vested right has been established, shall be binding on the landowner, and any such ~~zoning vested right~~site specific vested right shall be terminated.

Part 3 – Permit Choice~~(Code 1971, § 23-57)~~

Sec. 40-83. Applicability.

If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made, or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, permit choice shall apply.

Sec. 40-84. Effect of Permit Choice.

If permit choice is applicable, the applicant may choose whether to apply the land development regulation at the time of the submission of the completed application or the land development regulation in effect at the time of the issuance of the development approval. If the applicant chooses the version of the land development regulation at the time of the submission of the completed application, the applicant shall not be required to wait until the outcome of the amendment to the land development regulation prior to a decision being made on the development permit.

(a)

If an applicable land development regulations is amended after a development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the land development regulation will apply to the development permit.~~Sec. 40-82. Limitations.~~

(b)

(c) If a permit application is placed on hold at the request of the applicant for a period of six (6) consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the City for a period of six (6) consecutive months or more, the application

review shall be discontinued and the development regulations in effect at the time permit processing is resumed shall apply to the application.

(d) Any person aggrieved by the failure of the City to comply with this section may apply to Henderson County Superior Court for an order compelling compliance and the court may issue that order.

~~Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160A-385.1.~~

~~(Code 1971, § 23-58)~~

~~Sec. 40-83. Repealer.~~

~~If G.S. 160A-385.1 is repealed, this article shall be deemed repealed and the provisions thereof no longer effective.~~

~~(Code 1971, § 23-59)~~

LOCALiQ

StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Item A.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	06/21/2021
Order Number:	5980882
Prepayment Amount:	$ 0.00

Column Count:	1
Line Count:	147.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	1	06/22/2021 - 06/22/2021	Govt Public Notices
HEN blueridgenow.com	1	06/22/2021 - 06/22/2021	Govt Public Notices

Total Order Confirmation	**$22.64**

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold three public hearings on Friday, July 2, 2021, at 5:45 p.m., in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN 9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00** a.m. on July 1, 2021 to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

6/22 & 6/29/2021 5980882

SPECIAL CALL MEETING NOTICE
PUBLIC HEARING NOTICE(S)

Notice is hereby given that the City of Hendersonville City Council will hold a **Special Call Meeting on Friday, July 2, 2021, at 9:00 a.m., in the City Operations Assembly** Room located at 305 Williams Street, Hendersonville NC to consider the following three public hearings:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and
Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN

9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00 a.m. on July 1, 2021,** to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

Run two times: Tuesday, June 22, 2021
Tuesday June 29, 2021

CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY
PLANNING DIVISION

SUBMITTER:	Matthew Manley, Planning Manager	**MEETING DATE:**	July 1, 2021
AGENDA SECTION:	Public Hearing	**DEPARTMENT:**	Community Development

TITLE OF ITEM: Standard Rezoning: 305 S Whitted St. (P21-18-RZO) – *Matt Manley, Planning Manager, AICP.*

SUGGESTED MOTION(S):

1. For Recommending Approval:	2. For Recommending Denial:
I move City Council approve the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons: **[Please state reasons describing why this development is good for the community. Example suggestions below or include your own]** 1. The development will provide additional dense residential zoning [if applicable] 2. The proposed zoning is compatible with the area. [if applicable].	I move City Council deny the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is inconsistent with the Comprehensive Plan's Future Land Use map and that the rezoning is not reasonable nor in the public interest for the following reasons: **[Please state reasons describing why this development is not good for the community]**

SUMMARY:

The City is in receipt of a Zoning Map Amendment (rezoning) application from William Schaffer to rezone properties along S Whitted St (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) from I-1 Industrial / R-15 Medium Density Residential to R-6 High Density Residential.

For additional detail, please see the attached staff report prepared for the Planning Board.

PROJECT/PETITIONER NUMBER:	P21-18-RZO
PETITIONER NAME:	William Schaffer
ATTACHMENTS:	1. Planning Board Staff Report 2. Proposed Zoning Map 3. Current Land Use Map 4. Non-binding Survey 5. Draft Ordinance 6. Application 7. Planning Board Minutes

Ordinance #___-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR THE PARCELS OF WILLIAM SHAFFER & ANN TWIGS (PINS# 9568-46-9083, 9568-45-9994 AND 9568-55-0841) BY CHANGING THE ZONING DESIGNATION FROM I-1 (LIGHT INDUSTRIAL) DISTRICT & R-15 (MEDIUM DENSITY RESIDENTIAL) DISTRICT TO R-6 (HIGH DENSITY RESIDENTIAL) DISTRICT

IN RE: 305 S Whitted St (PINS - 9568-46-9083, 9568-45-9994 and 9568-55-0841) (File # P21-18-RZO)

WHEREAS, the City is in receipt of a Rezoning application from William Shaffer and Ann Twigs; and

WHEREAS, the Planning Board took up this application at its regular meeting on June14, 2021; voting to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, City Council took up this application at its regular meeting on July 1, 2021, and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:
   Parcel 9568-46-9083 (R-15), 9568-45-9994 (R-15/I-1) and 9568-55-0841 (I-1) from R-15 (Medium Density Residential) & I-1 (Light Industrial) District to R-6 (High Density Residential) District
2. Any development of the parcels shall occur in accordance with the Zoning Ordinance of the City of Hendersonville, North Carolina.

3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 1st, day of July 2021.

_____

Attest: Barbara G. Volk, Mayor, City of Hendersonville

_____

Angela L. Reece, City Clerk

Approved as to form:

_____

Angela S. Beeker, City Attorney

305 S Whitted I-1/R-15 to R-6 | P21-18-RZO

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

Staff Report Contents

PROJECT SUMMARY 2
SITE CONDITIONS – SITE IMAGES 4
REZONING CRITERIA 6
REZONING CRITERIA 7
REZONING CRITERIA Cont. 8
REZONING CRITERIA CONT. 10
STAFF ASSESSMENT 11
PUBLIC COMMENT 11
PLANNING BOARD - SUMMARY OF ACTION [RESERVED] 12
Summary of Planning Board Recommendations 12
Planning Board Motion 12
SUGGESTED MOTION(S) & CONSISTENCY STATEMENTS 13
ATTACHMENTS 14
- Proposed Zoning Map 14
- Current Land Use Map 14
- Non-binding Survey 14

PROJECT SUMMARY

Applicant: William Shaffer

Property Owner: William Shaffer & Ann Twiggs

Property Address:305 S Whitted St

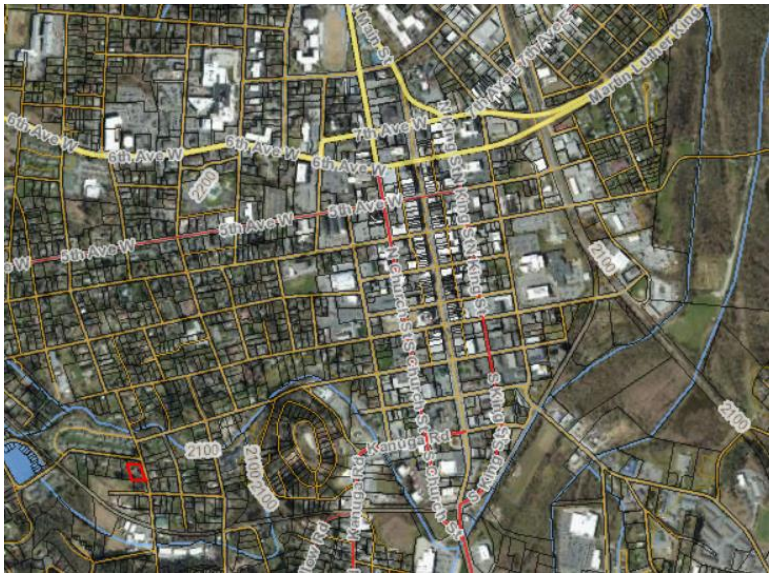
Project Acreage:.93 Acres

Parcel Identification Number(s): 9568-46-9083, 9568-45-9994 and 9568-55-0841

Current Parcel Zoning:I-1/R-15

Proposed Zoning: R-6

Neighborhood Compatibility Meeting [if applicable]: N/A



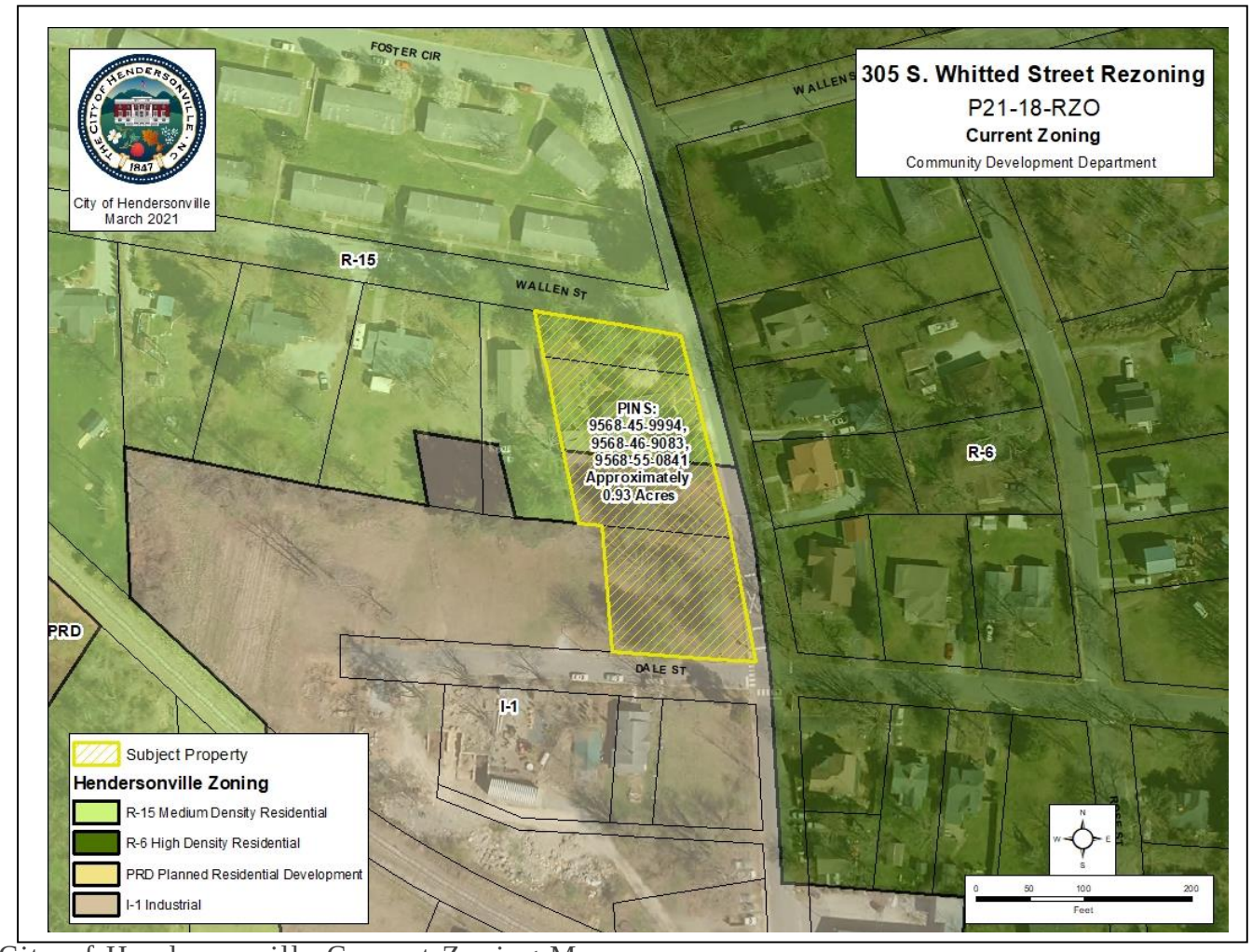
SITE VICINITY MAP

The City is in receipt of a Zoning Map Amendment (standard rezoning) application from William Shaffer and Ann Twiggs to rezone the property at 305 S Whitted St (PIN # 9568-45-9994) and adjacent parcels (PIN # 9568-46-9083 and 9568-55-0841) from I-1 Industrial / R-15 Medium-Density Residential to R-6 High Density Residential. The .93 Acre (40,511 Sq Ft) site is currently the site of a single-family residence and a vacant wooded lot. The property extends along S Whitted St from W Allen St to Dale St. The property is in very close proximity (.10 miles) to the future Ecusta Trail.

The proposed rezoning from I-1 to R-6 would be an extension of the R-6 Zoning District that is prevalent in the area to the east of S Whitted St. The proposed plan for these lots is to build one additional single-family home, but no other development is proposed at this time.

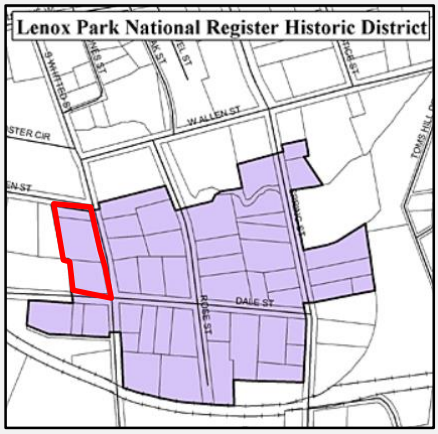
As a standard rezoning, there is no binding site plan or restriction of uses beyond what is permitted by the Zoning Code.

PROJECT SUMMARY – CONTINUED



City of Hendersonville Current Zoning Map

The predominant uses in the area around the subject property are residential. However, Industrial uses are also found. The subject property sits just to the north of the proposed Ecusta Trail (rail trail). Due to this location, the property is in an area that is transitioning from industrial to residential.



