

# AGENDA

## CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

JANUARY 4, 2018 – 5:45 P.M.

### COUNCIL CHAMBERS – CITY HALL

1. **Call to Order**
2. **Invocation and Pledge of Allegiance**
3. **Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda*
4. **Consideration of Agenda**
5. **Consideration of Consent Agenda:** *These items are considered routine, noncontroversial in nature and are considered and approved by a single motion and vote.*
  - A. **Consideration of Minutes:** December 7, 2017 Regular Meeting
  - B. **Consideration of Budget Amendments**
    - 1) **Fire Community Fund , Fund 170, Increase of \$1,500**
    - 2) **Stormwater - 318 N. Main St., Fund 67, Increase of \$85,543, Fund 10, No Increase/Decrease**
    - 3) **Gravity Filter Water Treatment Plan, Fund 60 - No Increase/Decrease, Fund 445 - Decrease of \$20,000, Fund 425 - Increase of \$20,000**
  - C. **Consideration of Petitions for Annexation; Certificates of Sufficiency for:**
    - 1) **Mountain Bean Growers, Inc. for satellite annexation of a portion of a parcel containing 16.6 acres located on Howard Gap Road**
    - 2) **Ronald Jones for contiguous annexation of a parcel containing 0.31 acres located at 812 Orr's Camp Road**
  - D. **Consideration of Amendment 1 of the Etowah Area Water System Improvements Project Engineering Agreement**
  - E. **Consideration of Revisions to the Inclement Weather Policy**
  - F. **Consideration of Request to Convert Part-time Customer Service Representative to Full-time**
6. **Public Hearing – Consideration of an Order to Permanently Close an Unopened, Unnamed, and Unimproved Alley off Kensington Road**  
*Presenter: Development Assistance Director Susan Frady*

7. **Public Hearing – Consideration of a Petition for Annexation from Dianne Newman and Patrick Tighe for Property Located at 1926 Haywood Road**  
*Presenter: Susan Frady, Development Assistance Director*
8. **Public Hearing - Consideration of a Request for a Zoning Map Amendment from Andrew Riddle, and Sam and Linda Riddle, for Property Located at 732 Jonesborough Street, from R-15 Medium Density Residential to C-2 Secondary Business**  
*Presenter: Matt Champion, Senior Planner*
9. **Public Hearing - Consideration of a Zoning Ordinance Text Amendment of Section 7-4 and Several Others throughout the Ordinance to Remove Special Use Review and Special Use Districts and Add Conditional Zoning Districts**  
*Presenters: Susan Frady, Development Assistance Director and Daniel Heyman, City Planner*
10. **Public Hearing - Consideration of Entering into a Master Development Agreement with Grey Mill Ventures, LLC, or Assigns, to Convey Certain Real Property Known as the Grey Hosiery Mill Building**  
*Presenter: City Manager John Connet*
11. **Consideration of Request for Dispatch of Laurel Park Police Department**  
*Presenter: Police Chief Herbert Blake*
12. **Review of NCDOT Projects**  
*Presenter: City Manager John Connet*
13. **Presentation on Stormwater Utility Structure and Impervious Surface Area Study**  
*Presenter: Michael Huffman, Stormwater Quality Specialist*
14. **Consideration of Health Insurance Broker**  
*Presenter: Human Resources Director Jennifer Harrell*
15. **Comments from Mayor and City Council Members**
16. **Reports from Staff**
  - A. Reminder of Change in February’s Council Meeting: February 6 instead of February 1
  - B. Reminder of Special Meetings – Council Retreat on February 8 and 9, 2018, 6:00 p.m.
  - C. Report on Disposition of Surplus Property on Gov Deals
17. **Boards and Commissions: Consideration of (Re)Appointments, Announcement of Upcoming Vacancies**  
*Presenter: City Clerk Tammie Drake*
18. **New Business**
19. **Adjourn**



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 12/22/17

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05b

Budget Amendment(s) 3

1) Fire Community Fund.....	Fund 170	Increase	\$1,500
2) 318 N. Main St. Stormwater...	Fund 67	Increase	\$85,543
	Fund 10	No Increase/Decrease	
3) Gravity Filter WTP.....	Fund 60	No Increase/Decrease	
	Fund 445	Decrease	\$20,000
	Fund 425	Increase	\$20,000

**Budget Impact:** \$ n/a \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

Described Above.

**Suggested Motion:**

I move to approve the budget amendments as presented.

**Attachments:**

See below.

**BUDGET AMENDMENT**

FUND: 170

ACCOUNT NUMBER			INCREASE	DECREASE
ORG	OBJECT	DESCRIPTION OF ACCOUNT		
1700000	527000	PURCHASE FOR RESALE	1,500.00	-
1700000	443230	MISC. ITEM SALES	1,500.00	-
<b>FUND 170</b>			<b>TOTAL REVENUES</b>	<b>1,500.00</b>
			<b>TOTAL EXPENDITURES</b>	<b>1,500.00</b>

Amendment to move funds from the Misc. Item Sales line to the Purchase for Resale line. This ammendment will cover the cost for the Fire Department's T-Shirts.

  
 \_\_\_\_\_  
 CITY MANAGER

Date: 12/19/17  
 DATE: 1/4/2018

APPROVED BY CITY COUNCIL:

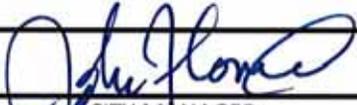


**BUDGET AMENDMENT**

FUND: 60 | 425 | 445

ACCOUNT NUMBER			INCREASE	DECREASE
ORG	OBJECT	DESCRIPTION OF ACCOUNT		
4450000	519400	PROFESSIONAL SERVICES- ENGINEERING		20,000.00
4450000	998060	TRANSFER IN FROM WATER AND SEWER		20,000.00
<b>FUND 445</b>				
TOTAL REVENUES			-	20,000.00
TOTAL EXPENDITURES				20,000.00
4250000	519400	PROFESSIONAL SERVICES- ENGINEERING	20,000.00	
4250000	998060	TRANSFER IN FROM WATER AND SEWER	20,000.00	
<b>FUND 425</b>				
TOTAL REVENUES			20,000.00	-
TOTAL EXPENDITURES			20,000.00	
609900	999425	TRANSFER OUT TO GRAVITY FILTER	20,000.00	
609900	999445	TRANSFER OUT TO GENERATOR		20,000.00
<b>FUND 60</b>				
TOTAL REVENUES			20,000.00	-
TOTAL EXPENDITURES				20,000.00

Amendment to cover design work for Gravity Filter replacement at the Water Treatment Plant.

  
 \_\_\_\_\_  
 CITY MANAGER

Date: 12/24/17

APPROVED BY CITY COUNCIL:

DATE: 1/4/2018



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 12/13/17

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 1/4/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05c1

The City of Hendersonville has received a petition from Mountain Bean Growers, Inc. for satellite annexation of a portion of parcel 9670-42-2817 as shown on the preliminary survey containing 16.6 acres located on Howard Gap Road. This annexation application is related to a sewer service request. Please refer to the attached maps for additional information.

Attached is the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move Council to accept the City Clerk's Certificate of Sufficiency for the Mountain Bean Growers Inc. petition and set February 6, 2018 as the date for the public hearing.

### Attachments:

Survey  
Legal Description  
Clerk's Certificate of Sufficiency

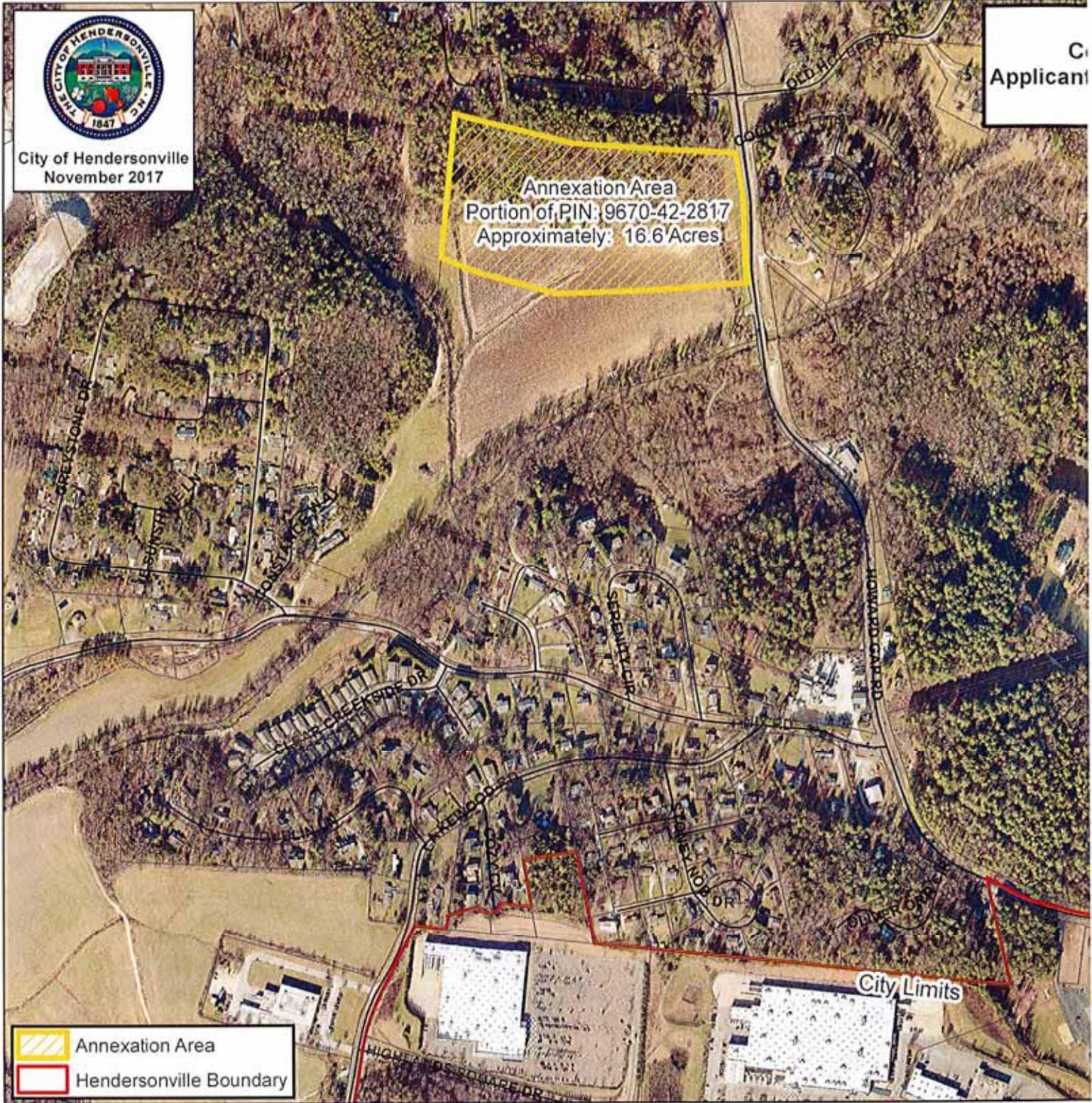


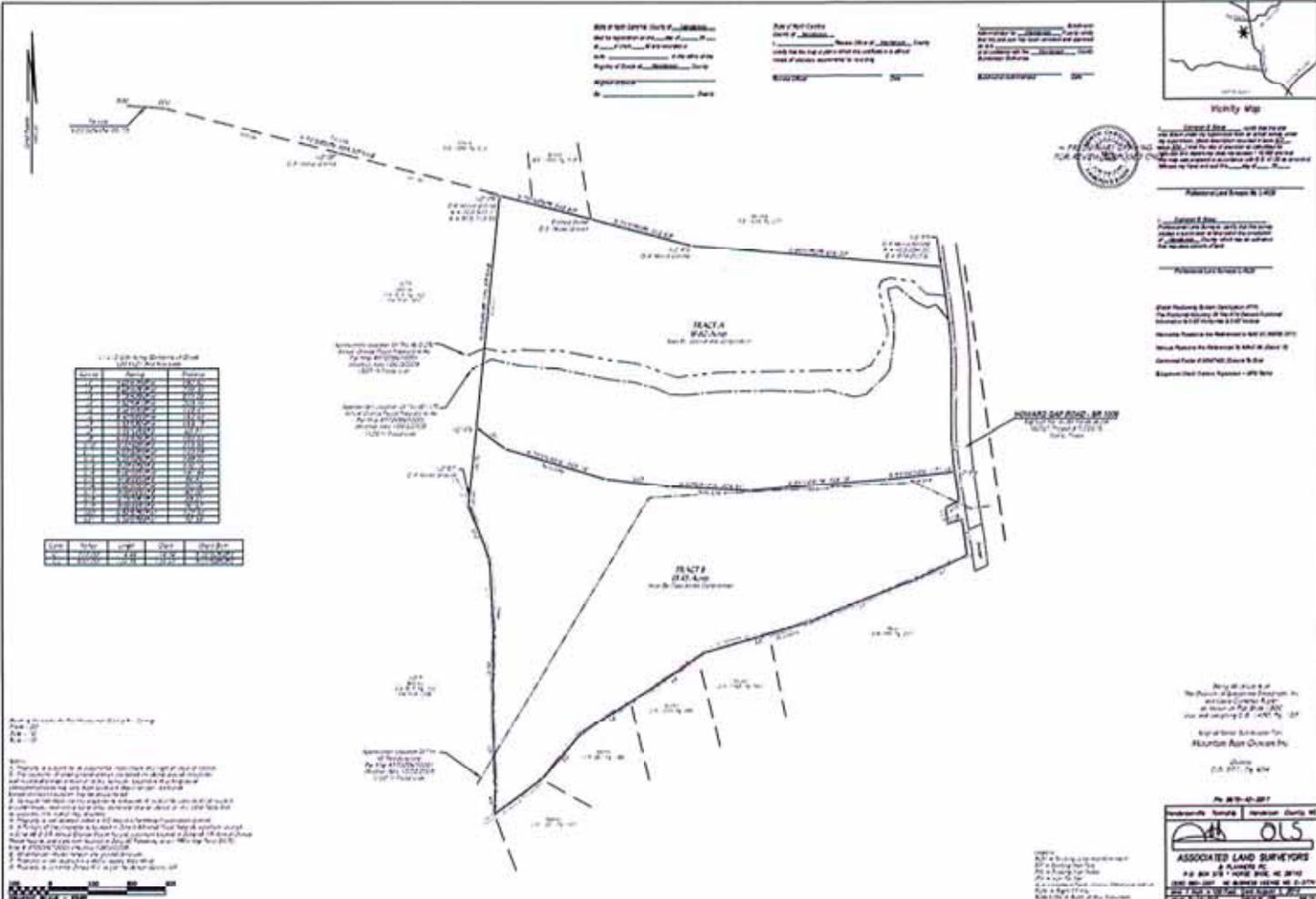
City of Hendersonville  
November 2017

C  
Applicant

Annexation Area  
Portion of PIN: 9670-42-2817  
Approximately: 16.6 Acres.

 Annexation Area  
 Hendersonville Boundary





1:12.500 Scale, Distance of 2000 Feet

Station	Bearing	Distance
1	N 0° 00' 00" E	100.00
2	N 89° 59' 59" W	100.00
3	S 0° 00' 00" W	100.00
4	S 89° 59' 59" E	100.00
5	N 0° 00' 00" E	100.00
6	N 89° 59' 59" W	100.00
7	S 0° 00' 00" W	100.00
8	S 89° 59' 59" E	100.00
9	N 0° 00' 00" E	100.00
10	N 89° 59' 59" W	100.00
11	S 0° 00' 00" W	100.00
12	S 89° 59' 59" E	100.00
13	N 0° 00' 00" E	100.00
14	N 89° 59' 59" W	100.00
15	S 0° 00' 00" W	100.00
16	S 89° 59' 59" E	100.00
17	N 0° 00' 00" E	100.00
18	N 89° 59' 59" W	100.00
19	S 0° 00' 00" W	100.00
20	S 89° 59' 59" E	100.00
21	N 0° 00' 00" E	100.00
22	N 89° 59' 59" W	100.00
23	S 0° 00' 00" W	100.00
24	S 89° 59' 59" E	100.00
25	N 0° 00' 00" E	100.00
26	N 89° 59' 59" W	100.00
27	S 0° 00' 00" W	100.00
28	S 89° 59' 59" E	100.00
29	N 0° 00' 00" E	100.00
30	N 89° 59' 59" W	100.00
31	S 0° 00' 00" W	100.00
32	S 89° 59' 59" E	100.00
33	N 0° 00' 00" E	100.00
34	N 89° 59' 59" W	100.00
35	S 0° 00' 00" W	100.00
36	S 89° 59' 59" E	100.00
37	N 0° 00' 00" E	100.00
38	N 89° 59' 59" W	100.00
39	S 0° 00' 00" W	100.00
40	S 89° 59' 59" E	100.00
41	N 0° 00' 00" E	100.00
42	N 89° 59' 59" W	100.00
43	S 0° 00' 00" W	100.00
44	S 89° 59' 59" E	100.00
45	N 0° 00' 00" E	100.00
46	N 89° 59' 59" W	100.00
47	S 0° 00' 00" W	100.00
48	S 89° 59' 59" E	100.00
49	N 0° 00' 00" E	100.00
50	N 89° 59' 59" W	100.00
51	S 0° 00' 00" W	100.00
52	S 89° 59' 59" E	100.00
53	N 0° 00' 00" E	100.00
54	N 89° 59' 59" W	100.00
55	S 0° 00' 00" W	100.00
56	S 89° 59' 59" E	100.00
57	N 0° 00' 00" E	100.00
58	N 89° 59' 59" W	100.00
59	S 0° 00' 00" W	100.00
60	S 89° 59' 59" E	100.00
61	N 0° 00' 00" E	100.00
62	N 89° 59' 59" W	100.00
63	S 0° 00' 00" W	100.00
64	S 89° 59' 59" E	100.00
65	N 0° 00' 00" E	100.00
66	N 89° 59' 59" W	100.00
67	S 0° 00' 00" W	100.00
68	S 89° 59' 59" E	100.00
69	N 0° 00' 00" E	100.00
70	N 89° 59' 59" W	100.00
71	S 0° 00' 00" W	100.00
72	S 89° 59' 59" E	100.00
73	N 0° 00' 00" E	100.00
74	N 89° 59' 59" W	100.00
75	S 0° 00' 00" W	100.00
76	S 89° 59' 59" E	100.00
77	N 0° 00' 00" E	100.00
78	N 89° 59' 59" W	100.00
79	S 0° 00' 00" W	100.00
80	S 89° 59' 59" E	100.00
81	N 0° 00' 00" E	100.00
82	N 89° 59' 59" W	100.00
83	S 0° 00' 00" W	100.00
84	S 89° 59' 59" E	100.00
85	N 0° 00' 00" E	100.00
86	N 89° 59' 59" W	100.00
87	S 0° 00' 00" W	100.00
88	S 89° 59' 59" E	100.00
89	N 0° 00' 00" E	100.00
90	N 89° 59' 59" W	100.00
91	S 0° 00' 00" W	100.00
92	S 89° 59' 59" E	100.00
93	N 0° 00' 00" E	100.00
94	N 89° 59' 59" W	100.00
95	S 0° 00' 00" W	100.00
96	S 89° 59' 59" E	100.00
97	N 0° 00' 00" E	100.00
98	N 89° 59' 59" W	100.00
99	S 0° 00' 00" W	100.00
100	S 89° 59' 59" E	100.00

Scale of 1:12,500  
 Date: 11/11/11  
 Surveyor: [Name]  
 1. This is a copy of a computer printout of a survey map.  
 2. The accuracy of this printout is based on the accuracy of the original survey data and the accuracy of the computer software used to generate this printout.  
 3. This printout is not a substitute for a physical copy of the original survey map.  
 4. The accuracy of this printout is not guaranteed.  
 5. The accuracy of this printout is not guaranteed.  
 6. The accuracy of this printout is not guaranteed.  
 7. The accuracy of this printout is not guaranteed.  
 8. The accuracy of this printout is not guaranteed.  
 9. The accuracy of this printout is not guaranteed.  
 10. The accuracy of this printout is not guaranteed.