The subject property is part of the Lenox Park National Register Historic District (ca. 1908-1952). As this is not a local historic district, no design guidelines exist to restrict design of new construction.

While the current I-1 zoning does allow residential uses, the minimum lot size, width at front building line and setback requirements are not conducive to infill, residential development.

SITE CONDITIONS – SITE IMAGES

View of existing home at 305 S Whitted



View of small narrow lot at corner of S Whitted St & W Allen St



View of vacant lot at corner of Dale St and S Whitted St.



Interior view of vacant lot at Dale and S. Whitted. Potential site of new single-family home



View of vacant space on large lot containing existing house at 305 S Whitted.



Rear view (from Dale St) of vacant lot on corner of Dale St & S Whitted St. Adjacent vacant land visible to the left.





REZONING CRITERIA

COMPREHENSIVE PLAN CONSISTENCY, COMPATABILITY, CHANGED CONDITIONS, PUBLIC INTEREST, ADEQUATE PUBLIC FACILITIES AND ENVIRONMENTAL IMPACTS [AS APPLICABLE]

The proposed rezoning to R-6 aligns with the Comprehensive Plan's *Land Use & Development Chapter* with the designation of this area as **High Intensity** and **Medium Intensity Residential.** Additionally, the Comp Plan designation as a *Historic Preservation* is also supported by the rezoning with the proposed infill of single-family homes. The proposed residential use is in line with the existing uses in the area therefore preserves the residential character while enhancing the area by putting an underutilized lot (undeveloped, overgrown with ivy, used as a dump site, etc.) in to use.

Goal LU-6.

***Medium-Intensity Neighborhood:* Provide a transition between High- and Low-Intensity Neighborhood areas while providing a wide range of housing formats and price points. Promote walkable neighborhood design and compatible infill development in new neighborhoods and as a means of preserving and enhancing existing neighborhoods.**

Strategy LU-6.1.

Locations:

- Existing neighborhoods zoned R-15, R-10, and R-6, including residential historic districts

Strategy LU-6.2.

Primary recommended land uses:

- Single-family attached and detached residential
- Open space

Strategy LU-6.4.

Development guidelines:

- Two to eight units per gross acre
- At least 60% open space in new developments on three or more acres
- Architectural guidelines to encourage compatibility when different housing types abut one another (e.g. similar building height, massing, roof pitch, and rhythm of windows and façade detailing)
- Encouragement of walkable neighborhood design, as described under Goal PH-3 in Chapter 2

REZONING CRITERIA

COMPREHENSIVE PLAN CONSISTENCY

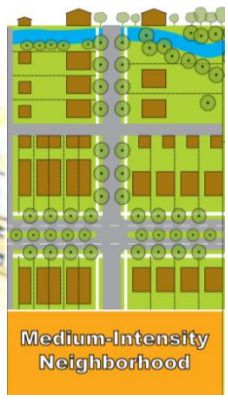
The subject property is classified as **Medium-Intensity & High-Intensity Neighborhood** on the *2030 Comprehensive Plan's Future Land Use Map (FLUM)*. A site-specific section of the *FLUM* is included in this staff report (see below).

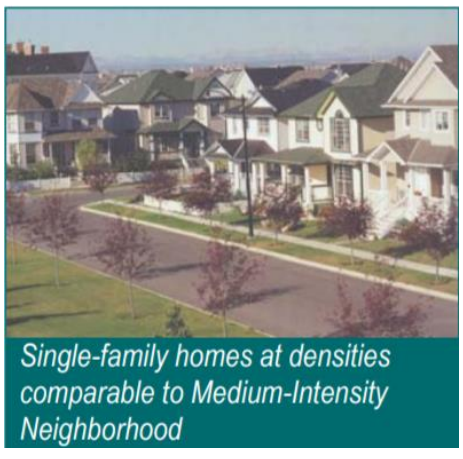
The rezoning site (being located in the Lenox Park NR Historic District) is also included in the *Historic Preservation* designation of the Growth Management map (see below).

The *FLUM* designates all adjacent parcels as either **Medium Intensity Neighborhood** (northern portion) **or High-Intensity Neighborhood** (southern portion)**.**

The most relevant goals of the **Medium Intensity Neighborhood** classification are outlined on this page.







Single-family homes at densities comparable to Medium-Intensity Neighborhood

Goal LU-7.

High-Intensity Neighborhood. ***Encourage low-maintenance, high-density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods.***

Strategy LU-7.1.

Locations:

- Neighborhoods near Downtown, excluding historic neighborhoods

Strategy LU-7.2.

Primary recommended land uses:

- Single-family attached and multi-family residential
- Planned Residential Developments
- Open space

Strategy LU-7.4.

Development guidelines:

- Eight or more units per gross acre
- Placement of higher-intensity uses (e.g. office or higher-density residential) close to Boulevards and Major Thoroughfares, and/or adjacent to Neighborhood and Regional Activity Centers
- At least 60% open space in new residential developments greater than three acres
- Architectural guidelines to encourage compatibility between different land uses (e.g. similarities in building height, massing, roof pitch, and rhythm of windows and façade detailing)
- Encouragement of walkable neighborhood design, as described under Goal PH-3 in Chapter 2

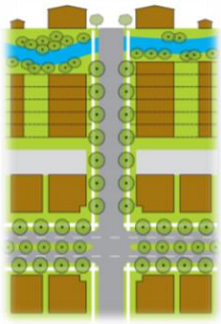
REZONING CRITERIA Cont.

COMPREHENSIVE PLAN CONSISTENCY

The subject property is also classified as **High-Intensity Neighborhood** on the *2030 Comprehensive Plan's Future Land Use Map (FLUM)*.

The most relevant goals of the **High-Intensity Neighborhood** classification are outlined on this page.





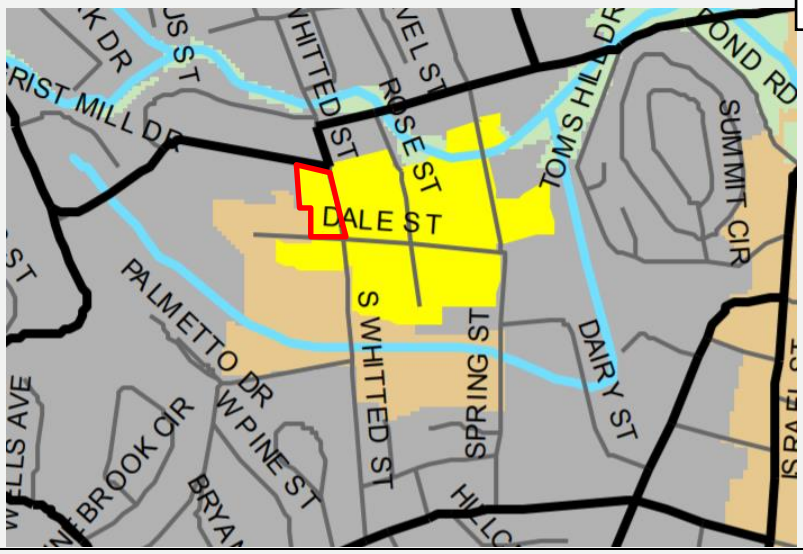
High-Intensity Neighborhood



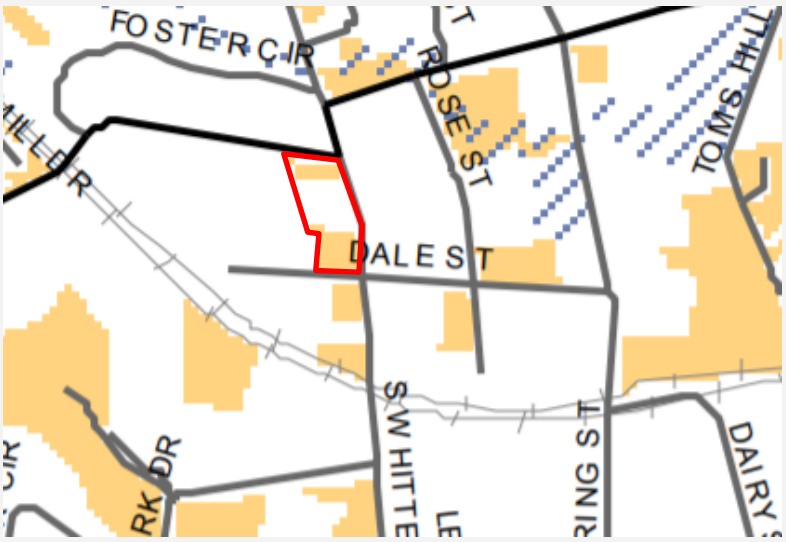
Example of High-Intensity Neighborhood development

Growth Management

Historic Preservation (yellow): • *Historic Preservation Areas (yellow): National or local historic districts in which the City should uphold policies that preserve historic integrity and character*



Development Framework Map: *The map depicts locations of greenfield development opportunities in Hendersonville and surrounding areas. Development Opportunities – orange - includes vacant land, agricultural land, and single-family residential properties greater than five acres.*



Floodplain Considerations: *The Subject Property is outside of the floodplain and no blue line streams are present on the site.*



Section 2.3. Goals and Strategies

Goal PH-1.
Maintain and enhance older neighborhoods so that they retain their value and viability in the face of demographic and market changes.

Strategy PH-1.1.
Promote compatible infill development. Compatible infill development helps to re-invigorate older neighborhoods with new housing products, amenities or services while minimizing negative impacts. Compatibility is achieved through selection of appropriate land uses and/or design strategies that smooth the transition between potentially conflicting land uses. Design strategies should address architectural compatibility and scale as well as landscape buffering.

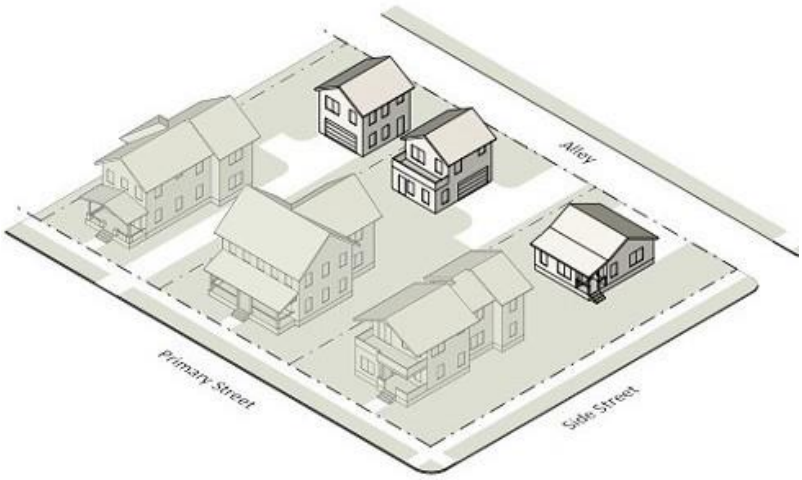
Strategy PH-2.3.
Allow housing arrangements in existing and new neighborhoods that provide affordable and/or multi-generational housing alternatives in single-family neighborhoods. An additional rental housing unit on a single-family property can provide rental income to the homeowner as well as an affordable housing alternative. Such housing can assist families in providing for older or younger family members who cannot afford housing or have special needs that require home care. Additional units may be detached accessory structures or integral to the principal unit. Zoning standards should encourage such arrangements while protecting existing neighborhoods from impacts such as parking shortages and significant exterior changes.

Action PH-2.3.1.
Continue allowing accessory and integral additional housing units that are associated with single-family detached units. Ensure that conversions of single-family properties do not disrupt the character of existing neighborhoods.

REZONING CRITERIA CONT.

The proposed rezoning further serves the Comprehensive Plan's goals in the *Population & Housing Chapter* by helping to enhance an older neighborhood with infill residential development.

Given the size of the parcel, it can be subdivided into three lots thus providing an opportunity for two additional single-family homes and two ADUs – as would be permitted by-right (subject to Section 16-4) under the R-6 zoning.



STAFF ASSESSMENT

Given the compatibility with the Comprehensive Plan goals, the surrounding existing residential uses, the existing R-6 zoning adjacent to the site and throughout the area, the best practice of providing opportunities for/incentivizing infill development, and the need for additional attainable housing in Hendersonville, the proposal to rezone the property from I-/R-15 to R-6 appears to provide a benefit to the City.

PUBLIC COMMENT

No Neighborhood Compatibility Meeting is required for a standard Zoning Map Amendment (rezoning) application. Staff has posted signs and mailed letters to property owners within 400’ of the subject property in order to satisfy code requirements and encourage public engagement. Staff has not received any calls on the posted signs or letters.

PLANNING BOARD - SUMMARY OF ACTION [RESERVED]

Summary of Planning Board Recommendations

After the presentation by staff, no additional comments were provided by the applicant. Planning Board proceeded with a motion without additional discussion.

Planning Board Motion

The following motion was supported unanimously (6-0) by the Planning Board:

I move the Planning Board recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant. Finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons:

The development will provide additional dense residential zoning [if applicable]

The proposed zoning is compatible with the area. [if applicable].