**Vicinity Map**  
 1. This map shows the location of the surveyed area within a larger regional context.  
 2. The surveyed area is indicated by a star on the map.  
 3. The map shows major roads and landmarks in the area.  
 4. The map is not to scale.

Surveyed by:  
 [Name]  
 [Address]  
 [City, State, Zip]  
 [Phone Number]

**ASSOCIATED LAND SURVEYORS**  
 1234 Main Street  
 Anytown, CA 90000  
 Phone: (555) 123-4567  
 Fax: (555) 987-6543  
 Website: www.associatedland.com

Description Being Proposed Tract A Of A Proposed Subdivision For Mountain Bean Growers, To Be Recorded At A Later Date

BEGINNING at a 1/2" Iron Pipe, said Pipe being the Northeast Corner of Subject Tract, also being in the Western margin of Howard Gap Road, SR 1006, said point bearing NC Grid Coordinates N= 603,356.91, E= 974,857.61; Thence, along the Western margin of Howard Gap Road S 7°47'35" E a distance of 140.16 feet to a point of curvature, curve being to the right, having a radius of 770.00 feet, the chord of which bears S 3°32'08" E, a chord distance of 114.34 feet, and having an arc length of 114.44 feet to a point; Thence, continuing along the said margin S 0°23'35" W a distance of 141.44 feet to a point of curvature, curve being to the left, having a radius of 830.00 feet, the chord of which bears S 3°58'52" E, a chord distance of 126.63 feet, and having an arc length of 126.75 feet to a point; Thence, leaving the Western margin of Howard Gap Road the following six calls along proposed new lines to be the dividing lines between proposed Tracts A and B, S 83°44'34" W a distance of 177.45 feet to a point; Thence, S 85°16'41" W a distance of 358.78 feet to a point; Thence, N 87°08'18" W a distance of 205.21 feet to a point; Thence, N 82°57'50" W a distance of 167.52 feet to a point; Thence, N 73°05'42" W a distance of 268.16 feet to a point; Thence, N 54°27'31" W a distance of 92.38 feet to the Western line of Subject Tract, Thence, N 5°54'53" W a distance of 594.54 feet to a 1/2" Iron Pipe, said pipe being the Northwest Corner of Subject Tract; Thence, S 75°38'38" E a distance of 241.82 feet to a Planted Stone; Thence, S 75°07'09" E a distance of 268.13 feet to a 1/2" Iron Pipe; Thence, S 85°07'09" E a distance of 651.02 feet, to the Point of BEGINNING.

Subject Tract Being 16.6 Acres, more or less, also being the Northerly Portion of that tract of land as shown on a Map of Boundary Survey for Mountain Bean Growers, Job No. S-14-047, an unrecorded survey by Associated Land Surveyors & Planners PC, dated August 1, 2014.

## CERTIFICATE OF SUFFICENCY

**Re: Petition for Satellite Annexation  
Mountain Bean Growers, Inc.  
File No. P17-21-ANX**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the satellite annexation of 16.6 acres on Howard Gap Road.

A. According to the Development Assistance Department, the area described in the petition meets all of the standards set out in GS160A-58.1(b).

1. The map distance from the proposed satellite corporate limits is approximately 2,250 feet from the primary corporate limits.
2. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
3. The area is situated so the City will, if City Council so determines, be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. The area proposed for annexation is not a subdivision as defined in GS 160A-376.
5. The total area within the satellite corporate areas, including land involved in this petition, constitutes 4.3 percent of the area within the primary corporate limits.

B. The petition bears the names, addresses, and signatures of all owners of the real property within the area proposed for annexation.

C. A metes and bounds description is attached to the petition.

D. A map showing the area proposed for annexation with relation to the primary corporate limits of Hendersonville is attached to the petition.

Having made the findings stated above, I hereby certify the petition for satellite annexation presented by Mountain Bean Growers, Inc. is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 28 day of Nov., 2017.

*Tammie K. Drake*

Tammie K. Drake, MMC, City Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 12/12/17

**Presenter:** Susan G. Frady

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05c2

The City of Hendersonville has received a petition from Ronald Jones for contiguous annexation of parcel 9679-32-8518 containing 0.31 acres located at 812 Orr's Camp Road. This annexation application is related to a sewer service request. Please refer to the attached maps for additional information.

Attached is the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move Council to accept the City Clerk's Certificate of Sufficiency for the petition from Ronald Jones and set February 6, 2018 as the date for the public hearing.

### Attachments:

Survey  
Legal Description  
Clerk's Certificate of Sufficiency



City of Hendersonville  
December 2017

Re  
City of H

City Limits

Annexation Area  
PIN 9579-32-8518  
0.31 Acres

ORRIS CAMP RD

City Limits

DANA RD

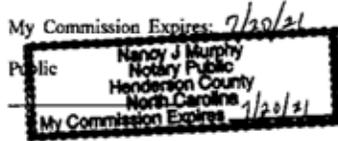
-  Annexation Area
-  Hendersonville Boundary

0

acknowledged the due and voluntary execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial stamp or seal this 19 day of May, 2017.

Book 3055  
Page 655



*Nancy J. Murphy* Notary

Nancy S. Murphy  
Notary's Printed or Typed Name

#### EXHIBIT A

##### TRACT ONE: (PIN 9579-32-9577)

BEGINNING at a point in the East margin of the Orr's Camp Rd., said point being the southwest corner of the Waganor Tract and running with the lines of said tract as follows: South 82 deg. 15' East 135 feet to an iron stake; thence 1 deg. 30' East 100 feet; thence 82 deg. 30' East 80 feet; thence North 2 deg. East with Waganor's line, and passing his corner 414 feet to a stake in the West margin of Dania Drive; thence with Dania Drive as follows: South 39 deg. 15' West 153.5 feet; South 10 deg. 15' East 261.7 feet; thence South 4 deg. 15' East 249.5 feet to a stake, the northeast corner of Lot 15; thence with the lines of 15 through 12, North 83 deg. West 79.8 feet to the northeast corner of Lot 12; thence 7 deg. West with the line of Lot 13, 150 feet to a stake in the north margin of Dana Road; thence with the margin of said road, North 83 deg. West 200 feet to the southeast corner of Lot 4; thence with the line of Lot 4, North 7 deg. East 150 feet; thence North 85 deg. West 113 feet to the East margin of Orr's Camp Road; thence with same North 1 deg. 30' East 83 feet to the BEGINNING. ALSO BEING Lots 5 through 12 and Lots 32 through 42 of the Dania Farm Subdivision, as shown on a map made by G.W. Justice and Son of Hendersonville, NC on May 20, 1948, said plat being recorded in Plat Book 4 at Page 62 in the Office of the Register of Deeds of Henderson County, North Carolina.

ALSO BEING that same property described as Tract Four in Deed Book 1646, Page 674, Henderson County Registry.

##### TRACT TWO: (PIN 9579-32-8518)

BEGINNING at a stake on the east margin of Buena Vista Avenue, said stake standing 235 feet from the north margin of Dana Road, and running thence North 1 deg. 30' East 100 feet along the east margin of said Buena Vista Avenue to a stake; thence South 82 deg. 31' East 135 feet to a stake; thence South 1 deg. 30' West 100 feet to a stake; thence North 82 deg. 31' West 135 feet to the point of BEGINNING. ALSO BEING Lots 12 and 13 of the Subdivision of J.E. Sherman's property as shown on a map of the same by B.H. Waldermier in 1926.

ALSO BEING that same property described as Tract Five in Deed Book 1646, Page 674, Henderson County Registry.

## CERTIFICATE OF SUFFICENCY

**RE: Petition for Contiguous Annexation  
Ronald Jones  
File No. P17-49-ANX**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the contiguous annexation of parcel 9579328518 located at 812 Orr's Camp Road.

- A. According to the Development Assistance Department, the area described in the petition meets all of the standards set out in G.S. 160A-58.1(b).
1. The petition follows the prescribed form.
  2. The petition was signed by the owners of the subject property.
  3. The subject property adjoins the present city limits line.

Having made the findings stated above, I hereby certify the petition for contiguous annexation presented by Ronald Jones is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 12 day of Dec., 2017.

*Tammie K. Drake*

---

Tammie K. Drake, MMC, City Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brent Detwiler

**Department:** Engineering

**Date Submitted:** 12/19/17

**Presenter:** Brent Detwiler

**Date of Council Meeting to consider this item:** 1/4/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05d

Amendment 1 of the Etowah Area Water System Improvements Project Engineering Agreement:

An engineering agreement with Black and Veatch was executed in November 2016 to complete the design, permitting, bidding and award work associated with the Etowah Area Water System Improvements Project. Several of the original design parameters have changed with this project during design - mostly regarding the access to the proposed water tank site. After several months of design, negotiation and redesign the City had come to an impasse to gain access to the tank site during and after construction. This has necessitated adjusting the design and aligning several thousand feet of water line outside of its original alignment. The redesign will require construction of an access drive from another location to the tank site. Although there are design costs associated with the realignment, the water line relocation will allow the City to easily loop it's system along Eade Rd in Etowah thereby improving operation. The realignment will also involve construction within NCDOT right-of-way versus a private street that would have required easements.

All of the work necessary to finish the project is outside of the scope of Black & Veatch's original engineering agreement, therefore, we need to execute an amendment to the original agreement. The additional design & bidding work will amount to a not to exceed amount of \$275,000. Note that construction administration services were not included in the original agreement and are now a part of this amendment (\$125,000). The City will be involved in the construction observation process as well. The proposed amendment is attached for your reference. We welcome any questions that you may have.

**Budget Impact:** \$ 400,000  Is this expenditure approved in the current fiscal year budget?  Yes  If no, describe how it will be funded.

There are funds set aside for this project as part of a Capital Project Ordinance. Funds may need to be moved from project contingencies or fund balance in order to cover costs associated with redesign.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve Amendment 1 to the Black & Veatch engineering agreement for design, permitting, bidding and construction administration of the Etowah Area Water System Improvements Project and to authorize the City Manager to execute the Amendment for said work; as presented and recommended by staff.

### Attachments:

Black and Veatch Engineering Agreement for Etowah Area Water System Improvements

**AMENDMENT 1  
ATTACHMENT A  
SCOPE OF SERVICES**

Owner: City of Hendersonville, NC  
Engineer: Black & Veatch International Company  
Project: Etowah Area Water System Improvement Project  
Original Agreement Dated November 16, 2016

The Etowah Area Water System Improvement Project originally consisted of approximately 15,000 linear feet (LF) of 12 and 8-inch water mains, a booster pump station and a 500,000 gallon above ground-level water storage tank.

AMENDMENT 1: The water main alignment has changed due to difficulties obtaining an easement from a property owner. In addition, the previous proposed alignment would have required significant and costly stabilization of an unstable slope to enable access to the proposed tank site. The amended scope of services includes analysis of slope stability, support of negotiations with property owner, identification and evaluation of alternative routes, Etowah System model update/revisions for the revised alignment, detailed design for the rerouting of approximately 4,000 LF of water main (see attached figure), an access road to the tank site, permitting, bidding and award, and part-time construction services. The new water main alignment will connect to the existing water mains at the intersection of Oak Knoll Road and Drexel Road as previously planned, but will not include extending the water main up Oak Knoll Road to the tank site. Instead, the revised alignment will extend from Drexel Road and Maple Leaf Drive, to the end of Maple Leaf Drive, across to Eade Road, along Eade Road to the property located at 416 County Road 1207 (Eade Road), Etowah, NC 28729, cross country to the City of Hendersonville property and proposed tank site.

**Phase 100. Project Administration**

- A. Provide project management and administration for a 8 month design period to:
  - a. Correspond and consult with Owner,
  - b. Coordinate activities of the project team,
  - c. Develop and implement specific work plans, procedures and a quality control and quality assurance plan, and
  - d. Provide overall project direction to meet Owner's objectives.
- B. Maintain a project filing system to document and retain project records.
- C. Prepare monthly invoices and status reports to document project progress.
- D. Arrange for and participate in project status meetings with OWNER to review progress, budget, schedule and deviations from this scope of services and exchange ideas and information.
- E. Prepare and distribute the minutes for project meetings. Minutes for the project meetings will include a record of decisions made.

## **Phase 200. Preliminary Design**

### **A. Hydraulic Analysis/Modeling**

- a) Update the previously completed hydraulic modeling analysis of the Etowah Area Water System, specifically to include the new booster pumping station, water mains with the new alignment, and ground storage tank.
- b) Use model results to confirm previously designed total dynamic head (TDH) of the pumps for pumping to the new water storage tank. Revise pumps and pump station appurtenances, if necessary.
- c) Provide a letter summarizing results as an attachment to the previously submitted Preliminary Design Memo (PDM).

## **Phase 300. Detailed Design**

A. As part of Detailed Design, Engineer shall produce documents for the purpose of review by Owner's staff and Engineer's quality control. The documents shall serve as milestones wherein certain features shall be fixed after a period of Owner review. The purpose of the documents and fixing certain features shall be to communicate the design progress and avoid later revisions that would impact design efficiency, cost and schedule. Changes made after fixing features will be considered Supplemental Services. Engineer's Detailed Design services include:

- a) Conduct internal quality control reviews and constructability reviews at Project milestones.
- b) Conduct design review meetings with Owner at Level 3 (90% complete) and Final (100%).
- c) Prepare detailed drawings and update specifications and other Contract Documents for the proposed construction work and for the materials and equipment required.

The documents shall be prepared for selection of private construction contractors on a competitive bid basis, in accordance with North Carolina State bidding laws. It is assumed there will be no contractor pre-qualification. The Owner intends to use the contractors that were previously pre-qualified for the project.

The Owner's standard front-end documents shall be used. The Engineer's technical specifications and standard detailing techniques shall be used. Contract drawings shall be produced using Auto CAD 2015 (Revit and Civil 3D).

- d) Prepare an opinion of probable construction cost at the conclusion of Level 3.
  - e) Prepare detailed drawings and specifications for one construction contract to include the water main, BPS, and tank installation.
- B. Field Investigations
- a) It is assumed Owner will use Owner's existing On-Call services contract to locate underground utilities and conduct surveying of the revised alignment.
  - b) Geotechnical Services
    - a. The Owner will provide, through Owner's On-Call services contract, geotechnical engineering services for the new alignment to include hand augers only to determine depth of rock, if present. A completed geotechnical report shall be provided by the Owner's On-Call Consultant.
    - b. The Engineer will review the data provided and incorporate the information provided into the design documents.
- C. Level 3 Design
- a) Deliverables.
    - a. Front-end documents
    - b. Technical specifications
    - c. Level 3 drawings
    - d. Opinion of Probable Construction Cost
  - b) Decisions. Make final coordination checks and remaining decisions on plans and specifications.
  - c) Discussion. Level 3 drawings shall include the following:
    - a. Final pipeline plan and profile drawings
    - b. Final pump station documents including civil, structural, architectural plans and final electrical and I&C diagrams
    - c. Final tank plans and specifications
    - d. Final details

Level 3 Design shall include providing sealed drawings for submittal to state review agencies. Drawings shall be annotated to be a review set only and not for construction.

#### **Phase 400. Permitting & Final Design**

##### **A. Permitting Assistance**

While permits were obtained previously for this project, revised project plans will require submission to permitting agencies to ensure the revisions are approved. The Engineer will:

- a) Provide assistance to Owner in obtaining permits and approvals from federal, state, and local agencies and from utility companies. The following permits and approvals are anticipated:
  - a. Water Extensions - Authorization to Construct (NCDEQ/DWR/PWS)
  - b. Erosion & Sedimentation Control Permit (NCDEQ)
  - c. Storm Water Management Permit (NCDEQ/DEMLR/Stormwater)
  - d. Nationwide Permit 12 (US Army Corp of Engineers)
  - e. Encroachment Agreement with NC Department of Transportation (General and Controlled Access).
  - f. Henderson County
    - 1) Floodplain Development Permit
    - 2) Water Supply Watershed Management Permit
- b) Coordinate with NCDOT and permitting agencies if needed, to determine compliance with their requirements.
- c) Update and finalize plans and specification with appropriate regulatory revisions.

#### **Phase 500. Bidding & Award**

Following receipt of authorization from Owner, Engineer shall perform the following services related to Bidding and Award of Contract.

- A. Assist Owner in advertising for a single prime contract for all construction, materials, equipment, and services as required for a complete project; attend and conduct one pre-bid conference, and develop minutes of the pre-bid conference.

- B. Reproduce and distribute Contract Documents to Owner's previously pre-qualified bidders.
- C. Maintain a record of prospective bidders and others to whom Contract Documents have been issued.

Prepare, as appropriate, interpretation, clarification, or further definition of the Contract Documents and provide to the Owner. Develop addenda for issuance by the Owner.

Consult with and advise Owner to determine the acceptability of substitute materials and equipment proposed by the Contractor(s) when substitution prior to award of contracts is allowed by the Contract Documents.

Conduct the bid opening and prepare the certified bid tabulation.

Evaluate bids and make a recommendation to Owner regarding award.

## PHASE 900. CONSTRUCTION PHASE SERVICES

- A. **Construction Contract Administration.** Engineer shall perform construction administration services for the Project in coordination with Owner's staff, for an anticipated duration of 12 months. By performing these services, Engineer shall not have authority or responsibility to supervise, direct, or control the Contractor's work or the Contractor's means, methods, techniques, sequences, or procedures of construction. Engineer shall not have authority or responsibility for safety precautions and programs incident to the Contractor's work or for any failure of the contractor to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the Contractor furnishing and performing the Work as included in the construction contract between Owner and Contractor. Engineer will coordinate administration services to be provided for the Project with Owner, as Owner intends to utilize Owner's personnel to also provide services. The following services may be performed as part of this contract:
1. **Project Management & Administration.** Provide project management and administration to:
    - a. Correspond and consult with Owner,
    - b. Coordinate activities of the project team,
    - c. Develop and implement specific work plans, procedures and a quality control and quality assurance plan, and
    - d. Provide overall project direction to meet Owner's objectives.
    - e. Maintain a project filing system to document and retain project records.
    - f. Prepare Engineer's monthly invoices and status reports to document project progress.
    - g. Provide administration and coordination of sub-consultants.
  2. **Preconstruction Conference and Monthly Progress Meetings.** Engineer will schedule and attend preconstruction conference and monthly progress meetings, and other meetings with Owner and Contractor when necessary, to review and discuss construction procedures and progress scheduling, engineering management procedures, and other matters concerning the Project. Engineer will preside at preconstruction conference and monthly construction progress meetings and record and distribute minutes of the meetings.
  3. **Contract Documents.** Upon completion of the Bidding, Engineer shall insert the awarded contractor's bid and executed documents and incorporate Addenda. Engineer will issue up to 6 sets to the contractor and Owner.

4. Contractor Submittal and Shop Drawing Review. Engineer will review, with reasonable care and for conformity to the construction Contract Documents and for Engineer's acceptance, shop drawings, O&M manuals, and other data submitted by the Contractor as required by the construction Contract Documents. Engineer's review shall not relieve the Contractor of any of his contractual responsibilities. Such reviews shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and programs incident thereto. Engineer's review of subsequent re-submissions (more than 3) due to the Contractors' failure to provide all previously requested corrected data or additional information will be considered Supplemental Services. The construction Contract Documents will require the Contractor to reimburse the Owners for these Supplemental Services. All submittals will be handled electronically via pdfs.
5. Request for Information and Change Orders. Engineer will interpret construction Contract Documents when requested by Owner or the Contractor, normally in the form of written requests for information (RFIs). Engineer will provide documentation and administer the processing of change orders, including applications for extension of construction time; evaluate the cost and scheduling aspects of all change orders; and, where necessary, negotiate with the Contractor to obtain a fair price for the Work. Said negotiation shall be subject to the approval of Owner. Unusually complex or unreasonably numerous claims are covered in Supplemental Services.
6. Contractor's Construction Schedule. Engineer will evaluate the Contractor's construction schedule, activity sequences, and construction procedures as applicable to Owner's ability to keep existing facilities in operation and coordination with work being conducted by Owner and for compliance with specific scheduling requirements included in the Construction Documents.
7. Contractor's Monthly Payment Requests. Engineer shall review and process the Contractor's monthly payment requests, and forward to Owner if appropriate. Engineer's review shall be for the purpose of making a full independent mathematical check of the Contractor's payment request. Engineer shall verify the quantities of work which are the basis of the payment requests and determine whether the progress of the Work is consistent with the requirements of the construction schedules submitted by the Contractor at the time of the Contractor's payment requests. Nothing herein shall confer liability upon Engineer for Contractor's completion of the project according to the Contract schedule.
8. Project Completion. Upon substantial completion of the Project, Engineer shall review the construction work and prepare punch-lists of those items to be completed or corrected before final completion of the Project. Submit results of the review to Owner and the Contractor. Upon completion or correction of the items of work on the punch-lists, Engineer shall conduct final project review to determine if the Work is completed. Provide written recommendations concerning final

payments to Owner, including a list of items, if any, to be completed prior to making such payment.

9. Record Drawings. Upon completion of the Project, Construction Administrator shall revise the construction Contract Drawings to conform to the construction records based on markups provided by Construction Contractor. Submit AutoCAD Drawing files on electronic CD or thumb drive and two hard print copies of Drawings.

**B. Resident Project Representative(s) Services During Construction.** Part-time Resident project representation (RPR) will be provided by Engineer for the Project. Owner's RPR will provide on-site RPR services on a full-time, or close to full time basis. RPR services may include those indicated below:

- Part-Time Resident for 12 months at 8 hours per week on average.
1. Any additional RPR services above these amounts will be completed as a supplemental service. The RPR will observe the Contractor's work and perform the services listed below. The RPR shall not have responsibility for the superintendence of construction site conditions, safety, safe practices or unsafe practices or conditions, operation, equipment, or personnel other than employees of Engineer. This service will in no way relieve the Contractor of complete supervision and inspection of the Work or the Contractor's obligation for complete compliance with the Drawings and Specifications. The Contractor shall have sole responsibility for safety and for maintaining safe practices and avoiding unsafe practices or conditions. Specific services that may be performed by the Construction Administrator's RPR when on-site are listed below.
    - a) Conduct onsite observations of the general progress of the Work to assist Construction Administrator in determining if the Work is proceeding in accordance with the construction Contract Documents.
    - b) Construction Administrator's RPR shall serve as Owner's liaison with the Contractor when the Contractor's operations affect Owner's onsite operation.
    - c) Obtain from Owner additional details or information when required at the jobsite for proper execution of the Work.
    - d) Monitor changes of apparent integrity of the site (such as differing subsurface and physical conditions, existing structures, and site-related utilities when such utilities are exposed) resulting from construction-related activities.
    - e) Observe pertinent site conditions when the Contractor maintains that differing subsurface and physical conditions have been encountered, and document actual site conditions.

- f) Review the Contractor's construction sequence and traffic control plans.
- g) Verify that the Contractor has contacted utilities in the general construction area and advised them of Contractor's schedule.
- h) Visually inspect materials, equipment, and supplies delivered to the worksites. Reject materials, equipment, and supplies which do not conform to the construction Contract Documents.
- i) Coordinate onsite materials testing services during construction. Copies of testing results will be forwarded to Owner for review and information. Laboratory and field testing services during construction will be provided and paid for by Owner.
- j) Observe field tests of equipment, structures, and piping, and review the resulting reports, commenting to Construction Administrator, as appropriate.
- k) Meetings, Reports, and Document Review and Maintenance:
  - 1) Identify work which is known to be defective, or which fails any required inspections, tests, or approvals, or has been damaged prior to final payment; and advise whether the Work should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection, or approval.
  - 2) Record date of receipt of shop drawings and samples. Receive samples which are furnished at the site by the Contractor.
  - 3) During the course of the Work, verify that specified certificates, operation and maintenance manuals, and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed; review and deliver this material to Owner prior to final acceptance of the Work.
  - 4) Maintain marked sets of Drawings and Specifications at the jobsite based on data provided by the Contractor. This information will be combined with information from the record documents maintained by the Contractor, and a master set of documents conforming to construction records will be provided to the Owner at the conclusion of the project.
  - 5) Review certificates of inspections, tests, and related approvals submitted by the Contractor as required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents (but only to verify that their content complies with the requirements of, and the results certified indicate compliance with, the Construction Contract Documents). This service is limited to a review of items submitted

by the Contractor and does not extend to a determination of whether the Contractor have complied with all legal requirements.

- 6) When on-site, maintain a diary or logbook of events, including the following information:
  - Days the Contractor worked on the jobsite.
  - Contractor and subcontractor personnel on jobsite.
  - Construction equipment on the jobsite.
  - Observed delays and causes.
  - Weather conditions.
  - Data relative to claims for extras or deductions.
  - Daily activities.
  - Observations pertaining to the progress of the Work.
  - Materials received on jobsite.

The diary or logbook shall remain the property of Construction Administrator.

2. Assistance in Certification of Substantial Completion

- a. Before Construction Administrator issues a Certificate of Substantial Completion, submit to the Contractor a list of items observed to require completion or correction.
- b. Assist in conducting final review in the company of Owner and the Contractor, and prepare a final list of items to be completed or corrected.
- c. Verify that all items on the final list have been completed or corrected prior to acceptance.

C. **Operational Phase Services.** Engineer may provide the following services during the operational phase of the project.

1. **Warranty Review.** Eleven months following final completion, conduct a project walk through with Owner and Contractor to document any items needing correction by the contractor, prior to the end of the 1-year warranty period.
2. **Warranty Correction Assistance.** No cost has been included for warranty correction assistance.

3. **Training.** No costs have been included for training of Owner's staff.

#### **OWNER'S RESPONSIBILITIES**

- A. The Owner will be responsible for the following in support of this project:
1. Operation of all pipeline valves, pumps, and other equipment.
  2. Provide property access
  3. Provide previously pre-qualified contractors information
  4. Bidding and award services.
    - a. Notify pre-qualified contractors for a single prime contract for construction materials, equipment, and services.
    - b. Post addenda to website as appropriate.
    - c. Attend the bid opening.

#### **SUPPLEMENTAL SERVICES**

- A. Any work requested by Owner that is not included in one of the items listed in any other phase will be classified as supplemental services.

Supplemental services shall include, but are not limited to:

1. Contractor Pre-qualification
2. Conformed contract documents
3. Additional meetings with local, State, or Federal agencies to discuss the project.
4. Supplemental engineering work required to meet the requirements of regulatory or funding agencies that become effective subsequent to the date of this agreement.
5. Special consultants or independent professional associates required by Owner.
6. Preparation for litigation, arbitration, or other legal or administrative proceedings; and appearances in court or at arbitration sessions in

connection with bid protests, change orders, or construction incidents, at the request of the Owner.

7. Changes in the general scope, extent, or character of the project, including, but not limited to:
  - a. Changes in size or complexity.
  - b. Owner's schedule, design, or character of construction.
  - c. Revision of previously accepted studies, reports, design documents, or construction contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, documents, or designs; or are required by any other causes beyond Engineer's control.
8. Additional permitting or regulatory meeting assistance. Payment of permitting fees.
9. Provisions, through a subcontract, for aerial photography as requested or approved by Owner.
10. Public information assistance.
11. Assistance in financially related transactions for the Project.
12. Environmental permitting assistance which may include but is not limited to wetland delineation and permitting, or to develop, submit, respond, and other requirements associated with an Environmental Assessment.
13. Provisions, through a subcontract, for implementation of environmental mitigation measures required as an outcome of the permitting assistance.
14. Services resulting from significant delays in obtaining the permits, encroachments, or materials to commence construction.
15. Assistance with procurement of materials.
16. Testing and handling of contaminated soil along pipeline alignment
17. Excessive RFIs and resubmissions of shop drawings

**AMENDMENT 1**

**ATTACHMENT B**

Owner: City of Hendersonville, NC  
Engineer: Black & Veatch International Company  
Project: Etowah Area Water System Improvement Project

**COMPENSATION**

For the Scope of Services in Attachment A, Owner will compensate Engineer a fee not exceed \$400,000 unless authorized by the Owner in writing. Engineer will invoice Owner for actual hours worked, plus reimbursable expenses. Owner agrees Engineer may alter the distribution of compensation between individual phases of the work to be consistent with services actually rendered, but not exceed the total amount unless approved in writing by the Owner. Standard hourly rates are subject to review and adjustment annually.

Fee Breakdown:

Phases 100 through 500:                   \$275,000

Phase 900                                       \$125,000

Engineer will coordinate with Owner and Owner's personnel to provide Phase 900 Construction Phase Services, within the fee amount.

**AMENDMENT 1**

**ATTACHMENT C**

Owner: City of Hendersonville, NC  
Engineer: Black & Veatch International Company  
Project: Etowah Area Water System Improvement Project

**SCHEDULE**

The scope of services is anticipated to be performed as follows:

Level 3 (90%) Detailed Design	3 months (starting upon receipt of survey data from Owner)
Permitting and Final Design	3 months
Bid Phase Services	2 months
Construction Phase Services	12 months



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 12/22/17

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05e

Inclement Weather Policy - Revision

The recent snow on December 8th, 2017, brought to light some confusing language in the City's Inclement Weather Policy. This agenda item proposes a revision to this policy to further clarify the language and match the procedures of holiday pay in the City's Personnel Policy. This would allow employees who worked during the closure to receive comp. time or be paid for their hours worked. The current policy requires that the employee take comp. time.

**Budget Impact:** \$ 0 Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move to adopt the revisions to the Inclement Weather Policy as presented.

### Attachments:

Inclement Weather Policy with track changes.

	<b>CITY OF HENDERSONVILLE</b>		
		Policy Name:	Inclement Weather Policy

**I. Introduction**

The City of Hendersonville is required to provide essential services for its citizens regardless of weather conditions. The City is committed to the safety and security of its employees, and visitors.

As such, the decision whether the City should close or remain open is based on the overall concern for the community. The Inclement Weather Policy is established to be as fair as possible to all employees.

**II. Scope**

This administrative policy, upon approval of the City Council, shall be applicable to all employees. This procedure shall remain in effect until such time that it is altered, modified, or rescinded by the City Council.

**III. Types of Personnel**

**Essential Personnel**

The term “essential personnel” is used in this policy to describe those employees whose job responsibilities are provided 24 hours a day – seven days a week and / or essential to the everyday livelihood of the city and its citizens. Employees essential to the successful and efficient management of a weather emergency situation shall be designated by the City Manager or their Department Head and are expected to return to work as scheduled.

An essential employee, unable to report to work for their scheduled shift due to legitimate environmental conditions, should contact their immediate supervisor to see if alternative transportation can be arranged. Employee who reports in their day off to cover the absent employee’s shift will be paid in accordance with the FLSA guidelines. Failure to be available or to report to work when called may be grounds for disciplinary action.

**Non-Essential Personnel**

The term “non-essential employee” is used in this policy to describe those employees whose job responsibilities are primarily administrative in nature and can be delayed without any negative impact to the employees, citizens, or community.

	<b>CITY OF HENDERSONVILLE</b>		
		Policy Name:	Inclement Weather Policy

**III. Procedure**

It is the policy of the City of Hendersonville to remain open during most periods of inclement weather; however, where extraordinary circumstances warrant the City reserves the right to close our facilities.

1. Each employee is expected to make necessary advance preparations so they can get to work in periods of adverse weather.
2. The City recognizes weather conditions may prevent some employees from reporting to work on time or not at all. The decision to report to work or not is an employee's option based on their assessment of road conditions. If an employee does not report to work, reports to work late, or leaves early due to weather they must notify their immediate supervisor.
3. The employee may use vacation, compensatory time, or leave without pay as coordinated with their supervisor during adverse weather.
4. Employees are strongly encouraged to have a plan in place for child care in the event that schools are closed due to inclement weather. Department Heads may exercise discretion in allowing employees to stay home for purposes of caring for school age children, as long as full operational capabilities are maintained.

City offices and departments shall remain open for the full scheduled working day unless authorization for closing or other deviation is approved by the City Manager. In these situations the City may be closed or may open late for employees, customers, and the general public in the interest of safety.

The City of Hendersonville will notify local media of this change and update our general information line at 828-697-3000. Department Heads will be contacted and are responsible for contacting their employees.

**VI. Closures and Payroll Procedures**

If the City does close this will be the City Managers decision. In the event of a closure due to weather conditions the City will apply the following standard:

- Non-Essential and essential employees will be paid for the closure. Additionally, ~~E~~ssential employees will receive pay for the hours worked during the closure

	<b>CITY OF HENDERSONVILLE</b>		
		Policy Name:	Inclement Weather Policy

~~which would be granted as either compensatory time “comp time” as regular time or paid regular hours.~~ For example, the City closes its operations for a half a day. Non-Essential and essential employees will receive a half day pay for the closure. ~~Additionally, Essential employees that worked would receive pay for hours worked during the closure which would be granted as either comp time as regular time or paid regular hours, would receive 4 hours for the closure which would be added to the employee’s “comp time” as regular time. These Hours paid for the closure hours~~ would be considered non-compensable hours under FLSA for overtime calculations.

- If the employee elects not report to work when facilities are open the employee can elect 1) use any accrued vacation leave or compensatory time or 2) the employee will not be paid for the day.
- If an employee can work remotely from home this must be authorized by the employee’s department head or City Manager. This time will be counted as regular working hours.
- All employees will be given the same amount of time for the closure. For instance, an employee works a second or third shift they will receive the same amount of ~~“comp-time”~~ if they work during a closure. This ~~“comp-time”~~ is only good for day of closure till midnight.
- If the employee is preapproved for a scheduled off day – either sick or vacation, or scheduled off due to shift rotation, they are not eligible for pay during the closure.

**V. Non-Compensable Stand-By Pay**

Employees may volunteer or be asked to have their name placed on a “call-in” list as relief personnel. Employees in this status are not eligible for “on-call” pay outlined in the City’s Personnel Policy in Article III Section 13 of the City’s personnel policy. These employees are not required to be available and no disciplinary action will be taken for failure to respond. However, should these employees report to work during their day off or work hours in addition to their regular schedule, they will be paid in accordance with FLSA guidelines.