SUGGESTED MOTION(S) & CONSISTENCY STATEMENTS

PLANNING BOARD - APPROVAL

I move the Planning Board recommend to City Council to approve the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) *from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons:*

[Please state reasons describing why this development is good for the community. Example suggestions below or include your own]

1. *The development will provide additional dense residential zoning [if applicable]*
2. *The proposed zoning is compatible with the area. [if applicable].*

PLANNING BOARD - DENIAL

I move Planning Board recommend to City Council to deny the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) *from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is not consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is not reasonable and in the public interest for the following reasons:*

[Please state reasons describing why this development should not be approved]

CITY COUNCIL - APPROVAL

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) *from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons:*

[Please state reasons describing why this development is good for the community. Example suggestions below or include your own]

1. *The development will provide additional dense residential zoning [if applicable]*
2. *The proposed zoning is compatible with the area. [if applicable].*

CITY COUNCIL - DENIAL

I move City Council to deny the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties (PINs: 9568-46-9083, 9568-45-9994 and 9568-55-0841) *from I-1/R-15 Zoning to R-6 (High Density Residential) Zoning District based on the application submitted by the applicant finding that the rezoning is not consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is not reasonable and in the public interest for the following reasons:*

[Please state reasons describing why this development should not be approved]

ATTACHMENTS

- Proposed Zoning Map
- Current Land Use Map
- Non-binding Survey

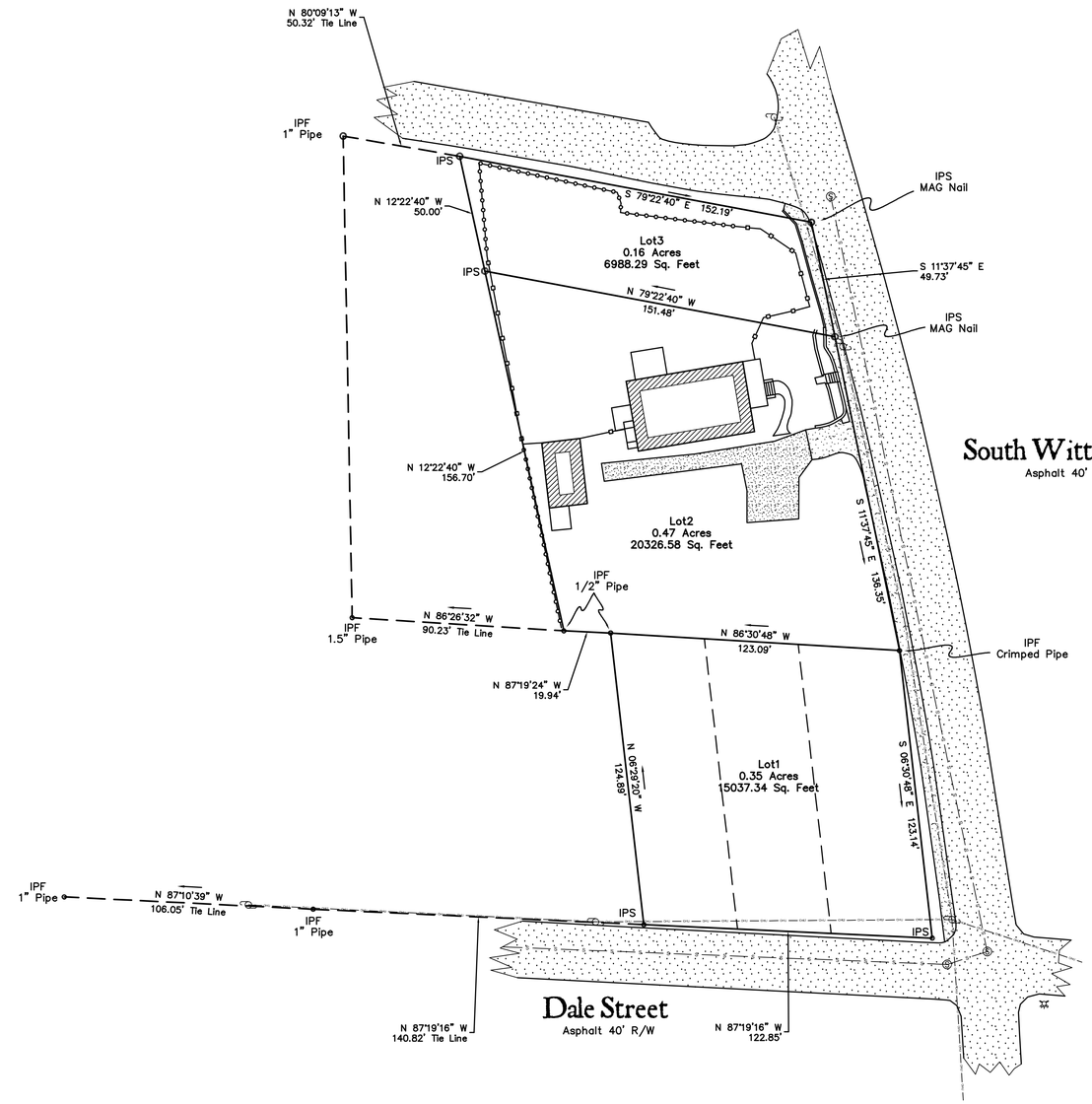
PROPOSED ZONING MAP



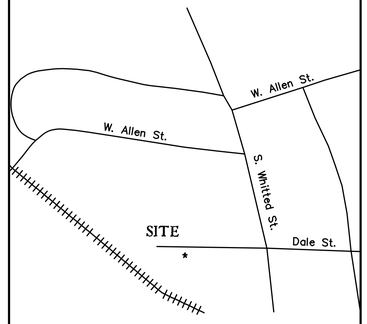
CURRENT LAND USE MAP



Preliminary Plat - Not for recordation, conveyances, or sales



Grid North



Not To Scale

Vicinity Map

LEGEND	
IPF	Iron Pin Found
IPS	Iron Pin Set 5/8" Rebar
PT	Unmarked Point
	Utility Pole
— OHU —	Overhead Utilities
	Fire Hydrant
S	Sanitary Sewer Manhole
W	Water Meter

Date:	June 6, 2021
Ref. Deed Book:	D.B. 1503 Pg. 295 D.B. 1503 Pg. 298
Ref. Plat Book:	Slide B 023
Tax Parcel Number:	9568-46-9083, 9568-45-9994 9568-45-0841
Drawn By: JHB	Party Chief: JHB
DWG File:	S-21XX-XXX

NOTES

- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
- All distances are horizontal unless otherwise noted.
- All acreage is by coordinate method.
- No attempt has been made as a part of this boundary survey to obtain or show data concerning existence, size, depth, condition, capacity, or location of any utility or municiple/public service facility. For information regarding these utilities or facilities, please contact the appropriate agencies.
- Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land use regulations; and any other facts that an accurate and current title search may disclose.
- This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements shown are located correctly, and that no visible encroachments exist unless otherwise shown.
- The error of closure is 1:10,000.
- This is a Class "A" Survey.

Copyright © J.H. Briscoe Land Surveying, PLLC. All rights reserved. No part of this drawing may be reproduced by photocopying, recording or by any means, or stored, processed or transmitted in or by any computer or other system without the prior written permission of the surveyor. This survey is valid only for the parties hereon.

"I, James H. Briscoe III, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:
(1) Class of survey: A
(2) Positional accuracy: 0.015 horizontal & 0.020 vertical
(3) Type of GPS field procedure: NC RTN Network
(4) Dates of survey: 5/14/21
(5) Datum/Epoch: NAD 83 (2011)
(6) Published/Fixed-control use: NC RTN Network
(7) Geoid model: 12B
(8) Combined grid factor(s): 0.99977595
(9) Units: Feet

I, James H. Briscoe, PLS, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book_____ page_____); that the boundaries not surveyed are clearly indicated as drawn from information found in Book_____ page_____; that the ratio of precision or positional accuracy as calculated is 1: 10,000; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this_____day of _____, A.D., 2021.

_____
James H. Briscoe III N.C. PLS L-5206

SCALE
30 0 15 30 60 120
30 Feet to the Inch

Survey of
D.B. 1503 Pg. 295 & D.B. 1503 Pg. 298
for
William Shaffer

State of North Carolina
Henderson County
Hendersonville Township

J.H. Briscoe Land Surveying, PLLC
P.O. Box 215
Skyland NC, 28776
828-333-1205
License No. P-1688

Zoning Ordinance Map Amendment

Sections 4-1 and 11-1 of the City Zoning Ordinance. The following are required to constitute a complete application for a zoning map amendment: This form and the property owner(s) signature(s), if applicable. Appropriate fees. A survey and/or metes and bounds description of the property. Applications for zoning map amendments are due at least 30 days prior to any Planning Board Meeting.

① Page 1 ② Page 2

Section 11-4 Standards: The advisability of amending the text of thei Zoning Ordinance or the Official Zoning Map is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning Map, the City Council shall consider the following factors among others:

a) Comprehensive Plan Consistency. Consistency with the Comprehensive Plan and amendments thereto.

b) Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with exisiting and proposed uses surrounding the subject property.

c) Changed Conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.

d) Public Interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.

e) Public facilities. Whether and to the extent which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

f) Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, stormwater managment, streams, vegetation, wetlands and wildlife.

Back Submit

Zoning Ordinance Map Amendment

Sections 4-1 and 11-1 of the City Zoning Ordinance. The following are required to constitute a complete application for a zoning map amendment: This form and the property owner(s) signature(s), if applicable. Appropriate fees. A survey and/or metes and bounds description of the property. Applications for zoning map amendments are due at least 30 days prior to any Planning Board Meeting.

① Page 1 ② Page 2

Section 11-4 Standards: The advisability of amending the text of thei Zoning Ordinance or the Official Zoning Map is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning Map, the City Council shall consider the following factors among others:

a) Comprehensive Plan Consistency. Consistency with the Comprehensive Plan and amendments thereto.

Amendment is consistent with comprehensive plan in that it would take a property within the Lenox Park National Register Historic District that is currently zoned Industrial and amend it to High Density Residential, This amendment would make the zoning of the subject property consistent with the zoning in the remaining portion of the Historic District.

b) Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with exisiting and proposed uses surrounding the subject property.

Surrounding uses are residential. Subject property, if amended, would be zoned residential, consistent with surrounding properties. The amendment would allow a single additional residential unit to be built on the subject property. Properties across S. Whitted Street (on the East side) are zoned high density residential. Existing housing stock on the West side of S. Whitted matches that of East side in both age and character. Requested amendment would match zoning on the West side with that of the East side.

c) Changed Conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.

Industrial zoning of subject property is a remnant of the period in which the nearby railroad was active and rail line crossing at S. Whitted Street was an appropriate industrial location. Abandonment of the rail line and the proposed conversion to the Ecusta Trail has changed the appropriateness of an Industrial zoning in an otherwise residential neighborhood.

d) Public Interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.

Surrounding neighborhood of Lenox Park is residential in character. Subject lot is zoned Industrial. Rezoning would prevent industrial incursion into a residential neighborhood. Proposed additional single family residential construction would contribute to residential character of the neighborhood without inappropriately increasing the neighborhood density.

e) Public facilities. Whether and to the extent which adequate public facilities and services such as wa supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

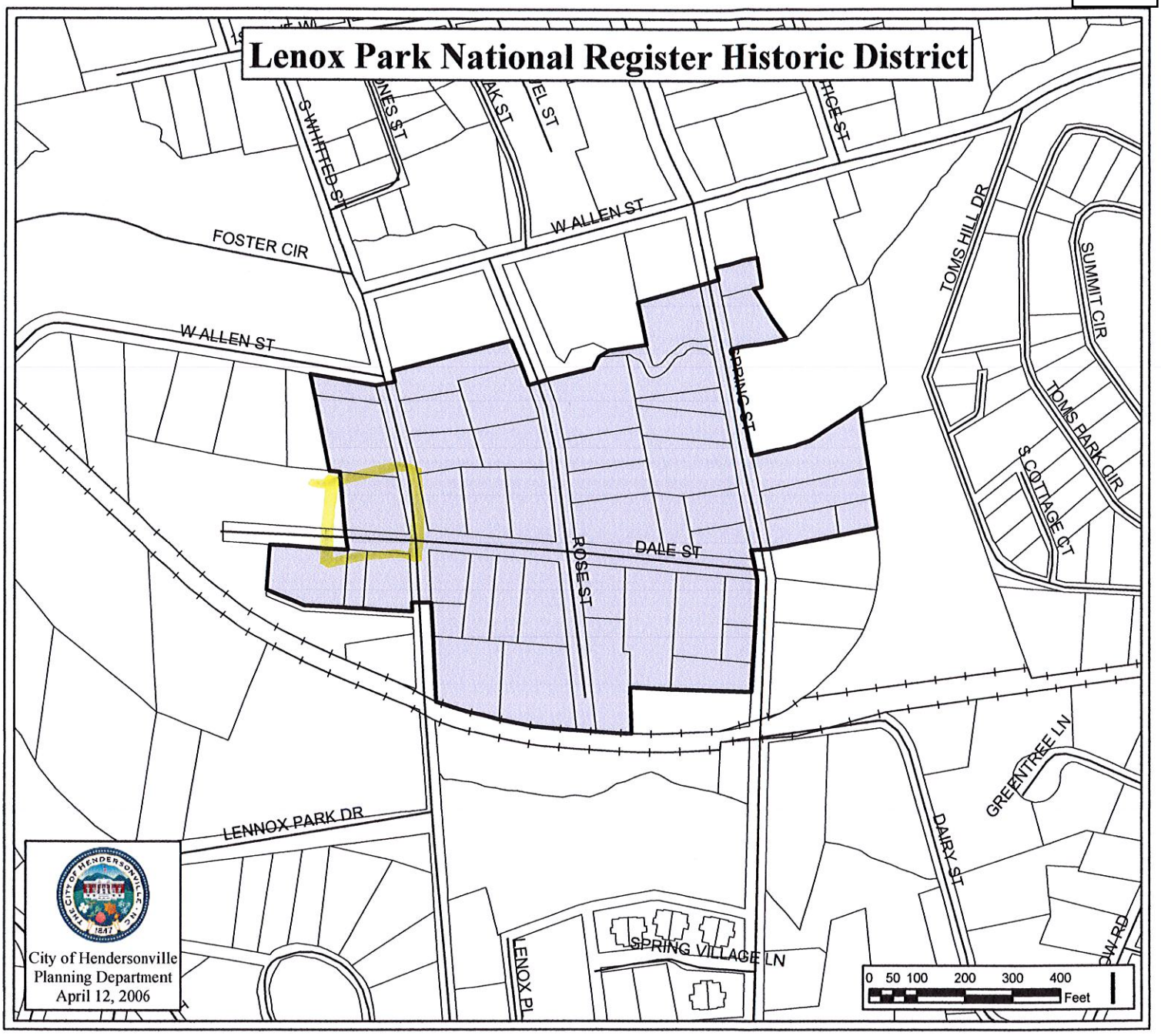
All public services and facilities such as water supply, wastewater treatment, fire and police protection and transportation are currently available to subject property.

f) Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, stormwater managment, streams, vegetation, wetlands and wildlife.