	<b>CITY OF HENDERSONVILLE</b>		
		Policy Name:	Inclement Weather Policy

**~~V. Payment Guidelines~~**

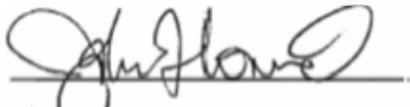
~~The general policy of the City of Hendersonville to award time essential workers who worked during a closure as “comp time” for the hours the City offices were closed due to adverse weather. However, this may not be feasible by the department. Department Heads may request a deviation from policy to City Manager for final approval. The City~~

~~Manager may approve any deviations from policy on a case by case basis for the department.~~

~~Below are general guidelines when the City Manager will consider any deviation and pay employees vs. awarding “comp” time.~~

- ~~• Number of consecutive closings in a 30 day period.~~
- ~~• The amount of “comp time” a department currently has on the books.~~
- ~~• The impact of scheduling multiple employees off and impact to operations.~~
- ~~• The financial impact to department of paying time off.~~

This policy is approved by City Council in accordance with City’s Personnel Policy.

  
 \_\_\_\_\_  
 John F. Connet, City Manager

**John Connet, City Manager**

\_\_\_\_\_  
 January 9<sup>th</sup>, 2014

**Date**



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 12/22/17

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05f

Request to Convert Part-time Customer Service Representative to Full-time

We are requesting to convert a 3/4 time customer service representative position to full-time. This position is available due to a resignation of a tenured employee who was working 3/4 time. The cost to convert this position to full-time is minimal as the tenured employee's salary is greater than an entry level hire. The customer service team will be benefited with additional coverage during busy times, more employees available to answer phone calls, and additional clerical work that needs to be accomplished in customer account management. The recurring future year costs are estimated to be \$3,000. This increase in recurring costs is minimal and is not expected to create a hardship on future budgets. City management supports and recommends this change.

**Budget Impact:** \$ 1,000 - \$3,000  Is this expenditure approved in the current fiscal year budget?  Yes  If no, describe how it will be funded.

### Suggested Motion:

I move to approve the conversion of a part-time Customer Service Representative position to a full-time position.

**Attachments:**

Department Request.

CITY COUNCIL:  
BARBARA G. VOLK  
Mayor  
RON STEPHENS  
MAYOR PRO TEM  
JERRY A. SMITH, JR.  
STEVE CARAKER  
JEFF MILLER

# CITY OF HENDERSONVILLE

*The City of Four Seasons*

FINANCE DEPARTMENT  
Tammy Holland  
Revenue Accounting Supervisor  
[tholland@hvlnc.gov](mailto:tholland@hvlnc.gov)  
(828)697-3022

OFFICERS:  
JOHN F. CONNET  
City Manager  
SAMUEL H. FRITSCHNER  
City Attorney  
TAMMIE K. DRAKE  
City Clerk

With Faye Kearney leaving the City, last working day is December 22<sup>nd</sup> last pay date will be December 29<sup>th</sup>, I am in need of a new employee. I am requesting additional funds to convert the current ¾ time position into a full time position. Based on Faye's current salary and if we hired in the new employee at the starting salary of \$27,545-28,500 there would be a difference of \$3,104-\$3,200 (based on experience) needed for the year and in upcoming years.

Currently I have a remaining budget in the full time salaries and wages account of 430,000 according to my estimation I will only have 14 more payrolls with an average amount of 20,000 per payroll remaining to be paid this fiscal year. This results in \$280,000 remaining to be paid. This does not include part-time current budgeted salary with has remaining 9,500 for the year.

I am unsure where the extra budgeted amount is coming from or why we budged so high for 2018, the water and sewer finance manager would not have accounted for this much of a difference. That being said I have enough in my current budget to cover the transforming of this position into a full-time employee.

Recurring costs associated with this would be as follows:

Removal of the part-time position budget, move remaining budget into full-time.

Increase of full-time position expense of \$1059-1150, depending on experience and starting pay, for the current year.

Increase of 3,104.00-3,204.00 budget in upcoming years based on candidate's experience.

The city would also have an increase of 616.00 monthly for employee insurance, Faye does not participate in our insurance plan.

An increase of \$20-25 for the retirement system.

The taxes on the wages paid by the city would be a minimal increase.

I think the transformation of this position into a full-time position would result in more applicants. This position being converted to full-time will also help with coverage in the collections area at all times and allow for someone to do more research and clerical items that no-one is currently doing.

Thank You for your consideration

Tammy Holland

145 Fifth Ave. E.  
Hendersonville, NC 28792-4328  
[wsdept@cityofhendersonville.org](mailto:wsdept@cityofhendersonville.org)

[www.hvlnc.gov](http://www.hvlnc.gov)

Customer Service Phone: 28.697.3052  
Fax: 828.697.5894



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 12-15-17

**Presenter:** Susan G. Frady, Development Asst Director

**Date of Council Meeting to consider this item:** 1-04-18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 06

The City has received an application from Robert Baumann and Robert Duffey, to close an unnamed alley running between Kensington Avenue and Ridgewood Boulevard. A map, survey and boundary description are included with this memorandum. There are no city utilities located within this alley.

The Council adopted a Resolution of Intent to close this unopened alley at their November 2, 2017 meeting. A copy of the Resolution of Intent was mailed to the adjoining property owners, notification of the proposed closing was posted on the property, and the Resolution of Intent and notice of the public hearing was advertised four times in the legal notice section of a local newspaper.

General Statute 160A-299 has procedures for permanently closing streets and alleys. Any person may be heard on the question of whether or not the closing would be detrimental to the public interest or the property rights of any individual. If it appears to the satisfaction of City Council after the hearing that closing this street is not contrary to the public interest, and that no individual owning property in the vicinity of the street portion or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property, the City Council may adopt an order closing this street portion.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move Council to adopt the Resolution of Intent for the closing of an unnamed alley as petitioned by Robert Baumann and Robert Duffey.

### Attachments:

Resolution of Intent  
Order to Permanently Close  
Map  
Boundary Description

**RESOLUTION OF INTENT**

**A resolution declaring the intention of the City of Hendersonville City Council to consider closing a portion of an unopened and unimproved Alley for an unnamed alley off Kensington Road located on PINs 9569426880 and 9569426834**

WHEREAS, NC General Statute (G.S.) 160A-299 authorizes the City Council to close public streets and alleys, and

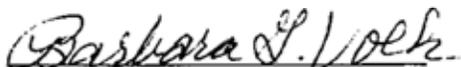
WHEREAS, Robert Baumann, has petitioned the Council of the City of Hendersonville to close a portion of an unopened and unimproved alley off of Kensington Road located on PINs 9569426880 and 9569840372, and

WHEREAS, the City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of an unopened and unimproved alley off Kensington Road located on PINs 9569426880 and 9569426834.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville:

1. A meeting will be held at 5:45 p.m. on the fourth day of January, 2018, in the Council Chambers of City Hall to consider closing a portion of an unopened and unimproved alley off of Kensington Road located on PIN numbers 9569426880 and 9569426834.
2. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
3. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
4. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Adopted by the City Council at a meeting held on the second day of November, 2017.

  
Barbara G. Volk, Mayor

Attest:

  
Tammie K. Drake, City Clerk

**ORDER TO PERMANENTLY CLOSE A PORTION OF  
An Unnamed Alley  
(Petition by Robert Baumann and Robert Duffy)**

NORTH CAROLINA  
HENDERSON COUNTY

TO WHOM IT MAY CONCERN:

WHEREAS, North Carolina General Statute Section §160A-299 authorizes a city council to permanently close any street or public alley way within its corporate limits or area of extraterritorial jurisdiction and provides a procedure for the closing of such streets or alleyways; and

WHEREAS, Robert Baumann and Robert Duffey, have petitioned the City of Hendersonville to close an unnamed alley off of Kensington Road; and

WHEREAS, on the second day of November 2017, the Hendersonville City Council adopted a resolution expressing the intention of the municipality to close this alley and setting the fourth day of January 2018, as the date of a public hearing regarding such closure; and

WHEREAS, the aforementioned resolution has been published once a week for four successive weeks prior to the public hearing in the Hendersonville Lightning (a newspaper of general and regular circulation in Hendersonville and Henderson County) and a copy thereof has been sent by certified mail to all owners of property adjoining the street as shown on the county tax records; and

WHEREAS, notice of the closings and of the public hearing has been posted in at least two places along the streets; and

WHEREAS, a public hearing was held in conformance with the aforementioned public notice on the fourth day of January 2018.

NOW, THEREFORE, the City Council of the City of Hendersonville does hereby make the following findings of fact:

1. The closing of the alley hereafter described are not contrary to the public interest.
2. No individual owning property in the vicinity of the streets or in the subdivision in which it is located would be deprived by the closing of such streets of reasonable means of ingress and egress to his property.

IN CONSIDERATION THEREOF, IT IS HEREBY ORDERED:

1. The following alley is permanently closed and no longer existent as of the effective date of this order:

Being located in the County of Henderson, State of North Carolina and more particularly described as:

An unnamed alley 15 feet in width running between Kensington Road and Ridgewood Avenue in Hendersonville, whose northern margin is the southern margin of lot 70 as shown on a plat recorded at plat slide 81, Henderson County Registry, and more particularly described below.

An alley 15 feet in width whose southern margin is shown as the northern margin of the Robert L. Bauman and Mary V. Bauman property as shown on a plat recorded at plat slide 10484, Henderson County Registry.

The alley as described herein and as shown on the above-referenced recorded plats may not be identical to any physical roadways or alleys actually in existence.

2. The City Clerk shall forthwith cause a certified copy of this order to be filed in the Office of the Register of Deeds of Henderson County.

This order shall take effect the fourth day of January, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, City Clerk

Approved as to form:

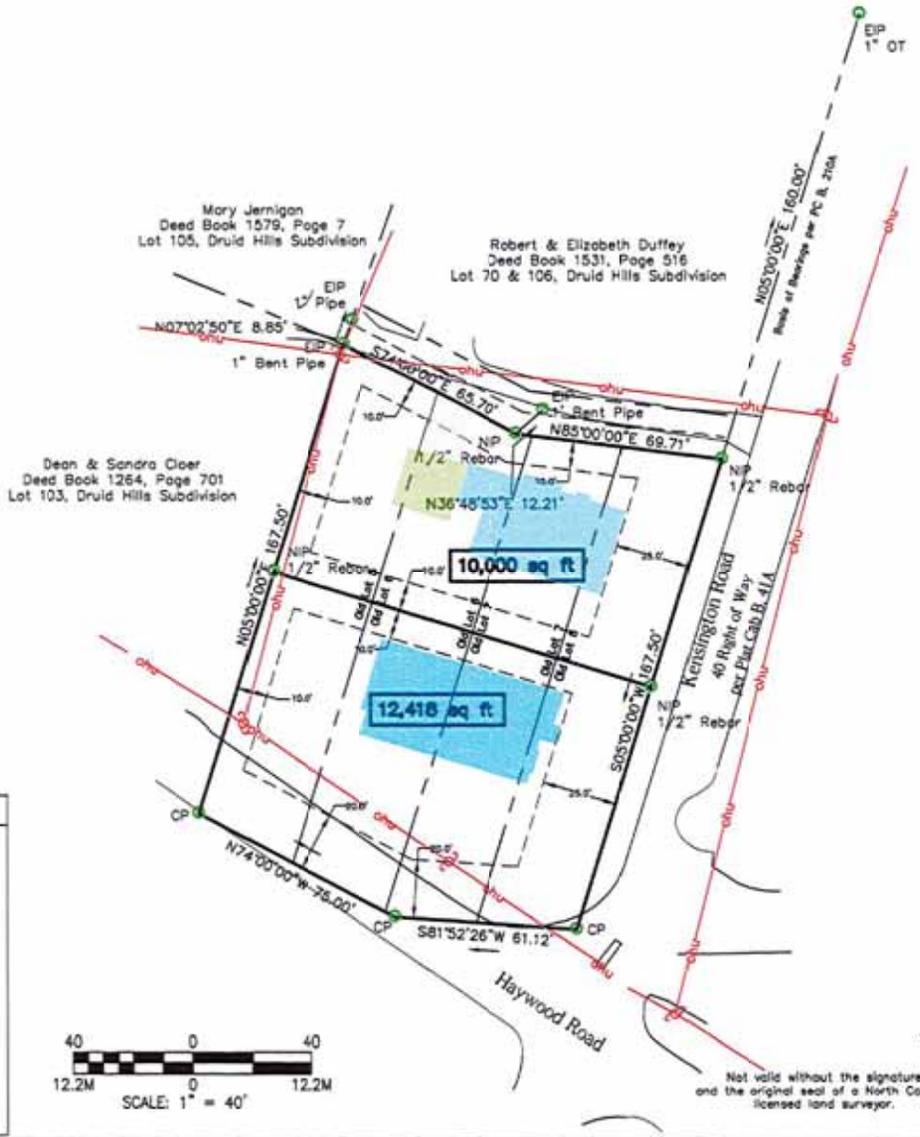
\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, \_\_\_\_\_, a notary public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk, in her capacity as Mayor of the City of Hendersonville, Tammie K. Drake, in her capacity as City Clerk, and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_.

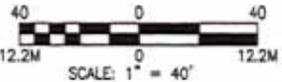
My commission expires \_\_\_\_\_



Plat of Boundary Survey for  
 \*\*\*\*\*  
 Street  
 Township, County, North Carolina  
 Lot, Subdivision

**LEGEND:**

IP	IRON PIN SET (1/2" REM)
IPF	IRON PIN FOUND
CP	CALCULATED POINT ONLY
CM	CONCRETE MONUMENT
PP	POWER POLE
L	LIGHT POLE
WV	WATER VALVE
SV	SANITARY VALVE
M	MILL
FH	FIRE HYDRANT
SSW	SEWAGE SANITARY WAREHOUSE
SDS	STONE DRIVE MARKER
CS	CATCH BASIN
CL	CLEWELT
CI	CURB INLET
T	TRANSFORMER
CU	CORNER UTILITY
FL	FENCE LINE
M	MEASURED
RE	RECORD
OR	OFFICIAL RECORD BOOK
LD	IDENTIFICATION
P.B.	PLAT BOOK
Pg	PAGE
N.L.	NOISE LINE
L	LINE
C	CORNER
R	RANGE
R/W	RIGHT-OF-WAY
OP	OWNER OF PROPERTY



**Not For Recordation**

The original drawing and/or all copies of it are not transferable to any future owner(s) of the platted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements are located correctly and that no visible encroachments exist unless otherwise shown.



RLS F. V. CLINKSCALES JR., P.E.  
 No: 2614 Firm No. C-1562

FREELAND - CLINKSCALES & ASSOCIATES, INC. OF N.C. ENGINEERS & LAND SURVEYORS 201 2nd AVE. EAST HENDERSVILLE, N.C. 28792 FCAOFNORBELLSOUTH.NET (828) 697-6539 Fax (828)-697-4195 Firm No. C-1562	REF. PLAT CABINET _____ REF. DEED BOOK _____ TAX MAP _____ PARTY CHIEF FVC DRAWN TEC DATE 2004 DWG. NO. H_____
---	--

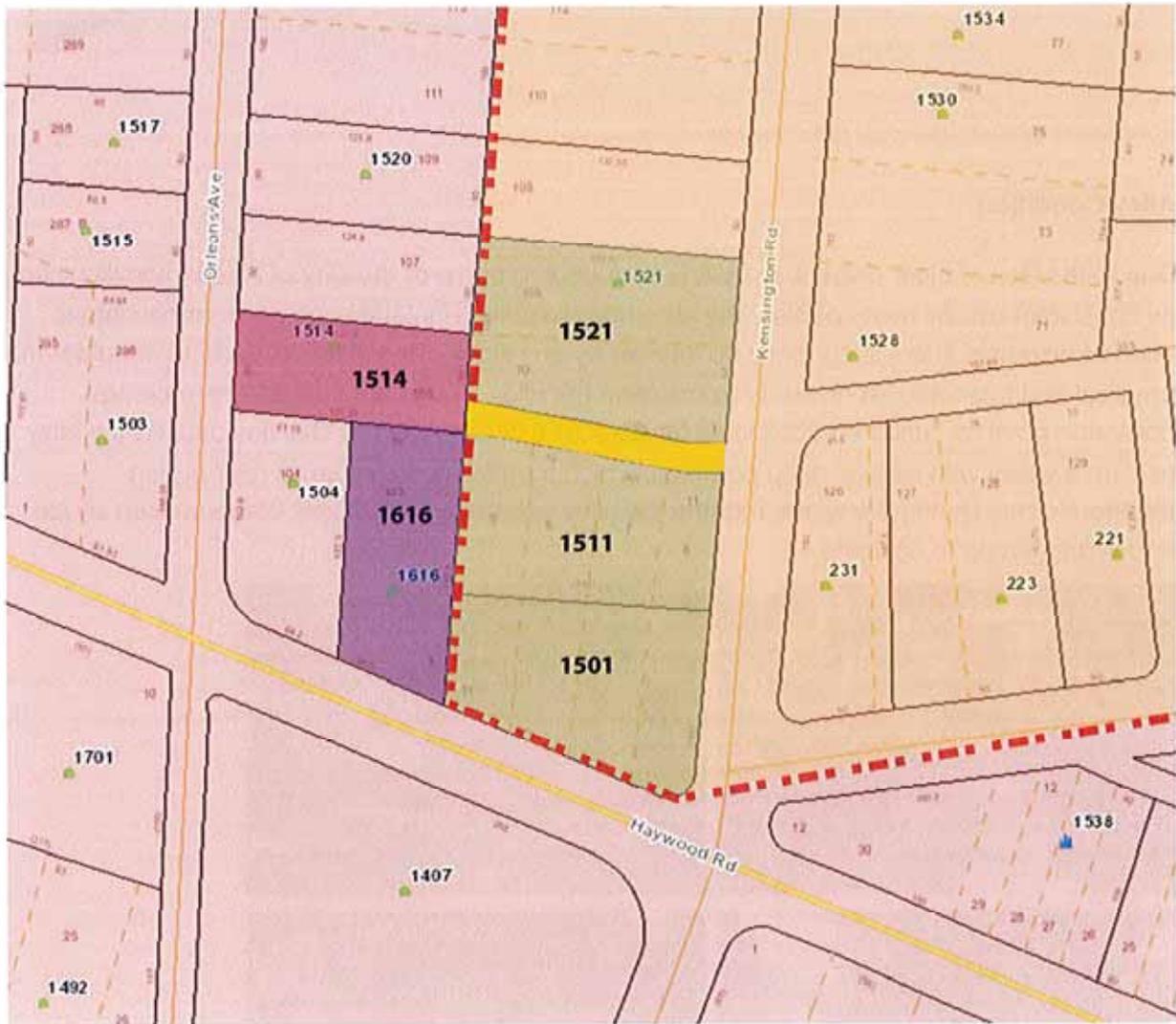
# Petition To Close Alley

1511/1521 Kensington Rd, Historic Druid Hills

Prepared by:

Derek Coté & Robert Baumann, 1501/1511 Kensington Rd.

Robert Duffey, 1521 Kensington Rd.



 Proposed alley to be closed

 Vacant property

 Property owners requesting closure

 Property accessing alley

 Historic Druid Hills boundary



*Image showing unmaintained and deteriorated condition of alley from Kensington entrance, in Historic Druid Hills.*

### **Alley Condition**

Due to the lack of clear ownership by any surrounding party, or the City of Hendersonville, and its consistent use by many parties, the alley has remained unmaintained and in a persistent state of disrepair. There is currently no interest by any single, or collective, party to shoulder the physical and financial responsibility to maintain the alley. In addition, the alley is a central collection point for runoff originating as far back as Orleans Avenue. This has caused the alley to form a valley with several deep potholes, which transforms into a small river during thunderstorms. During the winter months the alley becomes excessively compromised by ice and is dangerous to navigate.



*Images noting existing bent pipe survey point, in alley, marking NW corner of 1511 Kensington Road. 1616 Haywood Road (Left) and rear yard of 1514 Orleans Ave (right).*

## **1511/1521 Kensington Road**

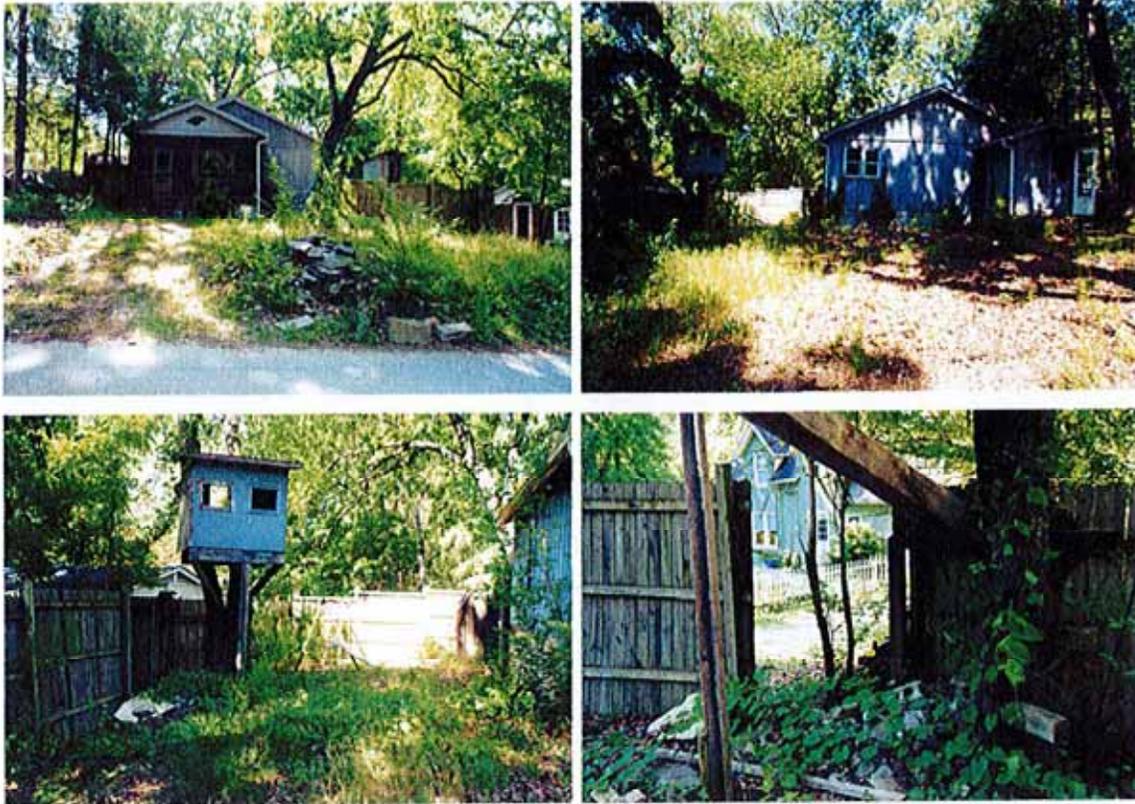
As the new owners of 1501/1511 Kensington, we propose to close the alley in between 1511 and 1521 Kensington Road, in Historic Druid Hills. The alley currently serves as the main driveway access for 1521 Kensington Road (Robert Duffey). It is our intention to have it serve as the future, main driveway access for 1511 Kensington Road (Robert Baumann/Derek Coté). This is where we are planning to build two new residences that will extend to the end of the block at the corner of Kensington Road and Haywood Road.

We have several concerns driving our intentions:

1- There are two children under the age of 9 residing at 1521 Kensington and one child under age 6 to reside at 1511 Kensington Road. This open and unmaintained alley poses a security and safety risk for our children. 1514 Orleans Avenue is a vacant home in an extreme state of disrepair with an unmaintained yard littered with debris. The alley allows free and open access to this property

2- Because the alley is not owned by anyone, including the City of Hendersonville, no one maintains the alley and it has fallen into a state of disrepair. There is no incentive for the adjacent residents at 1511 and 1521 Kensington to maintain the alley. Meanwhile, others in the rental properties at 1616 Haywood and 1514 Orleans continue using and contributing to its disrepair without any real incentive to contribute to its maintenance from the owners of said properties.

3- The alley is in Historic Druid Hills and is being utilized by residents of 1616 Haywood and 1514 Orleans. As the new owners of 1501/1511 Kensington Road, it is our intention, along with the owners of 1521 Kensington Road, to substantially re-grade for runoff, repair and maintain the alley and use it as our primary driveway access. We also intend to construct a fence along the property line in order to minimize free and clear access by our children to vacant and potentially hazardous property. This will serve to upgrade and beautify the last remaining corner of Historic Kensington Road. It is also our intention to clean up and maintain the entire corner/exit of the neighborhood all the way up to Haywood Road.



*Images noting vacant 1514 Orleans front access driveway and detailing condition of rear yard.*

### **1514 Orleans Avenue**

The alley currently provides secondary, and unnecessary, access to 1514 Orleans Avenue by cutting through the block to Kensington Road, a street that lies in Historic Druid Hills. 1514 Orleans Avenue currently has access via Orleans Avenue. According to neighbors, 1514 is currently vacant and has been for quite some time. The property is in a severe state of neglect and disrepair. This poses an additional safety hazard for our children who currently have free and easy access to the vacant property.



*Images noting 1616 Haywood front access and basement garage via Haywood Road.*

**1616 Haywood Road**

1616 Haywood is currently a rental property, which leads us to believe there will be no effort to maintain the alley on the occupants or owner's behalf. 1616 Haywood Avenue currently has ample access via Haywood Road, which is also where the (basement) garage access is located.



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 12-11-17

**Presenter:** Susan G. Frady, Development Asst Director

**Date of Council Meeting to consider this item:** 1-4-18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item # 07**

The City of Hendersonville has received a petition from Dianne Newman and Patrick Tighe for contiguous annexation of parcel 9569-14-7462 containing approximately 0.76 acres located at 1926 Haywood Road. This annexation application is related to a sewer service request. Please refer to the attached maps for additional information.

At your meeting of December 7, 2017, you accepted the Clerk's Certificate of Sufficiency and recommended a public hearing for the January 4, 2018 City Council meeting.

At this public hearing, any person residing in or owning property in the area proposed for annexation and any resident of Hendersonville may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If City Council then finds and determines that the area described in the petition meets all of the standards set out in G.S. 160A-31, Council may adopt an ordinance annexing the area described in the petition.

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move the City Council adopt an ordinance annexing the property included in the petition from Dianne Newman and Patrick Tighe effective January 4, 2018.

### Attachments:

Ordinance  
Map  
Survey  
Certificate of Sufficiency

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE  
CITY OF HENDERSONVILLE, NORTH CAROLINA  
Dianne Newman and Patrick Tighe**

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the fourth day of January 2018, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The area is contiguous to the present City boundaries;
- b. The petition presented to the City Council was signed by the owners of the real property located in the area;
- c. The petition was prepared in accordance with a form prescribed by NCGS 160A -31, and
- d. At the public hearing all persons owning property in the area to be annexed who allege an error in the petition were given an opportunity to be heard, as well as residents of the City who question the necessity for annexation.

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

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the fourth day of January 2018.

**DESCRIPTION OF PROPERTY**

BEGINNING at a point, said point being the northeastern corner of the property of James Arthur Ballard as described in a certain deed recorded in Deed Book 624, at page 253 of the Record of Deed of the Henderson County Registry, said point lying South 51 deg. 49 min.35 sec. East 295.87 feet from an iron pin, the northernmost corner of Lot 10 of Lynwood Subdivision as shown on a plat thereof recorded in Plat Cabinet B, at slide 158 of the Record of Plats of the Henderson County Registry, and running thence from said beginning point, South 56 deg. 43 min. 00 sec. East 150 feet to a point, thence with the area of a circle to the right having a radius of 19.6 feet an arc distance of 20.95 feet (chord bearing south 26 deg. 05 min. 30 sec. East 19.97) to a point, thence South 56 deg. 43 min. 00 sec. West 163.10 feet to a point, thence with the curve of a circle to the right, having a radius of 5 feet an arc distance of 10.36 feet (chord bearing South 63 deg. 54 min. 30 sec. West 8.61 feet) to a point within the right-of-way of Haywood Road, Highway 191, thence north 56 deg. 47 min. 34 sec. West 242.61 feet to a point, thence North 33 deg. 46 min. 01 sec. East 160.9 feet, crossing an iron pin at 9.44 feet, said point being the point and place of BEGINNING. This property is comprised of .76 acres, more or less, and is that same property shown and described on a certain survey entitled "Plat of Proposed Property of Kenneth Pearce and Julia Clapsaddle", performed by Steven Lloyd Waggoner, R.L.S. 2874, dated January 10, 1994, bearing Job No. 94-001.

This property is comprised of all of Lots 1, 2,3, and 4 of Lynwood Subdivision as shown on a plat thereof recorded in Plat Cabinet B, at Slide 158 of the Record of Plats of the Henderson County Registry.

This property is conveyed subject to the restrictive covenants, if any, of Lynwood Subdivision and further

subject to the right of way Haywood Road, Highway 191, and a gravel access road following the eastern and northern boundaries, to their full length widths.

AND BEING all of the property described in the Deed Book 1061 at the page 379, Henderson County Registry.

Section 2. Upon and after the fourth day of January 2018, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this fourth day of January 2018.

\_\_\_\_\_  
Barbara Volk, Mayor, City of Hendersonville

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, \_\_\_\_\_, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara Volk in her capacity of Mayor of the City of Hendersonville; Tammie K. Drake, in her capacity of City Clerk; and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

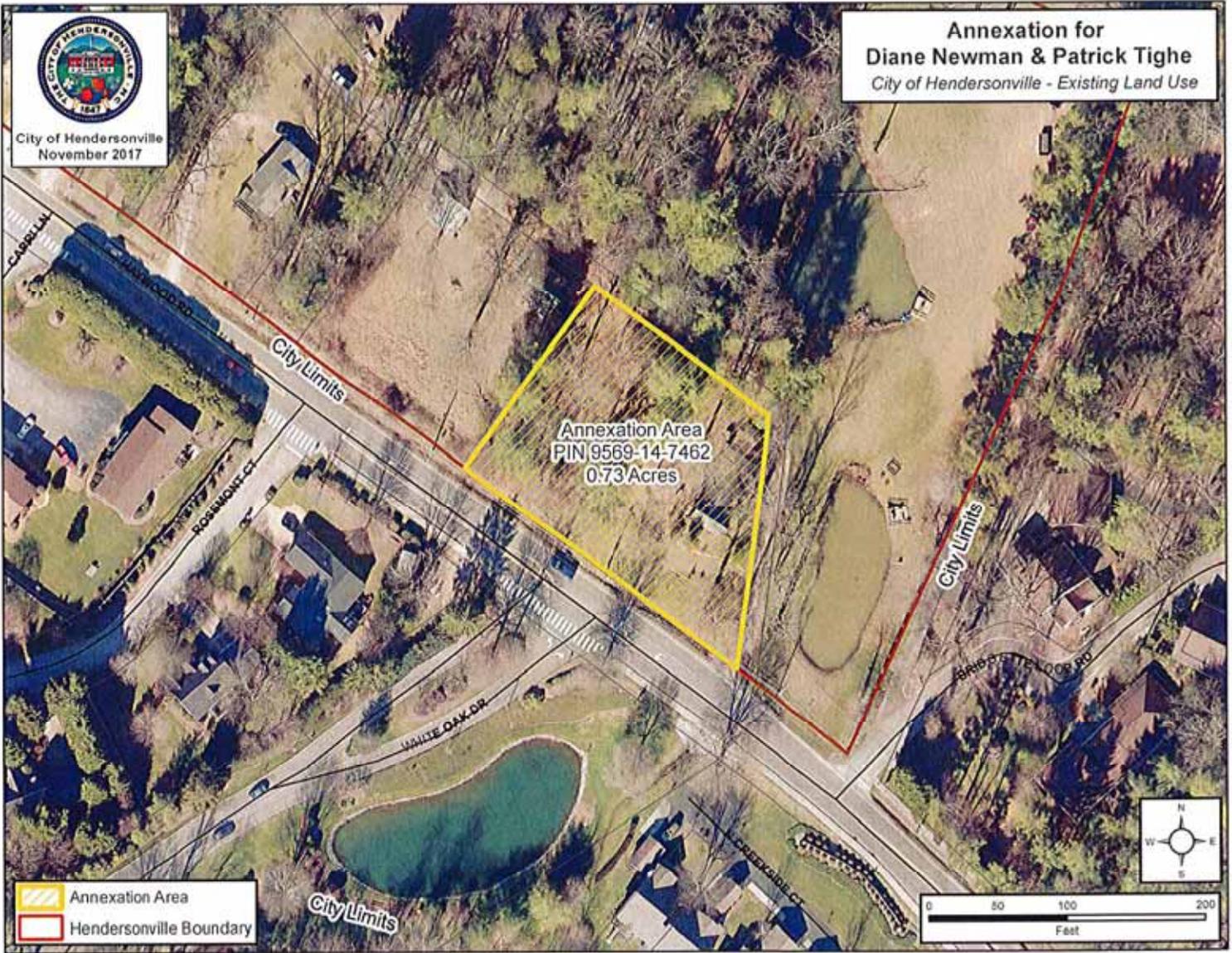
Witness my hand and notarial seal, this \_\_\_\_\_, 2018.

\_\_\_\_\_  
My commission expires \_\_\_\_\_



City of Hendersonville  
November 2017

**Annexation for  
Diane Newman & Patrick Tighe**  
*City of Hendersonville - Existing Land Use*



## CERTIFICATE OF SUFFICENCY

**RE: Petition for Contiguous Annexation  
Diane Newman, Patrick Tighe  
File No. P17-48-ANX**

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:

I, Tammie K. Drake, City Clerk, begin first duly sworn, hereby certify an investigation has been completed of the above referenced petition for the contiguous annexation of parcel 9569-14-7462 located at 1926 Haywood Road.

- A. According to the Development Assistance Department, the area described in the petition meets all of the standards set out in G.S. 160A-58.1(b).
1. The petition follows the prescribed form.
  2. The petition was signed by the owners of the subject property.
  3. The subject property adjoins the present city limits line.

Having made the findings stated above, I hereby certify the petition for contiguous annexation presented by Diane Newman and Patrick Tighe is valid.

In witness whereof, I have here unto set my hand and affixed the seal of the City of Hendersonville, this 20 day of Nov., 2017.

Tammie K. Drake  
Tammie K. Drake, MMC, City Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan Frady

**Department:** Development Asst Dept

**Date Submitted:** 12-13-17

**Presenter:** Matt Champion, Senior Planner

**Date of Council Meeting to consider this item:** 1-04-18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 08

The City has received an application for a zoning map amendment from Andrew Riddle and the property owners Sam and Linda Riddle. The applicant is requesting to rezone the property located at 732 Jonesborough Street from R-15 Medium-Density Residential to C-2 Secondary Business District. The parcel consists of .71 acres and is located off of White Street.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9568-73-6975 from R-15, Medium Density Residential to C-2, Secondary Business. The approval of this ordinance is not consistent with the Comprehensive Plan and is deemed an amendment to the Comprehensive Plan's Future Land Use map from Medium-Intensity Neighborhood to Neighborhood Activity Center due to the following change in conditions the Council took into account to meet the development needs of the community:

### Attachments:

Memo Maps

## MEMORANDUM

**TO:** Honorable Mayor and Council  
**FROM:** Development Assistance Department  
**RE:** Andrew Riddle  
**FILE #:** P17-44-Z  
**DATE:** January 4, 2018

### PROJECT HISTORY

The City is in receipt of an application for a zoning map amendment. The applicant is Andrew Riddle and the property owners are Sam and Linda Riddle. The applicant is requesting to rezone 732 Jonesborough Street from R-15 Medium-Density Residential to C-2 Secondary Business. The parcel is located off of White Street at PIN 9568-73-6975, and consists of 0.71 acres.

### COMPREHENSIVE PLAN CONSISTENCY

According to N.C.G.S.160A-383, zoning map amendments shall be made in accordance with a comprehensive plan. As shown on the map located on page 9, the 2030 Comprehensive Plan's Future Land Use Map designates the subject area as Medium Intensity Neighborhood and Natural Resource/Agricultural.