Proposed amendment would not result in adverse impacts on the natural environment. Proposed amendment would allow construction of an additional single family residential dwelling while retaining existing mature trees. Without the proposed amendment, mature trees would have to be eliminated in order to construct the dwelling.

Back Submit

2 / 2


Lenox Park National Register Historic District
S WHITTED ST
W ALLEN ST
FOSTER CIR
W ALLEN ST
SPRING ST
TOMS HILL DR
SUMMIT CIR
TOMS BARK CIR
S COTTAGE CT
ROSE ST
DALE ST
GREENTREE LN
LENNOX PARK DR
DAIRY ST
LENOX PL
SPRING VILLAGE LN
City of Hendersonville
Planning Department
April 12, 2006
0 50 100 200 300 400
Feet

Minutes of the Planning Board
Regular Meeting - Electronic
June 14, 2021

Members Present: Jon Blatt (Vice-Chair), Neil Brown, Robert Hogan, Peter Hanley, Bob Johnson, Candi Guffey

Members Absent: Tamara Peacock, Jim Robertson, Chair, Hunter Jones

Staff Present: Tyler Morrow, Planner, Lew Holloway, Community Development Director, Matt Manley, Planning Manager and Terri Swann, Administrative Assistant III

I Call to Order. ***The Chair called the meeting to order at 4:02 pm. A quorum was established.***

II Approval of Agenda. Matt Manley, Planning Manager added a staff update under Other Business. ***Mr. Hanley moved for the revised agenda to be approved. The motion was seconded by Mr. Brown and passed unanimously.***

III Approval of Minutes for the meeting of May 10, 2021. ***Mr. Hanley moved to approve the Planning Board minutes of the meeting of May 10, 2021. The motion was seconded by Mr. Brown and passed unanimously.***

IV Old Business - None

V(A) Conventional Rezoning – Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential. (File #P21-18-RZO). Mr. Manley gave the following background:

Mr. Manley stated this rezoning is for a zoning map amendment and is not a conditional rezoning, it is just a straight rezoning. It involves three parcels which are currently split zoned R-15, Medium Density Residential and I-1, Industrial. The proposed rezoning would be R-6, High Density Residential. This property is just under an acre and is currently the site of a single-family residence and a wooded lot.

Mr. Manley showed the survey and pointed out the lots. The applicant would like to add one more residence to the property. Mr. Manley pointed out the structure and the wooded lot and showed the Board photos of the existing condition of the property. He also showed the current zoning map and the proposed zoning map. As a standard rezoning there is not a binding site plan or restriction beyond what is allowed in the R-6 Zoning District.

The proposed rezoning to R-6 would be an extension of the R-6 Zoning District that is prevalent in the area to the east of S. Whitted Street. The property extends along S. Whitted Street from W. Allen to Dale Street and is close to the future Ecusta Trail.

The subject property is classified as Medium-Intensity and High-Intensity Neighborhood on the 2030 Comprehensive's Plan's Future Land Use Map. The primary recommended land uses are single-family attached and detached residential and open space. The Medium-Intensity Neighborhood promotes and encourages walkable neighborhood design.

The rezoning site is located in the Lennox Park National Register Historic District.

The suggested motions are listed.

Chair asked if there were any questions for staff.

There were no questions for staff.

Vice-Chair asked if the applicant would like to speak. Mr. Shaffer stated he would answer any questions, but Mr. Manley did a good job of explaining the rezoning. There were no questions for the applicant.

Vice-Chair asked if there was anyone in attendance that would like to speak. No one spoke.

Vice-Chair asked if anyone on the zoom call would like to speak. No one spoke.

Mr. Hanley moved the Planning Board recommend City Council to approve the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties; PIN's 9568-46-9083, 9568-45-9994 and 9568-55-0841 from I-1/R-15 Zoning to R-6, High Density Residential Zoning District based on the application submitted by the applicant finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons: 1. it is in the public's interest to rezone this property, 2. The development will provide additional dense residential zoning, and 3. The proposed zoning is compatible with the area. Mr. Johnson seconded the motion which passed unanimously.

V(B) Conventional Rezoning – Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone the subject property PIN 9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from C-3, Highway Business and R-10, Medium Density Residential to C-3, Highway Business. (File #P21-36-RZO). Mr. Morrow gave the following background:

Mr. Morrow stated this is a zoning map amendment application from Larry and Mary Ann Maitland for a rezoning of a portion of a parcel located at Monroe Drive and Asheville Highway. The current zoning is R-10, Medium Density Residential and proposed zoning is C-3, Highway Business. The area to be rezoned is approximately 0.06 acres. This request will remove the R-10 zoning and eliminate the split zoning.

Parcels to the north are zoned C-3, Highway Business and R-10, Medium Density Residential. Parcels to the east are zoned R-10 and include a single-family neighborhood. Parcels located to the south are zoned C-3, Highway Business and R-10, Medium Density Residential and include commercial and residential uses. Parcels located to the west are C-3 and contain commercial uses such as the Blue Ridge Commons Plaza.

The current zoning map and the proposed zoning map was shown to the Board. Mr. Morrow stated as a conventional rezoning, there is no binding site plan or restriction of uses beyond what is permitted by the zoning ordinance. Again, the rezoning is only for a portion of the parcel. The rest of the parcel is currently zoned C-3, Highway Business and can be developed commercially.

The proposed rezoning to C-3 does not currently align with the Comprehensive Plan's Future Land Use map with the designation of Medium Intensity Residential. Commercial uses are not recommended under this designation. If City Council chooses to rezone the property to C-3 then the Comp Plan would also need to be changed to Neighborhood Activity Center. This change is included in the motion.

Photos of the existing site were shown. There are established trees on the property. A survey of the property was also shown. Mr. Morrow stated a lot line adjustment was made on the site and prior to that the whole parcel was zoned C-3. When you move a lot line, the zoning does not move with it, therefore they are requesting this rezoning. They are cleaning this up so that the parcel will not be split zoned. Any construction on the parcel would have to go through the site plan review process with the City.

Vice-Chair asked if there were any questions for staff.

Mr. Johnson asked if access to this property would be off of Monroe Street. Mr. Morrow stated yes, access would come off of Monroe Street. The applicant is working with NCDOT.

Ms. Guffey asked if the commercial traffic will be re-routed onto the residential street. Mr. Morrow stated yes, they would not come off of Asheville Highway.

Vice-Chair asked if there were any further questions for staff. There were no further questions. Vice-Chair asked if the applicant would like to speak.

Mary Ann Maitland, 452 beach Drive stated they would not be removing any trees. Ms. Guffey asked about the access being from Monroe Street. Ms. Maitland stated yes, the access would come off of Monroe Street but the traffic will not actually go through the residential area.

Vice-Chair stated this is not site specific and it could be something different.

Vice-Chair asked if anyone on the zoom call or in attendance would like to speak. No one spoke.

Ms. Guffey stated she was concerned about bringing the commercial traffic into a residential area. Ms. Maitland stated this will not receive a lot of traffic, it will be an office/commercial proprietor.

Mr. Manley stated the property is currently zoned C-3 except for a small portion to the east. They currently could use the portion zoned C-3 for a commercial use.

Mr. Hanley moved the Planning Board to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of the subject property (PIN 9569-36-9825) from R-10, Medium Density Residential to C-3, Highway Business based on the application submitted by the applicant. Finding that the rezoning is inconsistent with the Comprehensive Plan's Future Land Use map this motion also amends a portion of the subject parcel's Future Land Use designation from Medium Intensity Neighborhood to Neighborhood Activity Center. Furthermore, finding the rezoning is reasonable and in the public interest for the following reasons: The rezoning will make the zoning on the subject property more uniform with surrounding properties. Mr. Johnson seconded the motion which passed 5 in favor and 1 opposed.

V(C) 160D Update – Mr. Manley stated the 160D revisions for the Zoning Ordinance, Subdivision Ordinance and Chapter 40 of the City Code are all updates per the North Carolina General Statutes. There is a proposed motion for reference which should include the Zoning Ordinance, Subdivision Ordinance and Chapter 40 of the City Code in the motion. Mr. Manley introduced Scott Adams, Regional Planner from Land of Sky.

Scott Adams briefly went through the changes and explained the 160D update that is a new state law has a deadline of July 1, 2021. That is the date the changes need to be adopted by. He went through the must changes and the may changes and stated another round of changes to clean up the zoning ordinance may come at a later date.

Vice-Chair asked if there were any questions.

Mr. Johnson had questions about the term width being changed to depth in Section 5-23-4-2.2 on page 75. Mr. Adams stated the term depth is typically used in urban design standards. Mr. Johnson asked about microbreweries and the number of barrels changing. Mr. Adams stated this number increased per state law.

Mr. Brown asked about crafting conditions of approval and the section that addresses that in the National Law Review. He talked about these stating conditions should be negotiated prior to the meeting and did this apply to the Planning Board or City Council or both Boards. Mr. Adams stated both Boards and conditions should be discussed in advance of a meeting.

Mr. Johnson asked about the definition of standing. Angie Beeker, City Attorney explained the definition of standing and what it means to have standing in court cases and in public hearings.

Vice-Chair asked about quasi-judicial hearings and the Planning Board having them. Some discussion was made about the Planning Board being a part of Special Use rezoning and this was all before the Conditional Zoning District process was put in place.

Mr. Hanley moved the Planning Board recommend to City Council to approve the adoption of an ordinance amending the official zoning code of the City of Hendersonville, the City of Hendersonville Subdivision Ordinance and Chapter 40 of the City of Hendersonville Code of Ordinances to reflect required revisions based on changes to North Carolina General Statutes in which laws related to enabling statutes for development regulations, formerly found in Chapters 153A and 160A, are now consolidated into a single, unified Chapter 160D. Mr. Hogan seconded the motion which passed unanimously.

VI Other Business. Mr. Hanley made a motion to adopt the annual schedule of meetings for 2021-2022. Ms. Guffey seconded the motion which passed unanimously.

Mr. Manley gave an update concerning the lighting ordinance that was presented to City Council. He also gave an update of the residential projects that would be coming before the Board in the summer months.

VII Adjournment – ***The meeting was adjourned at 5:06 pm.***

LOCALiQ

StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	06/21/2021
Order Number:	5980882
Prepayment Amount:	$ 0.00

Column Count:	1
Line Count:	147.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	1	06/22/2021 - 06/22/2021	Govt Public Notices
HEN blueridgenow.com	1	06/22/2021 - 06/22/2021	Govt Public Notices

Total Order Confirmation	**$22.64**

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold three public hearings on Friday, July 2, 2021, at 5:45 p.m., in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN 9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00** a.m. on July 1, 2021 to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

6/22 & 6/29/2021 5980882

SPECIAL CALL MEETING NOTICE
PUBLIC HEARING NOTICE(S)

Notice is hereby given that the City of Hendersonville City Council will hold a **Special Call Meeting on Friday, July 2, 2021, at 9:00 a.m., in the City Operations Assembly** Room located at 305 Williams Street, Hendersonville NC to consider the following three public hearings:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and
Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN

9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00 a.m. on July 1, 2021,** to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

Run two times: Tuesday, June 22, 2021
Tuesday June 29, 2021

City of Hendersonville

Certification of Mailing of Public Notice

IN RE: S. Whitted St. Rezoning File # P21-18-RZO

I hereby certify that official notice of the City Council Special Meeting on July 2, 2021, has been sent with regard to this matter by U.S. Mail on the date indicated below and as specified in this document.

The parties to whom notice was mailed are indicated on the sheets attached hereto as Exhibit A. Those listed on Exhibit A were mailed the letter, a copy of which is attached as Exhibit B.

Date Mailed: 06.21.21

Site posted this date per Section 7-4-8 of the City of Hendersonville Zoning Ordinance.

Terri Swann
Terri Swann
Administrative Assistant III

Henderson County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: Terri Swann.

Date: 6/21/2021

Notary Signature: Lisa N Stepp

Notary Printed Name: Lisa N Stepp

(Official Seal)

LISA N STEPP NOTARY PUBLIC HENDERSON COUNTY, NC

My Commission Expires: September 5, 2021

Catherine L. Stone, Trustee
234 N. Sandusky Street
Delaware, OH 43015

Wasare 1, LLC
4 Partain Drive
Hartwell, GA 30643

Gale G. Latt
301 Commonsgate Drive
Goldsboro, NC 27530

Angela June Gray
910 Dale Street
Hendersonville, NC 28739

Barbara Decker
853 Dale Street
Hendersonville, NC 28739

Jannette Lueann Thomas Dillon
308 S. Whitted Street
Hendersonville, NC 28739

Bonnie Smith Lynch
John Lynch
304 S. Whitted Street
Hendersonville, NC 28739

CITY OF HENDERSONVILLE

PLANNING DIVISION
AGENDA ITEM SUMMARY

SUBMITTER: Tyler Morrow **MEETING DATE:** 7-1-21

AGENDA SECTION: PUBLIC HEARING **DEPARTMENT:** Community Development

TITLE OF ITEM: Standard Rezoning: Monroe Drive and Asheville Highway (P21-36-RZO) – *Matthew Manley AICP, Planning Division Manager*

SUGGESTED MOTION(S):

1. For Recommending Approval:

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of the subject property (PIN: 9569-36-9825) from R-10 Medium Density Residential to C-3 Highway Business based on the application submitted by the applicant.