The Medium Intensity Neighborhood future land use category is to provide a transition between High- and Low-Intensity Neighborhood areas, while providing a wide range of housing formats and price points. The primary and secondary recommended land uses for the Medium Intensity Neighborhood land use category are as follows:

#### Primary

- Single-family attached and detached residential
- Open space

#### Secondary

- Limited multi-family residential along roadways designated as

- Boulevards or Thoroughfares
- Planned Residential Developments
- Recreational amenities
- Local public and institutional uses
- Recreational amenities

The Natural Resource/Agricultural future land use category is to create an interconnected network of green infrastructure that preserves environmentally sensitive area, protects water resource through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and

preserves agricultural resources. The primary and secondary recommended land uses for the Natural Resource/Agricultural land use category are as follows:

Primary

- Open Space
- Recreational amenities
- Low-impact stormwater management facilities
- Flood storage
- Agricultural

Secondary

- Utilities other than stormwater management
- Single-family attached/detached structures
- Cemeteries

In 2017 the North Carolina General Assembly amended G.S. 160A-383 to add the ability for governing bodies when reviewing zoning map amendments that are not in compliance with comprehensive plans, to approve the map amendment and subsequently the comprehensive plan, along with an explanation of the change in conditions. The amended statute went into effect on October 1, 2017 and is applicable to any zoning map amendment request after the effective date.

The subject area is located west of property classified as Neighborhood Activity Center on the Comprehensive Plan's Future Land Use Map, as shown on page 9. The Neighborhood Activity Center future land use category is to concentrate retail in dense, walkable, mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods. The primary and secondary recommended land uses for the Neighborhood Activity Center land use category are as follows:

Primary

- Neighborhood retail sales and services

Secondary

- Offices

- Multi-family residential
- Live-work units
- Public and institutional uses
- Pedestrian amenities
- Mixed uses

Notable changes in conditions in the vicinity of the subject area include Kanuga Road and White Street NCDOT roadway improvements. Both projects call for widening the existing roadway and add bike/pedestrian infrastructure. The site is also adjacent to the approved, and currently under construction, 49,000sq.ft. Publix grocery store.

### **PROPOSED ZONING CLASSIFICATION**

The subject area is proposed to be rezoned to C-2, Secondary Business zoning district which is designed primarily to accommodate existing developments of mixed commercial and light industrial uses, and certain commercial and light industrial uses compatible with one another but inappropriate in certain other zoning district classifications.

## SURROUNDING LAND USE & ZONING CLASSIFICATION

The parcel in the proposed rezoning request currently contains one commercial structure used by a construction company. The parcels to the north are zoned C-2, Secondary Business which includes a mix of vacant and commercial uses. Parcels to the south and west are zoned R-15, Medium Density Residential and includes a mix of residential structures and vacant property. Parcels to the northeast are zoned PCD, Planned Commercial Development and is the site for the approved Publix project. The parcel to the southeast is zoned R-20, Low Density Residential and is vacant. Please note an existing land use map is located on page 8 and an existing zoning map is located on page 10.

### ANALYSIS

Listed in Table A is an outline of the dimensional requirements for the C-2 zoning district classification. Table B is an outline of the dimensional requirements for the R-15 zoning district classification.

**Table A**

<b>Dimensional Req. C-2</b>	<b>Residential</b>	<b>Non-Residential</b>
Minimum Lot Area	6,000 Sq. Ft.	8,000 Sq. Ft.
Minimum Lot Width at Building Line	50 Feet	None
Minimum Front Yard	20 Feet	15 Feet
Minimum Side Yard	5 Feet & None	5 Feet & None
Minimum Rear Yard	10 Feet	None
Maximum Building Height	48 Feet	48 Feet

**Table B**

<b>Dimensional Req. R-15</b>	<b>Residential</b>
Minimum Lot Area	15,000 Sq. Ft.
Minimum Lot Width at Building Line	85Feet
Minimum Front Yard	30 Feet
Minimum Side Yard	10 Feet
Minimum Rear Yard	15 Feet
Maximum Building Height	35 Feet

The C-2, Secondary Business zoning district is designed primarily to accommodate existing developments of mixed commercial and light industrial uses, and certain commercial and light industrial uses compatible with one another but inappropriate in certain other zoning district classifications. The permitted and conditional uses for the C-2, Secondary Business zoning district are listed below.

### **C-2, Secondary Business District**

#### **Permitted Uses:**

Accessory dwelling units  
Accessory uses & structures  
Adult care centers  
Animal hospitals & clinics  
Automobile car washes  
Automobile sales & service  
Banks  
Bed & breakfast facilities  
Business services  
Congregate care facilities  
Construction trade facilities  
Convenience stores  
Cultural art buildings  
Dance and fitness facilities  
Dry cleaning and laundry establishments  
Farm equipment sales & service  
Food pantries  
Funeral homes  
Golf driving ranges  
Greenhouses & commercial nurseries  
Home occupations  
Hotels and motels  
Laundries  
Microbreweries  
Music and art studios  
Neighborhood community centers  
Nursing homes  
Offices, business, professional and public  
Parking lots and parking garages

Parks  
Personal services  
Planned residential developments  
Progressive care facilities  
Public & semi-public buildings  
Recreational facilities, indoors  
Recreational facilities, outdoors  
Religious institutions  
Repair services, miscellaneous  
Residential care facilities  
Residential dwellings, single family  
Residential dwellings, two-family  
Rest homes  
Restaurants  
Retail stores  
Schools, post-secondary  
Schools, primary & secondary  
Service stations  
Signs  
Telecommunications antennas  
Theaters, indoor  
Wholesale business

#### **Conditional Uses:**

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

The R-15, Medium-Density Residential zoning district is intended 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 time.

### **R-15, Medium-Density Residential District**

#### **Permitted Uses:**

Accessory dwelling units  
Accessory structures  
Adult care homes  
Camps  
Child care homes  
Home occupations  
Parks  
Planned residential developments  
Religious institutions  
Residential care facilities

Residential dwellings, single-family  
Residential dwellings, two-family  
Signs  
Telecommunication antennas

#### **Conditional Uses:**

Bed and breakfast facilities  
Cemeteries  
Public utility facilities  
Schools, primary & secondary

### **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map:

1. Comprehensive Plan consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. 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.
5. 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.
6. 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.

## **PLANNING BOARD**

The Planning Board took this matter up at its regular meeting on December 11, 2017. The Planning Board voted 5 to 1 recommending that City Council adopt an ordinance amending the official City of Hendersonville's 2030 Comprehensive Plan Future Land Use Map for parcel number 9568-73-6975 from Medium-Intensity Neighborhood to Neighborhood Activity Center, due to the Kanuga Road and White Street NCDOT roadway improvements and Publix grocery store, for the following reasons: the change will not affect the current situation and is the best use for the property.

And, Planning Board recommended City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9568-73-6975 from R-15, Medium Density Residential to C-2, Secondary Business, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map amendment to Neighborhood Activity Center, the rezoning is reasonable and in the public interest for the following reasons: highest and best use for the property.

## **SUGGESTED MOTIONS**

### **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 parcel number 9568-73-6975 from R-15, Medium Density Residential to C-2, Secondary Business, finding that the rezoning is not consistent with the Comprehensive Plan's Future Land Use map and is deemed an amendment to the Comprehensive Plan's Future Land Use map from Medium-Intensity Neighborhood to Neighborhood Activity Center due to the change in conditions the Council took into account to meet the development needs of the community:

**[PLEASE STATE CHANGED CONDITIONS]**

The action is reasonable and in the public interest for the following reasons:

**[PLEASE STATE YOUR REASONS]**

### **For Recommending Denial:**

I move City Council not adopt an ordinance rezoning parcel number 9568-73-6975.

**[PLEASE STATE YOUR REASONS]**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF  
HENDERSONVILLE**

IN RE: FILE NO. P17-44-Z

Be it ordained by the City Council of the City of Hendersonville:

1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9568-73-6975 from City of Hendersonville R-15, Medium Density Residential to City of Hendersonville C-2, Secondary Business.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 4<sup>th</sup> day of January 2018.

\_\_\_\_\_  
Barbara Volk, Mayor

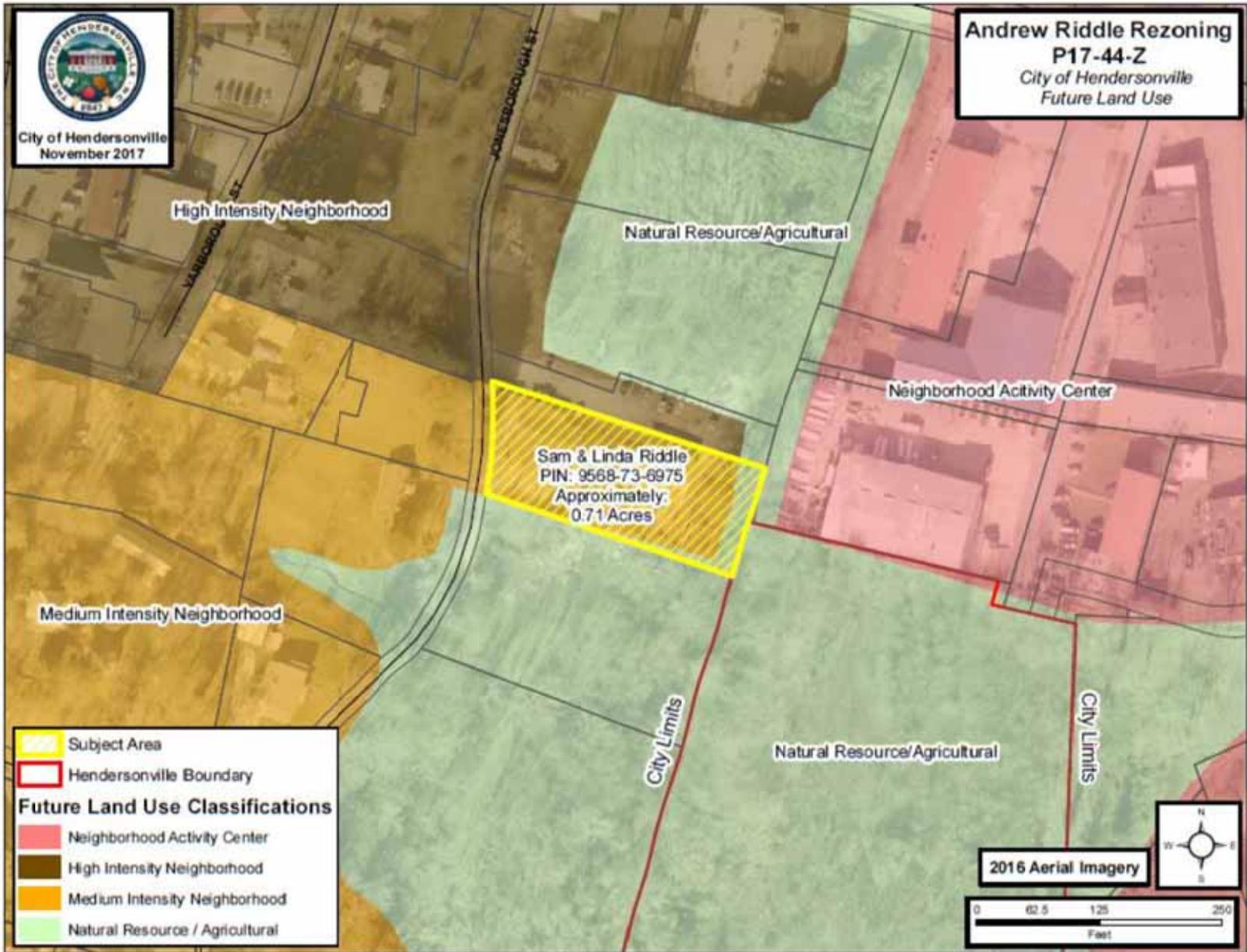
ATTEST:

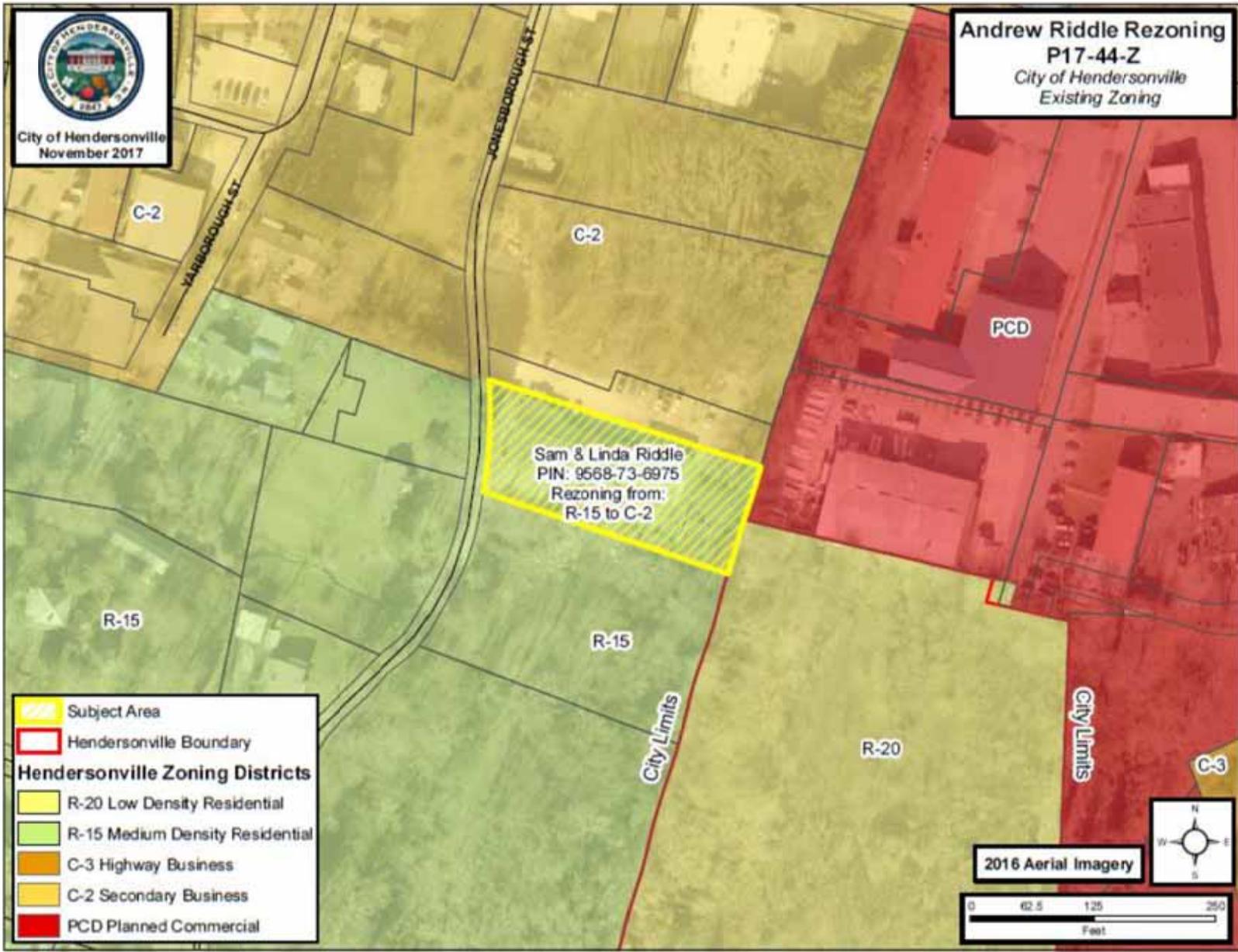
\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney









# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Susan G. Frady

**Department:** Development Asst Dept

**Date Submitted:** 12-20-17

**Presenter:** Susan Frady and Daniel Heyman

**Date of Council Meeting to consider this item:** 1-4-18

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 09

As you are aware, City Council requested that staff amend the zoning ordinance to remove special use permits and districts and replace these with conditional zoning districts.

The major difference between conditional zoning districts and special use districts or permits is that conditional zoning districts are legislative rather than quasi-judicial. Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined standards, rules, regulations and conditions imposed as part of the legislative decision creating the district and applying it to each individual development project. The three step procedure for rezoning to a conditional zoning district is the same as a special use permit. 1) Neighborhood Compatibility Meeting 2) Planning Board Meeting and 3) City Council. The conditional zoning district is a means by which the applicant may add special conditions to the petition for rezoning.

Throughout the sections that were amended if the term Planning Director or Zoning Administrator is used, these have been changed to Development Assistance Director or a designee. The designee could be appointed by the Development Assistance Director or the City Manager.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

## Suggested Motion:

I move City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts.

## Attachments:

Memo  
Ordinance

## MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** Development Assistance Department

**RE:** Zoning Ordinance Text Amendments – Conditional Zoning Districts

**FILE #:** P-17-43 ZTA

**DATE:** January 4, 2018

As you are aware, City Council requested that staff amend the zoning ordinance to remove special use permits and districts and replace these with conditional zoning districts.

The major difference between conditional zoning districts and special use districts or permits is that conditional zoning districts are legislative rather than quasi-judicial. Conditional zoning districts are zoning districts in which the development and **use** of the property is subject to predetermined standards, rules, regulations and conditions imposed as part of the legislative decision creating the district and applying it to each individual development project. The three step procedure for rezoning to a conditional zoning district is the same as a special use permit. 1) Neighborhood Compatibility Meeting 2) Planning Board Meeting and 3) City Council. The conditional zoning district is a means by which the applicant may add special conditions to the petition for rezoning.

Throughout the sections that were amended if the term Planning Director or Zoning Administrator is used, these have been changed to Development Assistance Director or a designee. The designee could be appointed by the Development Assistance Director or the City Manager.

**Article IV Establishment of Districts:** For each general use zoning district, there is a corresponding Conditional Zoning District (CZD) which corresponds to each of the districts authorized by the zoning ordinance as follows: R-40CZD, R-20CZD, R-15CZD, R-10CZD, R-6CZD, C-1CZD, C-2CZD, C-3CZD, C-4CZD, MICCZD, I-1CZD, RCTCZD, CMUCZD, GHMUCZD, HMUCZD and CHMUCZD.

**Article IV Section 4-4 Special Use Districts:** This is changed to conditional zoning districts. The following is added: 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.

**Article IV Section 4-4-2 Special Use Districts Created:** This Section is changed to Conditional Zoning Districts Created: R-40CZD, R-20CZD, R-15CZD R-6CZD, C-1CZD, C-2CZD, C-3CZD, C-4CZD, I-1CZD, MICCZD, CMUCZD, RCTCZD, GHMUCZD, HMUCZD and CHMUCZD.

**Article IV Section 4-4-3 Uses Permitted.** Special Use District is changed to Conditional Zoning District and the following is added: 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. This is taken from NCGS 160A-382.

**Article IV Section 4-4-4 Processing of applications,** special use district is changed to conditional zoning district.

**Article IV Section 4-5 Classification of Uses:** Special Use (S) is removed.

**Article V Zoning District Classifications:** Each special use district classification is changed to a conditional use zoning district classification and each special use section is changed to a conditional zoning district. The PRD, PCD, PMH, PID, UV, UR and PMD districts that required a rezoning and a special use permit are changed to PRDCZD, PCDCZD, PMHCZD, PIDCZD, UVCZD, URCZD and PMDCZD and require only a rezoning to this district.

**Article VI Section 6-3-1 Uses:** Special uses is changed to conditional zoning districts.

**Article VI Section 6-16-3 Common Open Space Requirements:** Special use review is changed to conditional zoning district review.

**Article VII Development Review.** Throughout this Article special use is changed to conditional zoning district.

**Article VII Section 7-4 Special Use Review.** Special Use Review is changed to Conditional Zoning District Review. The following text is added: 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 limitations and conditions on the use of the property proposed for rezoning. A final site plan is required which includes a landscaping plan rather than a preliminary plan. Approvals such as stormwater, erosion and sedimentation and NCDOT will be conditions on the approval.

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 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 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 are 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 provides 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 the property owner. If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid or if the applicant 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. The three step procedure for rezoning to a conditional zoning district is the same as a special use permit. 1) Neighborhood Compatibility Meeting 2) Planning Board Meeting and 3) City Council. The difference in the review is that a final site plan is submitted rather than a preliminary site plan. The approved site plan is a part of the petition for rezoning.

Section 7-4-7 states that the Planning Board and City Council may add reasonable and appropriate conditions. We have also included that the Tree Board may make recommendations to City Council concerning the landscape plan.

**Article VII Section 7-6 Modifications of Development Authorizations.** Conditional Zoning Districts are added and have the same guidelines for modifications as special use permits. Modifications to existing approved special use permits that are de minimis (would not increase the established intensity of the development by more than 10%) will be reviewed by staff. Any other modifications to a special use permit would require the applicant to go back through the process. That process would now be rezoning to a conditional zoning district.

**Article IX Section 9-7 Penalties for Violations.** Special use permits is changed to conditional zoning districts. The penalty for failure to comply with any of the requirements, including violations of conditions established as part of the conditional zoning district will be treated the same as for a violation of a special use permit.

**Article XI Section 11-5-3.1 Effect.** The reference to a special use or planned development district is removed as it no longer applies to a protest petition.

**Article XI Section 11-6 Scope of Proceedings.** Special use district or a planned development district is changed to conditional zoning district only.

**Article XIII Section 13-1-2 Signs Requiring a Permit.** Special use districts are removed from this section and conditional zoning districts are added as follows: 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 commercial conditional zoning districts, if any, without a permit obtained from the Administrative Officer.

**Article XVI Section Special Requirements For Certain Uses.** All references in this Article to special use permits have been changed to conditional zoning districts.

## **ZONING ORDINANCE GUIDELINES**

Per Section 11-4 of the City's Zoning Ordinance, the following factors shall be considered by City Council prior to adopting or disapproving an amendment to the text of the City's Zoning Ordinance:

1. Comprehensive Plan consistency. Consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. 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.
5. 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.

6. 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.

### **TEXT & POLICY COMMITTEE**

The Text and Policy Committee is made up of four members of the Planning Board. Due to the nature of these text amendments, the Planning Board felt it prudent for any discussion to include the entire Planning Board.

### **PLANNING BOARD RECOMMENDATION:**

The Planning Board took this matter up at its regular meeting of December 11, 2017. The Planning Board voted five in favor and one opposed to recommend the City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts.

### **SUGGESTED MOTIONS**

#### **For Recommending Approval:**

I move City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts.

[Please state your reasons]

#### **Approval With Modifications:**

I move City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts with the following modifications.

[Please state the modifications and your reasons]

#### **Denial:**

I move City Council not approve an ordinance amending the City of Hendersonville Zoning Ordinance respecting conditional zoning districts.

**AN ORDINANCE AMENDING THE ZONING ORDINANCE TO REPEAL SPECIAL USE PERMITS AND ADD CONDITIONAL ZONING DISTRICTS**

**WHEREAS**, the General Assembly of the State of North Carolina has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes, and minimum housing standards and other related measures, and

**WHEREAS**, the General Assembly of the State of North Carolina has granted authority to municipalities to amend, supplement, change, modify or repeal zoning regulation ordinances, and

**WHEREAS**, the City of Hendersonville desires to amend those regulations with regards to special use permits.

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

**1. Article IV Establishments of Districts is hereby amended as follows:**

<del>R-40SU</del>	<u>R-40CZD</u>	Estate Residential <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>R-20SU</del>	<u>R-20CZD</u>	Low-Density Residential <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>R-15SU</del>	<u>R-15CZD</u>	Medium-Density Residential <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>R-10SU</del>	<u>R-10CZD</u>	Medium-Density Residential <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>R-6SU</del>	<u>R-6CZD</u>	High-Density Residential <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>C-1SU</del>	<u>C-1CZD</u>	Central Business <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>C-2SU</del>	<u>C-2CZD</u>	Secondary Business <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>C-3SU</del>	<u>C-3CZD</u>	Highway Business <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>C-4SU</del>	<u>C-4CZD</u>	Neighborhood Commercial <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>MICSU</del>	<u>MICCZD</u>	Medical, Institutional and Cultural <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>I-1SU</del>	<u>I-1CZD</u>	Industrial <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>PMD</del>	<u>PMDCZD</u>	Planned Manufacturing Development <u>Conditional Zoning District</u>
<del>RCTSU</del>	<u>RCTCZD</u>	Residential Commercial Transition <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>PRD</del>	<u>PRDCZD</u>	Planned Residential <del>District</del> <u>Conditional Zoning District</u>
<del>PCD</del>	<u>PCDCZD</u>	Planned Commercial <del>District</del> <u>Conditional Zoning District</u>
<del>PMH</del>	<u>PMHCZD</u>	Planned Manufactured Housing <del>District</del> <u>Conditional Zoning District</u>
HHH		Hyman Heights Historic Overlay District
EC		Entry Corridor Overlay Districts

CMU		Central Mixed Use District
<del>CMUSU</del>	<u>CMUCZD</u>	Central Mixed Use <del>Special Use District</del> <u>Conditional Zoning District</u>
DHH		Druid Hills Historic Overlay District
<del>PID</del>	<u>PICZD</u>	Planned Institutional <del>District</del> <u>Conditional Zoning District</u>
GHMU		Greenville Highway Mixed Use District
<del>GHMUSU</del>	<u>GHMUCZD</u>	Greenville Highway Mixed Use <del>Special Use District</del> <u>Conditional Zoning District</u>
HMU		Highway Mixed Use District
<del>HMUSU</del>	<u>HMSCZD</u>	Highway Mixed Use <del>Special Use District</del> <u>Conditional Zoning District</u>
<del>UV</del>	<u>UVCZD</u>	Urban Village <del>District</del> <u>Conditional Zoning District</u>
<del>UR</del>	<u>URCZD</u>	Urban Residential <del>District</del> <u>Conditional Zoning District</u>
MSH		Main Street Historic Overlay District
CHMU		Commercial Highway Mixed Use District
<del>CHMUSU</del>	<u>CHMUCZD</u>	Commercial Highway Mixed Use <del>Special Use District</del> <u>Conditional Zoning District</u>

**Section 4-4 Special Use Districts, 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. ~~The review process established in the part provides for the accommodation of such uses by a reclassification rezoning of property into a "special use district," subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties.~~ 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. In light of this purpose, applicants for rezoning to ~~special use districts~~ conditional use 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 ~~special use district~~ 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 allows City Council 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 ~~special use district~~ conditional use zoning classification will be considered only upon request of the owner(s) of all property to be included in the proposed district.

**4-4-2 Special Use Districts Created. 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 special-use conditional zoning district classifications designated R-40SU, R-20SU, R-15SU, R-10SU, R-6SU, C-1SU, C-2SU, C-3SU, C-4SU, I-1SU, MICSU, CMUSU, RCTSU, GHMUSU, HMUSU and CHMUSU 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.

**4-4-3 Uses permitted.** Within a Special Use District Conditional Zoning District only those uses authorized by Article V as permitted in the parallel zoning district with which the Special Use District Conditional Zoning District corresponds shall be permitted, and all other requirements of such parallel zoning district classifications shall be met. ~~In addition, within a Special Use District no use shall be permitted except pursuant to a special use permit authorized by City Council which shall specify the use or uses authorized. Such permit may further specify the type and intensity of use, the location on the property of the proposed use or uses, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, 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 a special use permit, Council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done. 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 special-use district conditional zoning district shall be submitted and processed under special-use review a conditional zoning district rezoning in accordance with the provisions of Section 7-4, below.

**4-5 Classification of Uses.** The range of uses allowed in each district established in this ordinance is summarized in Table 4-5, 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.
  
- b) **Permitted By Right Subject to Special Requirements (SR).** 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.

c) **Conditional Use (C).** A use which may be authorized only by means of a conditional use permit issued by the Zoning Board of Adjustment pursuant to Article X, below.

~~d) **Special Use (S).** A use which may be authorized only by means of a special use permit issued by City Council pursuant to Section 7-4, below~~

e)d) **Limited (L)**

**2. Article V Zoning District Classifications is hereby amended as follows:**

**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 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 ft<sup>2</sup> of gross floor area
- Residential dwellings, single-family
- Signs, subject to the provisions of Article XIII
- Telecommunications antennas, subject to special requirements contained in Section 16-4, below

**5-1-2 Conditional Uses:** The following uses shall be permitted in the R-40 Estate Residential Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 ft<sup>2</sup> 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

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

~~Adaptive reuses  
Telecommunications towers~~

**Section 5-1-4 R-40SUCZD Estate Residential Special-Use 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 the 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 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 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 ft<sup>2</sup> 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 contained in Section 16-4, below.

**5-2-2 Conditional 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 pursuant to Article X and shall be subject to special requirements contained in Section 16-4, below:

- Bed and breakfast facilities
- Cemeteries
- Public utility facilities
- Schools, primary & secondary, containing no more than 50,000 ft<sup>2</sup> 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

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

~~Adaptive reuses  
Telecommunications towers~~

**Section 5-2S-4 R-20SUCZD Low-Density Residential Special-Use 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 the 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 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 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 ft<sup>2</sup> 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 contained in Section 16-4, below.

**5-3-2 Conditional 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 pursuant to Article X and shall be subject to special requirements contained in Section 16-4, below:

- Bed and breakfast facilities
- Cemeteries
- Public utility facilities
- Schools, primary & secondary, containing no more than 50,000 ft<sup>2</sup> 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 ft <sup>2</sup> 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

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

- ~~Adaptive reuses~~
- ~~Telecommunications towers~~

**Section 5-3-4 R-15UCZD Medium-Density Residential Special-Use 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 the 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 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 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 ft<sup>2</sup> 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 contained in Section 16-4, below

**5-4-2 Conditional 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 pursuant to Article X and shall be subject to special requirements contained in Section 16-4, below:

Bed and breakfast facilities  
Public utility facilities  
Schools, primary & secondary, containing no more than 50,000 ft<sup>2</sup> 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 ft <sup>2</sup> 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

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

- ~~Adaptive reuses~~
- ~~Telecommunications towers~~

**Section 5-4S-4 R-10SUCZD Medium-Density Residential Special Use 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 the 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 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 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 ft<sup>2</sup> 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 contained in Section 16-4, below

**5-5-2 Conditional 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 pursuant to Article X and shall be subject to special 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 ft<sup>2</sup> 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 ft <sup>2</sup> 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

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

~~Adaptive reuses~~

~~Telecommunications towers~~

**Section 5-5S-4 R-6SUCZD High-Density Residential ~~Special Use~~ 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 the 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 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 contained in Section 16-4, below

Adult care centers registered with the NC Department of Human Resources

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 ft<sup>2</sup> of floor area

Home occupations

Hotels and motels

Laundries, coin-operated

Microbreweries, subject to special requirements 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 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 contained in Section 16-4, below  
Theaters, indoor

**5-6-2 Conditional Uses:** The following uses shall be permitted in the C-1 Central Business Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 Special Uses.** Within the C-1 Central Business Zoning District Classification, the following uses and structure size may only be authorized by issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance. Such development or redevelopment shall not require rezoning of the property to a special use or planned development district.~~

- ~~a) Any development or redevelopment involving more than 50,000 ft<sup>2</sup> of gross floor area;~~
- ~~b) Shelter facilities, subject to special requirements contained in Section 16-4, below.~~

**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 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 ~~Zoning Administrator or the Planning Director acting alone.~~ 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 ft<sup>2</sup> of urban open space per 100 ft<sup>2</sup> 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 ft<sup>2</sup>. 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-1CZD Central Business Special-Use 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-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 C-1 Central Business Conditional Zoning District Classification only upon rezoning to the C-1CZD.

Any development or redevelopment involving more than 50,000 ft<sup>2</sup> of gross floor area; Shelter facilities, subject to special requirements contained in Section 16-4, below.

Permitted uses for the C-1 Central Business Zoning District Classification as specified in Section 5-6-1, above.

Conditional 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 contained in Section 16-4, below  
Accessory uses & structures

Adult care centers registered with the NC Department of Human Resources

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 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 of floor area  
Farm equipment sales & service  
Food pantries, subject to the special requirements 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 contained in Section 16-4, below  
Music and art studios  
Neighborhood community centers  
Newspaper offices and printing establishments  
Nursing homes subject to special requirements 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 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 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 contained in Section 16-4,  
 below  
 Theaters, indoor  
 Wholesale businesses

**5-7-2 Conditional Uses:** The following uses shall be permitted in the C-2 Secondary Business Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 Prohibited Uses.** No development or redevelopment involving more than 50,000ft<sup>2</sup> of floor area shall be permitted in the C-2 Zoning District Classification.~~

**5-7-43 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; 4,000 ft <sup>2</sup> 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

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

- Day center
- Shelter facilities
- Telecommunications towers

**Section 5-7S-4 C-2SUCZD Secondary Business Special Use Conditional Zoning District Classification.** The purpose and requirements of this zoning district classification are identical to the C-2 Central Business Zoning District Classification except that rezoning to C-2 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-2 Central Business Conditional Zoning District Classification only upon rezoning to the C-2CZD.

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

~~Section 5-7S-C-2SU Secondary Business Special Use Zoning District Classification.~~ The purpose and requirements of this zoning district classification are identical to the C-2 Secondary Business Use Zoning District Classification except that a special use permit, as provided for in Article VII herein, is required as a prerequisite to any use or development. *(added 03-07-96)*

**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 contained in Section 16-4, below
- Accessory uses & structures

Adult care centers registered with the NC Department of Human Resources  
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 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 ft<sup>2</sup> of floor area  
Farm equipment sales & service  
Food pantries, subject to the special requirements contained in Section, 16-4 below)  
Food processing establishments containing less than 10,000 ft<sup>2</sup> 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 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 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 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 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 contained in Section 16-4, below.  
 Telecommunications towers, subject to special requirements contained in Section 16-4, below.  
 Theaters, indoor  
 Wholesale businesses

**5-8-2 Conditional Uses:** The following uses shall be permitted in the C-3 Highway Business Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 Prohibited Uses.** No development or redevelopment involving more than 50,000 ft<sup>2</sup> of floor area shall be permitted in the C-3 Zoning District Classification. For such development see the PCD Planned Commercial Development Zoning District Classification.~~

**5-8-43 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 ft <sup>2</sup> 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 conforms to the established setback requirements.)  
 Side: 15  
 Rear: 20  
 Maximum Height in Feet: 48

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

~~Day centers  
 Shelter facilities~~

**Section 5-8-S4 C-3CZD Highway Business Special-Use Conditional Zoning District Classification.** The purpose and requirements of this zoning district classification are identical to the C-3 Central 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 the C-3CZD.

Day centers  
 Shelter facilities  
Development or redevelopment involving more than 50,000 ft<sup>2</sup> of floor area  
Permitted uses for the C-3, Highway Business Zoning District Classification as specified in Section 5-8-1, below)  
Conditional 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  
 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 ft<sup>2</sup> 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 contained in Section 16-4, below

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

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

~~**5-9-3 Prohibited Uses.** No development or redevelopment involving more than 10,000 ft<sup>2</sup> of floor area shall be permitted in the C-4 Neighborhood Commercial Zoning District Classification.~~

**5-9-43 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

**5-9-54 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 5-9-55 C-4SUCZD Neighborhood Commercial ~~Special Use~~ Conditional Zoning District Classification.** The purpose and requirements of this district are identical to the C-4 Neighborhood Commercial Zoning District Classification except that a ~~special-use permit~~, 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 the C-4CZD.

Permitted uses for the C-4 Neighborhood Commercial Zoning District classification as specified in Section 5-9-1, above.

Conditional 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 ft<sup>2</sup> 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 contained in Section 16-4 below
- Accessory uses & structures
- Adult care centers registered with the NC Department of Human Resources
- 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 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 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 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 contained in Section 16-4, below  
 Public & semi-public buildings  
 Religious institutions  
 Residential care facilities subject to special requirements contained in Section 16-4, below  
 Residential dwellings, single-family  
 Residential dwellings, two-family  
 Rest homes subject to special requirements 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 contained in Section 16-4, below

**5-10-2 Conditional Uses:** The following uses shall be permitted in the MIC Medical Institutional Cultural Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 ft <sup>2</sup> 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.)

~~5-10-4 Special Uses.~~ The following uses and structure size shall be permitted in the MIC Medical Institutional Cultural Zoning District Classification ~~only upon issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance.~~ Such development or redevelopment shall not require rezoning of the property to a special use or planned development district.

~~a) Telecommunications towers, subject to special requirements contained in Section 16-4 below~~

~~b) Any development or redevelopment involving more than 50,000 ft<sup>2</sup> of gross floor area.~~

**Section 5-10-S4 MICSUCZD Medical, Institutional, Cultural Special Use Conditional Zoning District Classification.** The purpose and requirements of this zoning district classification are identical to the MIC Medical, Institutional, 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, Cultural Conditional Zoning District Classification only upon rezoning to the MICCZD.