Finding that the rezoning is inconsistent with the Comprehensive Plan's Future Land Use map this motion also amends a portion of the subject parcel's Future Land Use designation from Medium Intensity Neighborhood to Neighborhood Activity Center.

Furthermore, finding that the rezoning is reasonable and in the public interest for the following reasons:

[Please state reasons describing why this rezoning is good for the community. Example suggestions below or include your own]

1) The rezoning will make the zoning on the subject property more uniform with surrounding properties[if applicable]
2) The proposed zoning is compatible with the area. [if applicable].

2. For Recommending Denial:

I move City Council deny the rezoning of a portion of the subject property (PINs: 9569-36-9825) from R-10 Medium Density Residential to C-3 Highway Business for the following reasons:

[Please state reasons describing why this development should not be approved]

1) The development is not consistent with the Comprehensive Plan *[if applicable]*.
2) The development is not compatible with the surrounding uses. *[if applicable]*.
3) The development is not in the public interest because *[state why if applicable]*.
4) There are not adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation available to support the proposed amendment. *[if applicable]*.
5) The development will have a detrimental impact on the natural environment *[if applicable]*.

SUMMARY:

The City is in receipt of a Zoning Map Amendment (standard rezoning) application from Larry and Mary Maitland to rezone a portion of the subject property (PIN # 9569-36-9825) from R-10 Medium Density Residential to C-3 Highway Business. The area to be rezoned is approximately 0.06 Acres and is currently vacant.

PROJECT/PETITIONER NUMBER: P21-36-RZO

PETITIONER NAME: Larry and Mary Maitland

ATTACHMENTS:

- Staff Report
- Proposed Zoning Map
- Site Survey
- Application
- Planning Board minutes

Ordinance #___-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR THE PARCELS OF LARRY AND MARY MAITLAND (PORTION OF PIN# 9569-36-9825 BY CHANGING THE ZONING DESIGNATION FROM R-10 MEDIUM DENSITY RESIDENTIAL TO C-3 HIGHWAY BUSINESS)

IN RE: Monroe Drive and Asheville Highway Rezoning (Portion of PIN 9569-36-9825) (File # P21-36-RZO)

WHEREAS, the City is in receipt of a Rezoning application from Larry and Mary Maitland; and

WHEREAS, the Planning Board took up this application at its regular meeting on June14, 2021; voting 5-1 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, City Council took up this application at its regular meeting on July 2, 2021, and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:
   Portion of parcel 9569-36-9825 R-10 (Medium Density Residential) District to C-3 (Highway Business) District
2. Any development of the parcels shall occur in accordance with the Zoning Ordinance of the City of Hendersonville, North Carolina.

3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 2nd , day of July 2021.

_____

Attest: Barbara G. Volk, Mayor, City of Hendersonville

_____

Angela L. Reece, City Clerk

Approved as to form:

_____

Angela S. Beeker, City Attorney

Monroe Drive and Asheville Highway Rezoning| P21-36-RZO

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

Staff Report Contents

PROJECT SUMMARY 2
SITE CONDITIONS – SITE IMAGES 4
REZONING CRITERIA 6
REZONING CRITERIA 7
STAFF ASSESSMENT 9
PUBLIC COMMENT 9
PLANNING BOARD - SUMMARY OF ACTION 10
Summary of Planning Board Discussions 10
Planning Board Motion 10
PACKET ATTACHMENTS 11
- Proposed Zoning Map 11
- Site Survey 11
- Application 11

PROJECT SUMMARY

Applicant: Larry and Mary Maitland

Property Owner: Larry and Mary Maitland

Property Address: No Address (corner of Asheville Highway and Monroe Drive.

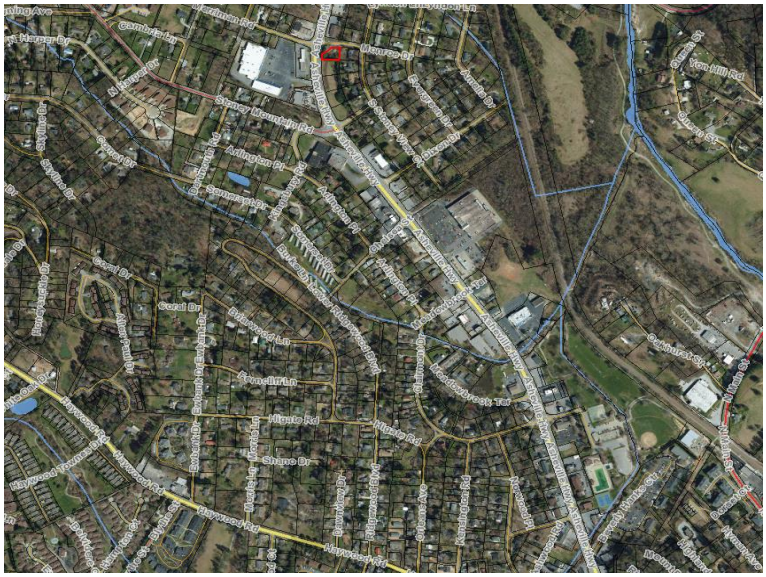
Project Acreage: +- 0.06 Acres

Parcel Identification Number(s): Portion of 9569-36-9825

Current Parcel Zoning: R-10

Proposed Zoning: C-3

Neighborhood Compatibility Meeting [if applicable]: N/A



SITE VICINITY MAP

The City is in receipt of a Zoning Map Amendment (standard rezoning) application from Larry and Mary Maitland to rezone a portion of the subject property (PIN # 9569-36-9825) from R-10 Medium Density Residential to C-3 Highway Business. The area to be rezoned is approximately 0.06 Acres and is currently vacant.

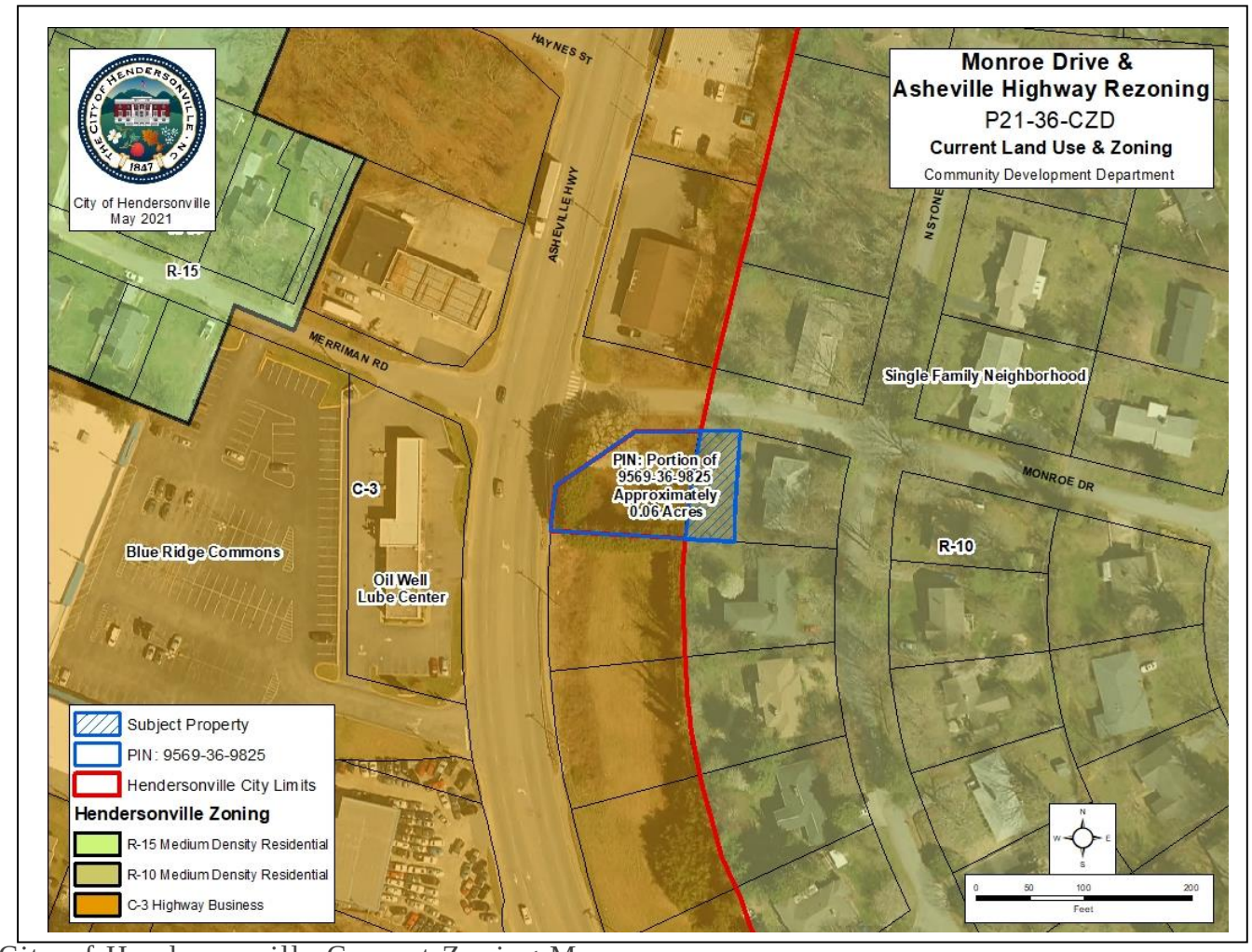
Our office received an application for a lot line adjustment for PIN: 9569-36-9825 . The applicants own PIN: 9569-36-9825 and the property directly to the east (2115 N Stoney View Court). The applicants moved the property boundary between the two properties closer to the existing single family house so that the commercially zoned property would have more acreage.

Prior to the lot line adjustment PIN 9569-36-9825 was entirely zoned C-3 Highway Business. However, the zoning does not move with the property line. The new portion of PIN 9569-36-9825 is still zoned R-10 Medium Intensity Residential.

The applicants are requesting to rezone the remaining portion of parcel 9569-36-9825 from R-10 to C-3. This rezoning will not change the zoning on the rest of PIN 9569-36-9825 or the zoning at 2114 N Stoney View Court. The zoning will only change in portion shown on the attached survey.

As a conventional rezoning, there is no binding site plan or restriction of uses beyond what is permitted by the zoning ordinance. The property if rezoned would still have to go through the site plan review process with City Staff for any development. The site would also have to adhere to all the requirements for any commercial property that abuts residential zoning or uses.

PROJECT SUMMARY – CONTINUED



City of Hendersonville Current Zoning Map

Parcels to the north are zoned C-3 Highway Business and R-10 Medium Density Residential. Parcels located to the east are zoned R-10 and include a single family neighborhood. Parcels located to the south are zoned C-3 Highway Business and R-10 Medium Density Residential and include commercial and residential uses. Parcels located to the west are C-3 and contain commercial uses such as the Blue Ridge Commons Plaza.

PIN 9569-36-9825 can be developed commercially in the area already zoned C-3. However, in order to use the remainder of the property for commercial use requires that it be rezoned. The rezoning would make the parcel uniform and would eliminate the split zoning.

SITE CONDITIONS – SITE IMAGES

View from corner of Monroe Drive and Asheville Highway



View from Monroe Drive



View from Asheville Highway



View from Asheville Highway

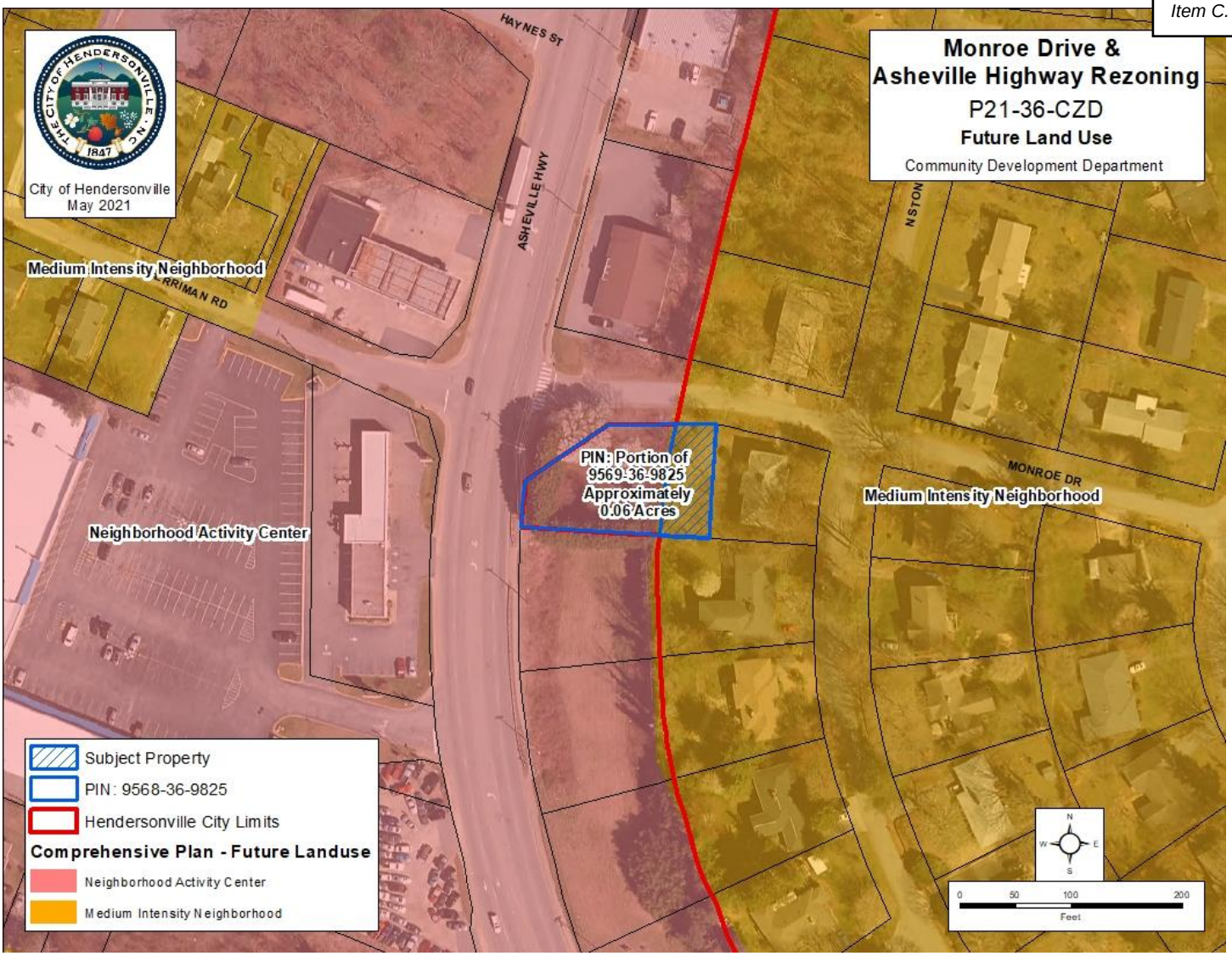


View from Monroe Drive



View from Google Street View





REZONING CRITERIA

COMPREHENSIVE PLAN CONSISTENCY, COMPATABILITY, CHANGED CONDITIONS, PUBLIC INTEREST, ADEQUATE PUBLIC FACILITIES AND ENVIRONMENTAL IMPACTS [AS APPLICABLE]

The proposed rezoning to C-3 **does not** currently align with the Comprehensive Plan's future Land Use Map with the designation of **Medium Intensity Residential.** Commercial uses are not recommended under this designation. If City Council chooses to rezone the property to C-3, then the parcel's Future Land Use classification would also need to be changed to Neighborhood Activity Center. This change is included in your suggested motion for approval. Staff feels that this change is needed to be in compliance with the Comprehensive plan. The remaining portion of PIN 9569-36-9825 is classified as Neighborhood Activity Center

Goal LU-6.

***Medium-Intensity Neighborhood:* Provide a transition between High- and Low-Intensity Neighborhood areas while providing a wide range of housing formats and price points. Promote walkable neighborhood design and compatible infill development in new neighborhoods and as a means of preserving and enhancing existing neighborhoods.**

Strategy LU-6.1.

Locations:

- Existing neighborhoods zoned R-15, R-10, and R-6, including residential historic districts
- Existing or planned neighborhoods that reflect the same densities as the R-15, R-10 and R-6 zoning districts (Two to eight units per gross acre)
- Undeveloped properties that are surrounded by or adjacent to the above neighborhoods

Strategy LU-6.2.

Primary recommended land uses:

- Single-family attached and detached residential
- Open space

Strategy LU-6.3.

Secondary recommended land uses:

- Limited multi-family residential along roadways designated as Boulevards or Major Thoroughfares on the Future Land Use Map
- Planned Residential Developments
- Local public and institutional uses
- Recreational amenities

Strategy LU-6.4.

Development guidelines:

- Two to eight units per gross acre
- At least 60% open space in new developments on three or more acres
- Architectural guidelines to encourage compatibility when different housing types abut one another (e.g. similar building height, massing, roof pitch, and rhythm of windows and façade detailing)
- Encouragement of walkable neighborhood design, as described under Goal PH-3 in Chapter 2

REZONING CRITERIA

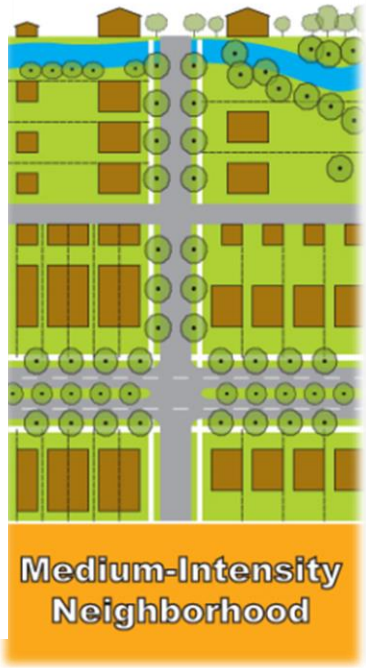
COMPREHENSIVE PLAN CONSISTENCY

The subject property is classified as **Medium-Intensity Neighborhood** on the *2030 Comprehensive Plan's Future Land Use Map*.

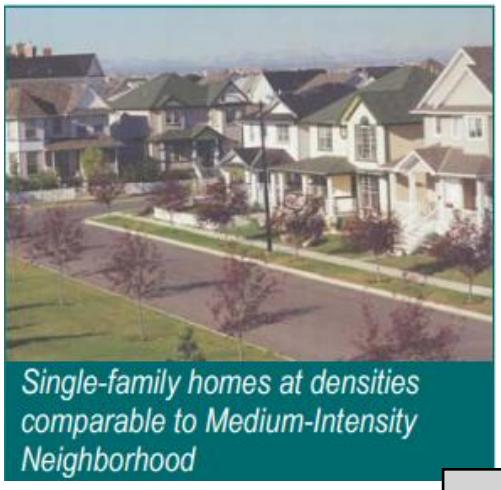
The subject property is classified as an enhancement/preservation area. The remaining part of portion of PIN: 9569-36-9825 is classified as Neighborhood Activity Center.

The Future Land Use Map designates all adjacent parcels as either **Neighborhood Activity Center or Medium-Intensity Neighborhood**

The goals of the **Neighborhood Activity Center** classification are outlined on this page.





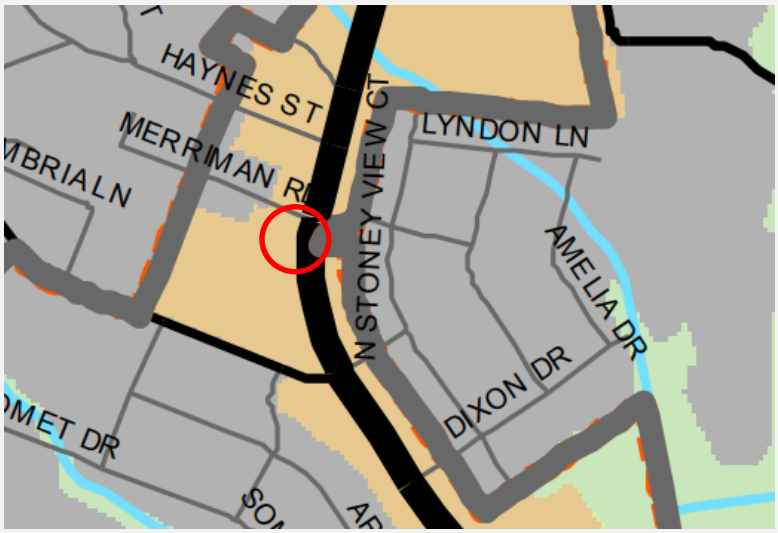


Single-family homes at densities comparable to Medium-Intensity Neighborhood

Growth Management-

Preservation/Enhancement (Gray) :

- *Preservation/Enhancement Areas (gray): Developed areas in which few significant changes are expected, or undeveloped areas that are not considered a high priority for growth. The City should respond to development or redevelopment in these areas by maintaining and enhancing existing neighborhood character and maintaining consistency with Comprehensive Plan goals and strategies*



Development Framework Map: *The map depicts locations of greenfield development opportunities in Hendersonville and surrounding areas. Development Opportunities – orange - includes vacant land, agricultural land, and single-family residential properties greater than five acres.*



Floodplain Considerations: *The Subject Property is outside of the floodplain and no blue line streams are present on the site.*



STAFF ASSESSMENT

The majority of PIN: 9569-36-9825 is already zoned C-3 Highway Business. Rezoning the section of property on the eastern border from R-10 to C-3 allows for this property to no longer be split zoned. A property that is not split zoned allows for a more straightforward development process for both staff and the applicant. The property owners could still develop the C-3 area of the parcel commercially without this rezoning. This rezoning allows for the parcel to be uniform under 1 zoning classification like all the abutting properties. Staff feels that making this entire property C-3 aligns with the intent of the zoning map.

Staff also feel that changing the parcels future land use designation from Medium-Intensity Neighborhood to Neighborhood Activity Center is reasonable due to the rest of parcel falling under this classification and allows this property to comply with the comprehensive plan.

PUBLIC COMMENT

No Neighborhood Compatibility Meeting is required for a conventional Zoning Map Amendment (rezoning) application. Staff has posted the site with a sign and mailed letters to adjacent property owners in order to satisfy zoning ordinance/state statute requirements and encourage public engagement. Staff has not received any calls for this project.

PLANNING BOARD - SUMMARY OF ACTION

Summary of Planning Board Discussions

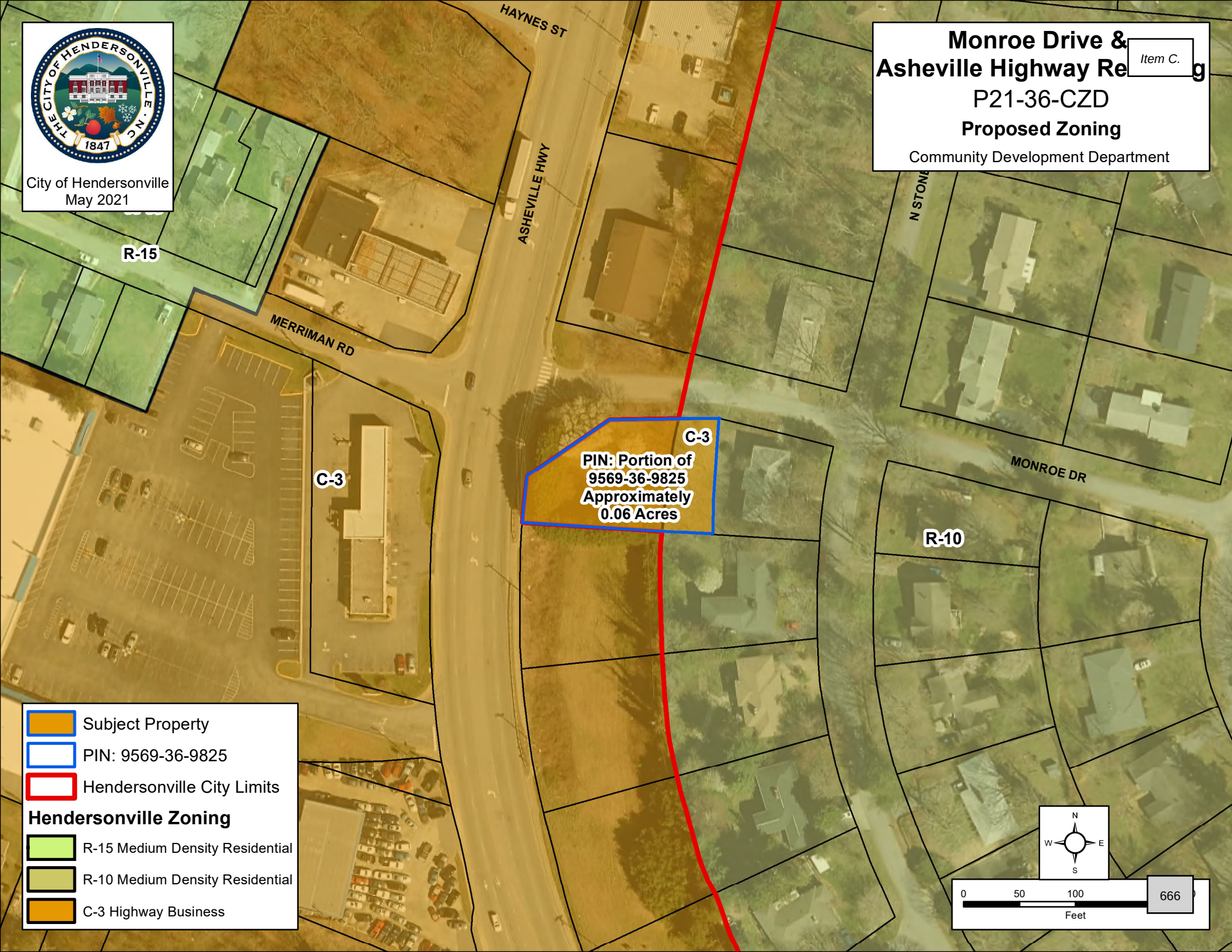
- Mr. Johnson asked if access to this property would be off of Monroe Street. Mr. Morrow stated yes, access would come off of Monroe Street. The applicant is working with NCDOT.
- Ms. Guffey stated she was concerned about bringing the commercial traffic into a residential area. Ms. Maitland stated this will not receive a lot of traffic, it will be an office/commercial proprietor.
- Vice-Chair stated this is not site specific and it could be something different.

Planning Board Motion

Mr. Hanley moved the Planning Board to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of the subject property (PIN 9569-36-9825) from R-10, Medium Density Residential to C-3, Highway Business based on the application submitted by the applicant. Finding that the rezoning is inconsistent with the Comprehensive Plan's Future Land Use map this motion also amends a portion of the subject parcel's Future Land Use designation from Medium Intensity Neighborhood to Neighborhood Activity Center. Furthermore, finding the rezoning is reasonable and in the public interest for the following reasons: The rezoning will make the zoning on the subject property more uniform with surrounding properties. Mr. Johnson seconded the motion which passed 5 in favor and 1 opposed.

PACKET ATTACHMENTS

- Proposed Zoning Map
- Site Survey
- Application
- Planning Board Minutes


Monroe Drive &
Asheville Highway Re g
Item C.
P21-36-CZD
Proposed Zoning
Community Development Department
City of Hendersonville
May 2021
HAYNES ST
ASHEVILLE HWY
N STONE
MERRIMAN RD
MONROE DR
R-15
C-3
C-3
PIN: Portion of
9569-36-9825
Approximately
0.06 Acres
R-10
Subject Property
PIN: 9569-36-9825
Hendersonville City Limits
Hendersonville Zoning
R-15 Medium Density Residential
R-10 Medium Density Residential
C-3 Highway Business
N
W
E
S
0
50
100
Feet
666

DocuSign Envelope ID: 9D1BA48C-129F-4AA4-B2A5-05E2A74C99B0

SLIDE 13262

REVIEW OFFICER

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Sharon M. McCall, REVIEW OFFICER OF HENDERSOBN COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUATORY REQUIREMENTS FOR RECORDING.

Sharon M. McCall — 5-21-21
REVIEW OFFICER — DATE

REGISTER OF DEEDS

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

PLAT BOOK 2021, PAGE 13262

FILED FOR REGISTRATION ON THE 21 DAY OF MAY, 2021 AT 12:07pm

Willa Lee King
REGISTER OF DEEDS, HENDERSON COUNTY

BY: Willa Blair, Assistant ~~DEPUTY~~

CITY OF HENDERSONVILLE

CITY OF HENDERSONVILLE,
HENDERSON COUNTY:

I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON COMPLIES WITH THE CITY OF HENDERSONVILLE SUBDIVISION AND ZONING DEPARTMENT FOR RECORDING IN THE HENDERSON COUNTY REGISTER OF DEEDS OFFICE.

MATTHEW MANLEY
PLANNING DIVISION MANAGER
CITY OF HENDERSONVILLE

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	87.75	592.70	8.48	S9° 18' 12"W	87.67
C2	38.95	914.93	2.44	N5° 33' 16"E	38.95

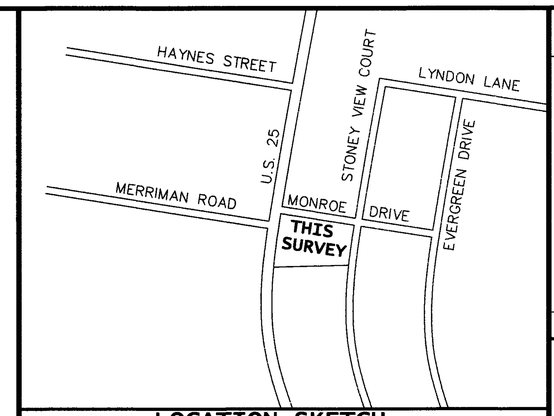
BOOK 2021 PAGE 13262 (1)
953840

This document presented and filed:
05/21/2021 12:07:11 PM

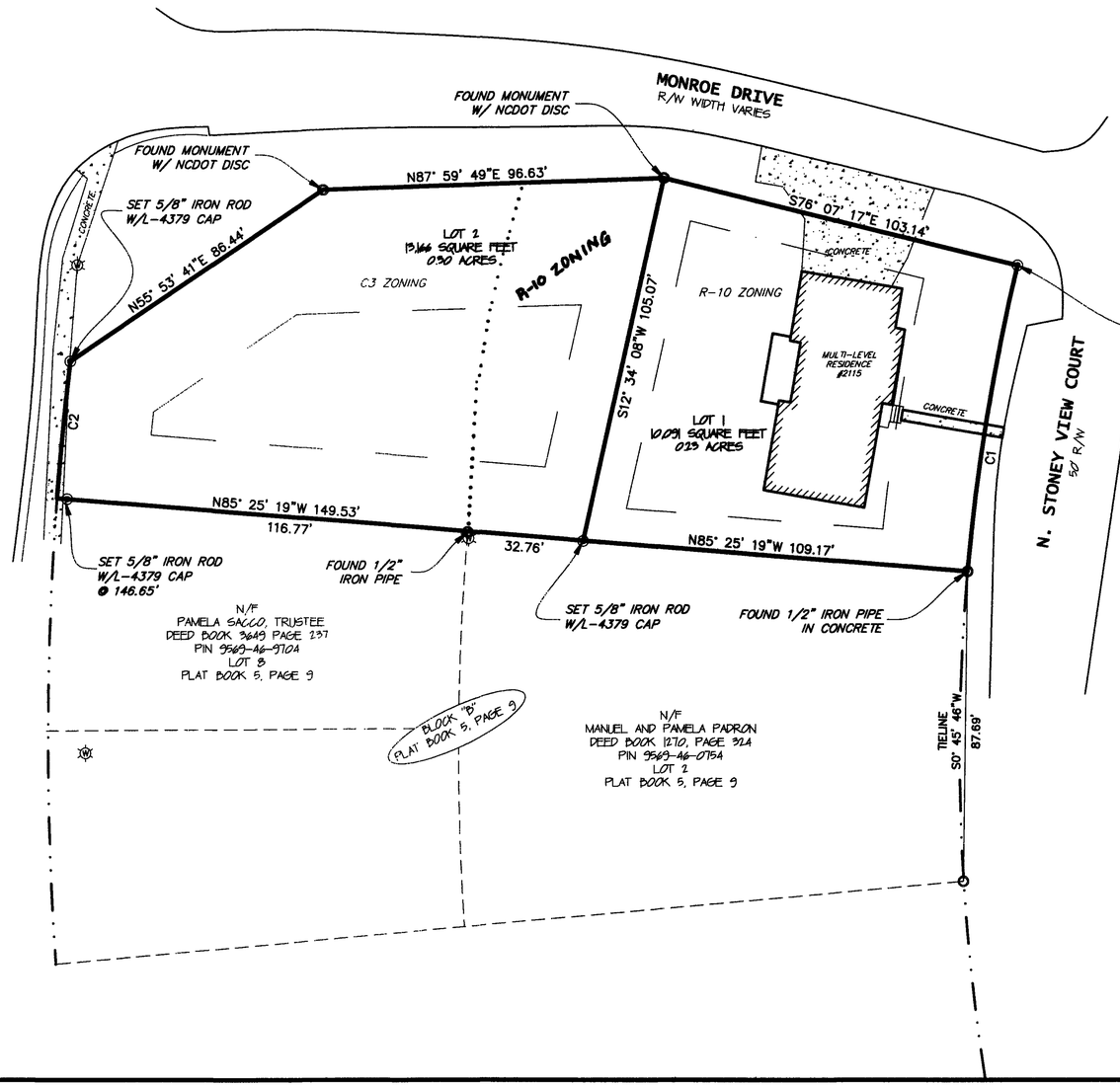
WB
WILLIAM LEE KING, Henderson COUNTY, NC

GRAPHIC SCALE
30 0 15 30
(IN FEET)
1 inch = 30 ft.

NCDOT R/W MAP U-2106



LOCATION SKETCH
NOT TO SCALE



LEGEND

△	CENTRAL ANGLE	CHD	CHORD
L	ARC LENGTH	BRG	BEARING
R	RADIUS	Ⓓ	DRAINAGE MANHOLE
R/W	RIGHT OF WAY	Ⓢ	SANITARY MANHOLE
○	FOUND IRON PIN	WM	WATER METER
⊡	FOUND STONE		WATER VALVE
	SET BENCHMARK		CATCH BASIN
	WOOD POWER POLE		CLEAN OUT
℄	CENTERLINE	T	TELEPHONE RISER
	PROPERTY LINE	EM	ELECTRIC METER
	FIRE HYDRANT	CMP	CULVERT
W	WELL	N/F	NOW OR FORMERLY
GM	GAS METER	—OH—	OVERHEAD WIRE

– – – – BOUNDARY LINE NOT SURVEYED
CENTERLINE POINT NOT SET
SET 5/8" IRON ROD WITH L-4379 CAP UNLESS NOTED
LINE NOT TO SCALE

NOTES

1.) THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND OR ONE OR MORE EXISTING EASEMENTS AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.

2.) THE BEARINGS SHOWN HEREON ARE BASED ON NCDOT R/W MAP PROJECT 9.814349, I.D. NO. U-2106 HIGHWAY 25.

3.) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS, RIGHT OF WAYS OR OWNERSHIPS.

4.) THE RATIO OF PRECISION OF THE UNBALANCED TRAVERSE MEETS OR EXCEEDS 1 : 10,000.

5.) THE SUBJECT PROPERTY (IS/IS NOT) LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY F.E.M.A. FLOOD INSURANCE RATEMAP # 3700956900J EFFECTIVE DATE: 10/02/2008.

6.) THE FEATURE SYMBOL LOCATIONS ARE TO THE CENTER OF THE SYMBOL AND MAY BE ENLARGED FOR CLARITY.

7.) UNDERGROUND FOUNDATIONS AND/OR UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED.

8.) BEARINGS AND DISTANCES SHOWN IN PARENTHESIS REPRESENT DEED AND OR PLAT VALUES.

9.) ACREAGE COMPUTED BY THE COORDINATE METHOD.

10.) THERE ARE NO NORTH CAROLINA GEODETIC CONTROL POINTS WITHIN 2000 FEET OF THIS SITE.

ZONING

C3 AND R-10
SETBACKS:
R-10
FRONT: 25'
SIDE: 10'
REAR: 10'

SETBACKS:
C3
FRONT 10' TO 35'
SIDE: 15'
REAR: 20'

REFERENCES

DEED BOOK 867, PAGE 603 (R/W)
DEED BOOK 3536, PAGE 336
PLAT BOOK 5, PAGE 9

CERTIFICATE

I, KEITH R. SANDERS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY DIRECT SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 3536 PAGE 336, HENDERSON COUNTY REGISTRY); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN THE HENDERSON COUNTY REGISTRY (SEE REFERENCES); THAT THE RATIO OF PRECISION AS CALCULATED IS 1 : 10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 28TH DAY OF APRIL, A.D. 2021.

DocuSigned by:
Keith Sanders
327DC8C7FAF84BF...

KEITH R. SANDERS
PROFESSIONAL LAND SURVEYOR # L-4379
STATE OF NORTH CAROLINA

NO.	REVISION	DATE	BY

SANDERS
SURVEYING & MAPPING
SERVICES, INC.
(828) 669-2777
C-2384
510 AVENA ROAD, BLACK MOUNTAIN, NORTH CAROLINA, 28711

RECOMBINATION BOUNDARY SURVEY FOR:
OWNERS: LARRY AND MARY ANN MAITLAND
PIN # 9659-46-0853 & 9659-36-9825
DEED BOOK 3536, PAGE 336
CITY OF HENDERSONVILLE,
HENDERSON COUNTY, NORTH CAROLINA

DATE: 04/28/21
DRAWN: KRS
CHECKED: KRS
F.B. #: TDS
SCALE: 1" = 30'
21-0032.DWG

SEAL OR STAMP

NORTH CAROLINA
SEAL
L-4379
SURVEYOR
KEITH R. SANDERS

PROJECT:
21-0032

SHEET:
1 OF 1

Print Form

Item C.

CITY OF HENDERSONVILLE
DEVELOPMENT ASSISTANCE DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792
Phone (828) 697-3010 ~ Fax (828) 697-6185
www.cityofhendersonville.org

ZONING ORDINANCE MAP AMENDMENT
Sections 4-1 and 11-1 of the City Zoning Ordinance

The following are required to constitute a complete application for a zoning map amendment:
- **~ This form and the property owner(s) signature(s), if applicable.**
- **~ Appropriate fee.**
- **~ A survey and/or metes and bounds description of the property.**

Applications for zoning map amendments are due at least 30 days prior to any Planning Board Meeting.

Date	5/11/2021
Address / Location of Property	PIN#9569-36-9825 CORNER HWY 25 MONROE DRIVE
Current Zoning	~~C-3~~ R-20
Proposed Zoning	C-3

List the adjacent property parcel numbers & uses.

PIN or PID #	9569-46-0853	**Adjacent Property Use**	RESIDENTIAL / OWNER LARRY + MARY MAITLAND
PIN or PID #	9569-46-9704	**Adjacent Property Use**	COMMERCIAL LOT
PIN or PID #	9569-46-0754	**Adjacent Property Use**	RESIDENTIAL
PIN or PID #		**Adjacent Property Use**	

Applicant Name	LARRY R MAITLAND & MARY ANN MAITLAND
Address	452 BEACH DRIVE, HENDERSONVILLE, NC 28792
Phone	828-775-8646
Fax	
E-mail	mamaitland@att.net
Property Owner: Name	LARRY R. & MARY ANN MAITLAND
Address	452 BEACH DRIVE HENDERSONVILLE, NC 28792
PIN or PID #	9569-36-9825

Signature Mary Ann Maitland
Larry R Maitland

Printed Name LARRY R. MAITLAND MARY ANN MAITLAND

Official Use:
DATE RECEIVED: 5/12/21 **BY** _____ **FEE RECEIVED $** _____

668

Minutes of the Planning Board
Regular Meeting - Electronic
June 14, 2021

Members Present: Jon Blatt (Vice-Chair), Neil Brown, Robert Hogan, Peter Hanley, Bob Johnson, Candi Guffey

Members Absent: Tamara Peacock, Jim Robertson, Chair, Hunter Jones

Staff Present: Tyler Morrow, Planner, Lew Holloway, Community Development Director, Matt Manley, Planning Manager and Terri Swann, Administrative Assistant III

I Call to Order. ***The Chair called the meeting to order at 4:02 pm. A quorum was established.***

II Approval of Agenda. Matt Manley, Planning Manager added a staff update under Other Business. ***Mr. Hanley moved for the revised agenda to be approved. The motion was seconded by Mr. Brown and passed unanimously.***

III Approval of Minutes for the meeting of May 10, 2021. ***Mr. Hanley moved to approve the Planning Board minutes of the meeting of May 10, 2021. The motion was seconded by Mr. Brown and passed unanimously.***

IV Old Business - None

V(A) Conventional Rezoning – Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential. (File #P21-18-RZO). Mr. Manley gave the following background:

Mr. Manley stated this rezoning is for a zoning map amendment and is not a conditional rezoning, it is just a straight rezoning. It involves three parcels which are currently split zoned R-15, Medium Density Residential and I-1, Industrial. The proposed rezoning would be R-6, High Density Residential. This property is just under an acre and is currently the site of a single-family residence and a wooded lot.

Mr. Manley showed the survey and pointed out the lots. The applicant would like to add one more residence to the property. Mr. Manley pointed out the structure and the wooded lot and showed the Board photos of the existing condition of the property. He also showed the current zoning map and the proposed zoning map. As a standard rezoning there is not a binding site plan or restriction beyond what is allowed in the R-6 Zoning District.

The proposed rezoning to R-6 would be an extension of the R-6 Zoning District that is prevalent in the area to the east of S. Whitted Street. The property extends along S. Whitted Street from W. Allen to Dale Street and is close to the future Ecusta Trail.

The subject property is classified as Medium-Intensity and High-Intensity Neighborhood on the 2030 Comprehensive's Plan's Future Land Use Map. The primary recommended land uses are single-family attached and detached residential and open space. The Medium-Intensity Neighborhood promotes and encourages walkable neighborhood design.

The rezoning site is located in the Lennox Park National Register Historic District.

The suggested motions are listed.

Chair asked if there were any questions for staff.

There were no questions for staff.

Vice-Chair asked if the applicant would like to speak. Mr. Shaffer stated he would answer any questions, but Mr. Manley did a good job of explaining the rezoning. There were no questions for the applicant.

Vice-Chair asked if there was anyone in attendance that would like to speak. No one spoke.

Vice-Chair asked if anyone on the zoom call would like to speak. No one spoke.

Mr. Hanley moved the Planning Board recommend City Council to approve the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject properties; PIN's 9568-46-9083, 9568-45-9994 and 9568-55-0841 from I-1/R-15 Zoning to R-6, High Density Residential Zoning District based on the application submitted by the applicant finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map and that the rezoning is reasonable and in the public interest for the following reasons: 1. it is in the public's interest to rezone this property, 2. The development will provide additional dense residential zoning, and 3. The proposed zoning is compatible with the area. Mr. Johnson seconded the motion which passed unanimously.

V(B) Conventional Rezoning – Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone the subject property PIN 9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from C-3, Highway Business and R-10, Medium Density Residential to C-3, Highway Business. (File #P21-36-RZO). Mr. Morrow gave the following background:

Mr. Morrow stated this is a zoning map amendment application from Larry and Mary Ann Maitland for a rezoning of a portion of a parcel located at Monroe Drive and Asheville Highway. The current zoning is R-10, Medium Density Residential and proposed zoning is C-3, Highway Business. The area to be rezoned is approximately 0.06 acres. This request will remove the R-10 zoning and eliminate the split zoning.

Parcels to the north are zoned C-3, Highway Business and R-10, Medium Density Residential. Parcels to the east are zoned R-10 and include a single-family neighborhood. Parcels located to the south are zoned C-3, Highway Business and R-10, Medium Density Residential and include commercial and residential uses. Parcels located to the west are C-3 and contain commercial uses such as the Blue Ridge Commons Plaza.

The current zoning map and the proposed zoning map was shown to the Board. Mr. Morrow stated as a conventional rezoning, there is no binding site plan or restriction of uses beyond what is permitted by the zoning ordinance. Again, the rezoning is only for a portion of the parcel. The rest of the parcel is currently zoned C-3, Highway Business and can be developed commercially.

The proposed rezoning to C-3 does not currently align with the Comprehensive Plan's Future Land Use map with the designation of Medium Intensity Residential. Commercial uses are not recommended under this designation. If City Council chooses to rezone the property to C-3 then the Comp Plan would also need to be changed to Neighborhood Activity Center. This change is included in the motion.

Photos of the existing site were shown. There are established trees on the property. A survey of the property was also shown. Mr. Morrow stated a lot line adjustment was made on the site and prior to that the whole parcel was zoned C-3. When you move a lot line, the zoning does not move with it, therefore they are requesting this rezoning. They are cleaning this up so that the parcel will not be split zoned. Any construction on the parcel would have to go through the site plan review process with the City.

Vice-Chair asked if there were any questions for staff.

Mr. Johnson asked if access to this property would be off of Monroe Street. Mr. Morrow stated yes, access would come off of Monroe Street. The applicant is working with NCDOT.

Ms. Guffey asked if the commercial traffic will be re-routed onto the residential street. Mr. Morrow stated yes, they would not come off of Asheville Highway.

Vice-Chair asked if there were any further questions for staff. There were no further questions. Vice-Chair asked if the applicant would like to speak.

Mary Ann Maitland, 452 beach Drive stated they would not be removing any trees. Ms. Guffey asked about the access being from Monroe Street. Ms. Maitland stated yes, the access would come off of Monroe Street but the traffic will not actually go through the residential area.

Vice-Chair stated this is not site specific and it could be something different.

Vice-Chair asked if anyone on the zoom call or in attendance would like to speak. No one spoke.

Ms. Guffey stated she was concerned about bringing the commercial traffic into a residential area. Ms. Maitland stated this will not receive a lot of traffic, it will be an office/commercial proprietor.

Mr. Manley stated the property is currently zoned C-3 except for a small portion to the east. They currently could use the portion zoned C-3 for a commercial use.

Mr. Hanley moved the Planning Board to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of the subject property (PIN 9569-36-9825) from R-10, Medium Density Residential to C-3, Highway Business based on the application submitted by the applicant. Finding that the rezoning is inconsistent with the Comprehensive Plan's Future Land Use map this motion also amends a portion of the subject parcel's Future Land Use designation from Medium Intensity Neighborhood to Neighborhood Activity Center. Furthermore, finding the rezoning is reasonable and in the public interest for the following reasons: The rezoning will make the zoning on the subject property more uniform with surrounding properties. Mr. Johnson seconded the motion which passed 5 in favor and 1 opposed.

V(C) 160D Update – Mr. Manley stated the 160D revisions for the Zoning Ordinance, Subdivision Ordinance and Chapter 40 of the City Code are all updates per the North Carolina General Statutes. There is a proposed motion for reference which should include the Zoning Ordinance, Subdivision Ordinance and Chapter 40 of the City Code in the motion. Mr. Manley introduced Scott Adams, Regional Planner from Land of Sky.

Scott Adams briefly went through the changes and explained the 160D update that is a new state law has a deadline of July 1, 2021. That is the date the changes need to be adopted by. He went through the must changes and the may changes and stated another round of changes to clean up the zoning ordinance may come at a later date.

Vice-Chair asked if there were any questions.

Mr. Johnson had questions about the term width being changed to depth in Section 5-23-4-2.2 on page 75. Mr. Adams stated the term depth is typically used in urban design standards. Mr. Johnson asked about microbreweries and the number of barrels changing. Mr. Adams stated this number increased per state law.

Mr. Brown asked about crafting conditions of approval and the section that addresses that in the National Law Review. He talked about these stating conditions should be negotiated prior to the meeting and did this apply to the Planning Board or City Council or both Boards. Mr. Adams stated both Boards and conditions should be discussed in advance of a meeting.

Mr. Johnson asked about the definition of standing. Angie Beeker, City Attorney explained the definition of standing and what it means to have standing in court cases and in public hearings.

Vice-Chair asked about quasi-judicial hearings and the Planning Board having them. Some discussion was made about the Planning Board being a part of Special Use rezoning and this was all before the Conditional Zoning District process was put in place.

Mr. Hanley moved the Planning Board recommend to City Council to approve the adoption of an ordinance amending the official zoning code of the City of Hendersonville, the City of Hendersonville Subdivision Ordinance and Chapter 40 of the City of Hendersonville Code of Ordinances to reflect required revisions based on changes to North Carolina General Statutes in which laws related to enabling statutes for development regulations, formerly found in Chapters 153A and 160A, are now consolidated into a single, unified Chapter 160D. Mr. Hogan seconded the motion which passed unanimously.

VI **Other Business**. Mr. Hanley made a motion to adopt the annual schedule of meetings for 2021-2022. Ms. Guffey seconded the motion which passed unanimously.

Mr. Manley gave an update concerning the lighting ordinance that was presented to City Council. He also gave an update of the residential projects that would be coming before the Board in the summer months.

VII **Adjournment** – ***The meeting was adjourned at 5:06 pm.***

LOCALiQ

StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Item C.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	06/21/2021
Order Number:	5980882
Prepayment Amount:	$ 0.00

Column Count:	1
Line Count:	147.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	1	06/22/2021 - 06/22/2021	Govt Public Notices
HEN blueridgenow.com	1	06/22/2021 - 06/22/2021	Govt Public Notices

Total Order Confirmation	**$22.64**

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold three public hearings on Friday, July 2, 2021, at 5:45 p.m., in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN 9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00** a.m. on July 1, 2021 to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

6/22 & 6/29/2021 5980882

SPECIAL CALL MEETING NOTICE
PUBLIC HEARING NOTICE(S)

Notice is hereby given that the City of Hendersonville City Council will hold a **Special Call Meeting on Friday, July 2, 2021, at 9:00 a.m., in the City Operations Assembly** Room located at 305 Williams Street, Hendersonville NC to consider the following three public hearings:

I. **Land Development Regulations Text Amendments Proposed for Conformance with Chapter 160D of the North Carolina General Statutes** – Text amendments are proposed for land development regulations for the City of Hendersonville for conformance with Chapter 160D of the North Carolina General Statutes. The land development regulations proposed for amendment include:

The Subdivision Ordinance
The Zoning Ordinance
Chapter 24, Article II of the Code – Flood Damage Prevention Ordinance
Chapter 24, Article III of the Code – Stormwater Ordinance
Chapter 12 of the Code – Buildings and Building Regulations
Chapter 28 of the Code – Historic Preservation, including also:
Historic Preservation Commission Residential Standards and
Historic Preservation Commission Main Street Standards
Chapter 40 of the Code – Planning and Development

The purpose for the proposed amendments is to readopt and update these ordinances for conformance to Chapter 160D of the North Carolina Statutes, including but not limited to clarifications and changes to land development law adopted by N.C. Sess. Laws 2019-111, 2020-3, and 2020-25. Changes include, but are not limited to, procedures, notices, conflict of interest, terminology, definitions, statutory references, clarifications, period of validity for development approvals, vested rights, permit choice and other conforming changes.

Drafts of these Ordinances as proposed for readoption and amendment may be accessed by visiting the City's website at https://www.hendersonvillenc.gov/ starting Tuesday, June 22, 2021.

II. **Zoning Map Amendment – S. Whitted St. (P21-18-RZO)** - Application for a zoning map amendment from William Shaffer. The applicant is requesting to rezone the subject properties, PIN 9568-46-9083, 9568-45-9994 and 9568-55-0841 and located on S. Whitted Street, from I-1, Industrial and R-15, Medium Density Residential to R-6, High Density Residential.

III. **Zoning Map Amendment – Monroe & Asheville Highway (P21-36-RZO)** - Application for a zoning map amendment from Larry R. Maitland and Mary Ann Maitland. The applicant is requesting to rezone a portion of the subject property PIN

9569-36-9825 and located at the corner of Asheville Highway and Monroe Drive, from R-10, Medium Density Residential to C-3, Highway Business.

The Mayor and City Council Members will attend the hearings in person. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting https://www.hendersonvillenc.gov/events-calendar. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit digital comments for the public hearings prior to the meeting may visit https://www.hendersonvillenc.gov/comment to submit their comment. Digital comment submissions for public hearings must be received by **8:00 a.m. on July 1, 2021,** to be considered by the City Council in accordance with the City's Public Comment Policy and security protocols. All comments and materials submitted are considered public records as defined in §132.1.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

Run two times: Tuesday, June 22, 2021
Tuesday June 29, 2021

City of Hendersonville

Certification of Mailing of Public Notice

IN RE: Maitland Conventional Rezoning File # P21-36-RZO

I hereby certify that official notice of the City Council Special Meeting on July 2, 2021, has been sent with regard to this matter by U.S. Mail on the date indicated below and as specified in this document.

The parties to whom notice was mailed are indicated on the sheets attached hereto as Exhibit A. Those listed on Exhibit A were mailed the letter, a copy of which is attached as Exhibit B.

Date Mailed: 06.21.21

Site posted this date per Section 7-4-8 of the City of Hendersonville Zoning Ordinance.

Terri Swann
Terri Swann
Administrative Assistant III

Henderson County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: Terri Swann.

Date: 6/21/2021

Notary Signature: Lisa N Stepp

Notary Printed Name: Lisa N Stepp

(Official Seal)

LISA N STEPP NOTARY PUBLIC HENDERSON COUNTY, NC

My Commission Expires: September 5, 2021

Pamela Sacco, Trustee
319 Smith Drive
Hendersonville, NC 28739

Manuel O. Padron
Pamela D. Padron
2113 N. Stoney View Ct.
Hendersonville, NC 28792

Joseph D. Jones
PO Box 947
Mountain Home, NC 28758