Telecommunications towers, subject to special requirements contained in Section 16-4 below  
Any development or redevelopment involving more than 50,000 ft<sup>2</sup> 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 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.** This zoning district classification is designed to accommodate planned manufacturing developments ~~for which a special use permit has been~~ with a rezoning to a Planned Manufactured Development Conditional Zoning District, issued in accordance with Article VII herein. ~~Such special use permit is required as a prerequisite to any use or development in the PMD Zoning District Classification, and no use shall be permitted except pursuant to such permit. Such permit shall insure~~ 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 ~~special use permit~~ rezoning for a planned manufacturing district, City Council may impose such additional reasonable and appropriate safeguards upon such ~~permit 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 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, and, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII. No permit shall be issued for any development within a PMD Planned Manufacturing Development Conditional Zoning District except in accordance with an approved special use permit rezoning.

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

- Any development or redevelopment involving more than 50,000 ft<sup>2</sup> of gross floor area.
- Permitted uses for the I-1 Industrial Zoning District Classification as specified in Section 5-12-1, below
- Conditional 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 light 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 contained in Section 16-4, below  
Accessory uses & structures  
Agricultural supplies, bulk  
Animal hospitals & clinics subject to special requirements 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 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

<b>Standard Industrial Classification</b>	<b>Industries Excluded</b>	<b>Short Title</b>
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
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

Standard Industrial Classification	Industries Excluded	Short Title
3732		Boat building & repairing
38		Instruments & related products
39		Miscellaneous manufacturing

Merchandise gaming operations  
 Microbreweries  
 Mini-warehouses  
 Motels  
 Motor freight terminals  
 Nursing homes, subject to special requirements 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 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 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 contained in Section 16-4, below.  
 Telecommunications towers, subject to special requirements 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.** The following uses shall be permitted in the I-1 Industrial Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 Prohibited Uses.** No development or redevelopment involving more than 50,000 ft<sup>2</sup> of floor area shall be permitted in the I-1 Industrial Zoning District Classification. For such development, see the PMD Planned Manufacturing Development Zoning District Classification.~~

**5-12-43 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 unless 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.

~~**5-12-5 Special Uses.** The following uses shall be permitted in the I-1 Industrial Zoning District Classification only upon issuance of a special use permit pursuant to Article VII and shall be subject to special requirements contained in Section 16-4, below: *(added 02-05-15)*~~

~~Day centers  
Shelter facilities~~

**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 the 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 for the I-1 Industrial Zoning District Classification as specified in Section 5-12-2, above

Development or redevelopment involving more than 50,000ft<sup>2</sup> of floor area

~~**Section 5-12S I-1SU Industrial Special Use Zoning District Classification.** The purpose and requirements of this zoning district classification are identical to the I-1 Industrial Use Zoning District Classification except that a special use permit, as provided for in Article VII herein, is required as a prerequisite to any use or development.~~

**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 contained in Section 16-4, below  
Accessory uses & structures  
Adult care centers registered with the NC Department of Human Resources  
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 contained in Section 16-4, below

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

Bed & breakfast facilities  
Child care centers  
Civic clubs & fraternal organizations  
Public utility facilities

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 ft <sup>2</sup> of gross floor area

~~5-13-4~~

~~5-13-5~~ **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.

~~5-13-6 Prohibited Uses.~~ No non-residential development or redevelopment involving more than 50,000 ft<sup>2</sup> of floor area shall be permitted in an RCT Residential Commercial Transition Zoning District Classification. *(added 09-07-00, amended 04-10-03)*

**Section 5-13S-5 RCTS CZD Residential Commercial Transition Special Use Conditional Zoning District Classification.** The purpose and requirements of this classification are identical to the RCT Residential Commercial Transition Use Zoning District Classification except that a special use permit, 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 the 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 ~~for which a special use permit has been issued~~ with a rezoning to a Planned Residential Development Conditional Zoning District in accordance with Article VII herein. Such ~~special use permit~~ 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. ~~Such permit shall insure~~ 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 ~~special-use permit~~ rezoning for a planned residential district, City Council may impose such additional reasonable and appropriate safeguards upon such ~~permit 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. 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 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. ~~And, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII.~~ No permit shall be issued for any development within a PRD Planned Residential Development Conditional Zoning District except in accordance with an approved ~~special-use permit~~ rezoning.

**5-14-2 Permissible Uses Subject to Rezoning to Planned Residential Development Conditional Zoning District.** ~~Issuance of a Special Use Permit~~ A building or land shall be used only for those purposes specified in the ~~special-use permit~~ 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
- Adult care homes
- Camps
- Child care centers subject to special requirements contained in Section 16-4, below
- Child care homes
- Congregate care facilities, subject to special requirements 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 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 contained in Section 16-4, below
- Public utility facilities, subject to special requirements 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 contained in Section 16-4, below  
Schools, primary, elementary & secondary  
Telecommunications antennas, subject to special requirements contained in Section 16-4, below  
Telecommunications towers, subject to special requirements contained in Section 16-4, below

**~~5-14-3 Permitted Uses.~~** ~~The following uses are permitted by right in the PRD Planned Residential Development Zoning District Classification, provided they meet all requirements of this Section and all other applicable requirements contained in this Ordinance~~

~~Home occupations~~

**5-14-43 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.

**5-14-54 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.

**5-14-65 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 the 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.

**5-14-76 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

**5-14-76.1 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.

**5-14-76.2 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.

**5-14-76.3 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.

**5-14-76.4 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.”

**5-14-76.5 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.

**5-14-76.6 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.

**5-14-76.7 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.

**5-14-76.8 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 common facilities serving the project.

**5-14-87 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.

**5-14-87.1 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

**5-14-87.2 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 5-14-76, 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.

**5-14-87.3 Procedures for Reviewing.** Unlike other planned developments which undergo ~~special-use review~~ rezoning to a conditional zoning district, minor planned residential developments undergo site plan review pursuant to Section 7-3.

**5-14-98 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 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 ~~permissible as special uses~~ permitted uses in a PRD Planned Residential Development Conditional Zoning District, in which case it shall undergo ~~special-use review~~ 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 ft<sup>2</sup> of floor area or which contain commercial uses which are proposed to be developed in conjunction with residential uses. A ~~special-use permit~~, rezoning to a Planned Commercial Development Conditional Zoning District ~~issued~~ in accordance with Article VII, below, is required as a prerequisite to any use or

development in a PCD District, and no use shall be permitted except pursuant to such ~~permit~~ approval. Such ~~permit~~ 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 ~~special use permit~~ rezoning for a planned commercial development conditional zoning district, City Council may impose such additional reasonable and appropriate safeguards upon such ~~permit~~ 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 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, ~~and, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII.~~ No permit shall be issued for any development within a PCD Planned Commercial Development Conditional Zoning District except in accordance with an approved ~~special use permit~~ rezoning.

**5-15-2 Permissible Uses, Subject to Rezoning to a Planned Commercial Development Conditional Zoning District ~~Issuance of a Special Use Permit.~~** A building or land shall be used only for those purposes specified in the ~~special use permit~~ 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
- 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 contained in Section 16-4, below
- Business services
- Child care center, subject to special requirements contained in Section 16-4, below
- Civic clubs & fraternal organizations
- Congregate care facilities, subject to special requirements 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 contained in Section 16-4, below  
 Mini-warehouses  
 Music and art studios  
 Newspaper offices and printing establishments  
 Nursing homes, subject to special requirements 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 contained in Section 16-4, below  
 Public & semi-public buildings  
 Public utility facilities, subject to special requirements 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 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 contained in Section 16-4, below  
 Telecommunications towers, subject to special requirements 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 5-14-6, 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 ~~for which a special use permit has been issued~~ with a rezoning to a Planned Manufactured Housing Development Conditional Zoning District in accordance with Article VII herein. Such ~~special use permit rezoning~~ 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 ~~permit approval~~ rezoning. Such ~~permit rezoning~~ 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 ~~special-use permit~~ rezoning for a planned manufacturing district, City Council may impose such additional reasonable and appropriate safeguards upon such ~~permit 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 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. ~~and, at the same time, for a special-use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII.~~ No permit shall be issued for any development within a PMH Planned Manufactured Housing Conditional Zoning district except in accordance with an approved ~~special-use permit: rezoning~~.

In addition to the requirements for a planned development application contained in Article VII, the application for a ~~special-use permit~~ 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 Issuance of a Special Use Permit.** A building or land shall be used only for those purposes specified in the ~~special-use permit~~ rezoning for the project which may include the following:

- Accessory uses and structures
- Adult care centers registered with the NC Department of Human Resources
- 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 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

**Section 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.

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

**Section 5-16-4.1 Lot Size.** Each manufactured home shall occupy a designated space having at least 4,000 ft<sup>2</sup>, 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.

**Section 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.

**Section 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 ft<sup>2</sup> minimum lot size for a manufactured home.

**Section 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.

**Section 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.

**Section 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.

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

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

**Section 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 ft<sup>2</sup>.
- 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 ft<sup>2</sup> 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 ~~Zoning Administrator~~. 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:** 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 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 development 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.** 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 ft<sup>2</sup> 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 ft<sup>2</sup> for each linear foot of the front facade for that business, or 250 ft<sup>2</sup>, 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 ft<sup>2</sup> for each three linear feet of such facade frontage for that business, or 250 ft<sup>2</sup>, whichever is less.

Also, in shopping centers, one suspended sign may be incorporated per business, which sign shall not exceed three ft<sup>2</sup> 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 of 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 contained in Articles ~~VII~~ and 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  
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 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 ft<sup>2</sup> of floor space  
Funeral homes  
Garage apartments  
Home occupations  
Hotels & motels  
Laundries, coin-operated  
Microbreweries, subject to special requirements contained in Section 16-4, below  
Music & art studios  
Newspapers and printing companies  
Nursing homes, subject to special requirements 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 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 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 contained in Section 16-4, below  
Theaters, indoors

**5-19-2 Conditional Uses** The following uses shall be permitted in the CMU Central Mixed Use Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special 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 Special Uses** Within the CMU Central Mixed Use Zoning District Classification, the following uses may only be authorized by issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance. Such development shall not require rezoning of the property to a special use or planned development district.~~

~~Any development involving more than 50,000 ft<sup>2</sup> of gross floor area and/or 50 residential dwelling units  
Day centers, subject to the special requirements contained in Section 16-4, below.  
Shelter facilities, subject to the special requirements contained in Section 16-4, below.  
Telecommunications towers, subject to special requirements contained in Section 16-4, below.~~

**5-19-43 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.

**5-19-43.1 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.

### 5-19-43.2 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.

**5-19-43.3 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 ft<sup>2</sup> of urban open space per 100 ft<sup>2</sup> of gross floor area (5/100). Provided, however, buildings containing less than 20,000 ft<sup>2</sup> 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 ft<sup>2</sup>. 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 5-19-54 CMUSU CZD Central Mixed Use ~~Special 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 ~~special use permit~~, 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 ft<sup>2</sup> of gross floor area and/or 50 residential dwelling units

Day centers, subject to the special requirements contained in Section 16-4, below.

Shelter facilities, subject to the special requirements contained in Section 16-4, below.

Telecommunications towers, subject to special requirements 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:** 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 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 ft<sup>2</sup>. A ~~special-use permit~~, 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 ~~permit approval~~. Such ~~permit 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 ~~special use permit rezoning~~ for-to a planned institutional development conditional zoning district, City Council may impose such additional reasonable and appropriate safeguards upon such ~~permit 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 Conditional Zoning Development shall constitute an amendment of the Official Zoning Map which may be initiated only by 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. ~~and, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII. No permit shall be issued for any development within a PID Planned Institutional Development district except in accordance with an approved special use permit.~~

**5-21-2 Permissible Uses, Subject to ~~Issuance of a Special Use Permit~~ Rezoning to a Planned Institutional Development Conditional Zoning District.** A building or land shall be used only for those purposes specified in the ~~special-use permit rezoning~~ for the project which may include the following:

- Accessory uses & structures
- Adult care centers registered with the NC Department of Human Resources
- Child care centers registered with the NC Department of Human Resources
- 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 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 ft<sup>2</sup> of floor area
- Funeral homes
- Home occupations
- Hotels & motels
- Laundries, coin-operated
- Microbreweries, subject to special requirements 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 contained in Section 16-4,  
below  
Theaters, indoors  
Veterinarian clinics

**5-22-2 Conditional 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 pursuant to Article X and shall be subject to special 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 Special Uses.** Within the GHMU Greenville Highway Mixed Use Zoning District Classification, the following uses and structure size may only be authorized by issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance. Such development shall not require rezoning of the property to a special use or planned development district.~~

~~Telecommunications towers, subject to special requirements contained in Section 17-4,  
below:  
Structures with a footprint greater than the maximum allowed under Section 5-22-4.2  
Dimensions  
Requirements, below.~~

**5-22-43 Development Standards.** The following standards shall apply to development within the GHMU Greenville Highway Mixed Use Zoning District Classification.

**5-22-43.1 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.

**5-22-43.2 Dimensional Requirements.**

Minimum Lot Area in Square Feet:	None
Minimum Lot Width:	None
Open Space Ratio:	≥.40

Maximum Footprint for any Structure:	12,000 ft <sup>2</sup> . For structures with a footprint greater than 12,000 ft <sup>2</sup> 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 of 15 feet.
Building Height:	Varies with building type. See Design Standards.

**5-22-43.3 Residential Density.** There shall be no limit on the number of residential dwellings on any development tract.

**5-22-54 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.

**5-22-54.1 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.

**5-22-54.1.1 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.

**5-22-54.1.2 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.

**5-22-54.1.3 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.

**5-22-54.1.4 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 ft<sup>2</sup> 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.

**5-22-54.1.5 Architectural Details.** 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)

**5-22-54.1.6 Building Façades.** 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.

**5-22-54.1.7 Windows.** 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.

**5-22-54.1.8 Building Scale.** 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-~~54~~.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-~~54~~.1.10 Building Materials.** 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-~~54~~.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-~~54~~.2 General Standards for Residential Developments.** 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-~~54~~.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-~~54~~.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 ft<sup>2</sup> 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, vinyl or materials similar in appearance and durability. Side and rear yard fences may be chain link, wood, wrought iron, vinyl or similar material.

#### **5-22-54.2.3 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.

#### **5-22-54.3 General Standards for Nonresidential Buildings and Multi-Family Buildings.**

The following standards shall apply to all buildings containing nonresidential and multi-family uses.

**5-22-54.3.1 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.

**5-22-54.3.2 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.

**5-22-54.3.3 Encroachments.** Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

**5-22-54.3.4 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.

**5-22-54.3.5 Pedestrian access** shall be provided from street sidewalks to principal entrances by means of a sidewalk or other all-weather walkway.

**5-22-54.3.6 Roofs.** Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

**5-22-54.3.7 Canopies & Awnings.** If a building canopy, awning, or similar weather protection is provided, it shall project between three to five feet from the façade.

**5-22-54.3.8 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.

#### **5-22-54.4 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.

**5-22-54.5 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 ft <sup>2</sup>

Maximum Number of Structures: 1 per townhouse

**5-22-54.6 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 ft <sup>2</sup>
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).

**5-22-54.7 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 5-22S GHMUSU Greenville Highway Mixed Use Special Use Zoning District Classification.** The purpose and requirements of this classification are identical to the GHMU Greenville Highway Mixed Use Zoning District Classification except that a special use permit, as provided for in Article VII herein, is required as a prerequisite to any use or development.~~

**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 Classification only upon rezoning to the GHMUCZD Zoning District.

Telecommunications towers, subject to special requirements contained in Section 17 -4 below.

Structures with a footprint greater than the maximum allowed under Section 5-22-4.2

Dimensions

Requirements, below.

Permitted uses for the GHMU Zoning District Classification as specified in 5-221-1, above.

Conditional 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: *(amended 07-07-05, 07-02-15)*

- Accessory dwelling units subject to special requirements contained in Section 16-4, below
- Accessory uses & structures
- Adult care centers registered with the NC Department of Human Resources
- 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 contained in Section 16-4, below
- Child care homes
- Civic clubs & fraternal organizations, subject to special requirements contained in Section 16-4 below
- Congregate care facilities, subject to special requirements 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 ft<sup>2</sup> of floor area
- Funeral homes
- Greenhouses & commercial nurseries
- Home occupations
- Hotels & motels
- Laundries, coin-operated
- Lawn & garden centers
- Microbreweries, subject to special requirements contained in Section 16-4, below
- Music & art studios
- Neighborhood community centers
- Newspaper offices & printing establishments
- Nursing homes, subject to special requirements 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 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 contained in Section 16-4, below  
Theaters, indoors

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

Bus stations  
Public utility facilities

~~**5-23-3 Special Uses.** Within the HMU Highway Mixed Use Zoning District Classification, the following uses may only be authorized by issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance. Such development shall not require rezoning of the property to a special use or planned development district.~~

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

**5-23-43 Development Standards.** The following standards shall apply to development within the HMU Highway Mixed Use Zoning District Classification.

**5-23-43.1 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.

**5-23-43.2 Dimensional Requirements.**

Minimum Lot Area in Square Feet:	None
Minimum Lot Width:	None
Open Space Ratio:	≥.40
Common Space Ratio:	≥.10
Maximum Footprint for any Structure:	40,000 ft <sup>2</sup>
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 devoted 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 <sup>2</sup> . 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.

**5-23-43.3 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

**5-23-54 Design Standards.** These standards are intended to apply to all development and redevelopment 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.

**5-23-54.1 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.

**5-23-54.1.1 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.

**5-23-54.1.2 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.

**5-23-54.1.3 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.

**5-23-54.1.4 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 ft<sup>2</sup> 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.

**5-23-54.1.5 Architectural Details.** 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)

**5-23-54.1.6 Building Façades.** 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.

**5-23-54.1.7 Windows.** 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.

**5-23-54.1.8 Building Scale.** 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.

**5-23-54.1.9 Streets and Sidewalks.** Streets and sidewalks shall comply with the circulation and access requirements contained in Section 18-6-4.6, below.

**5-23-54.1.10 Building Materials.** 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.

**5-23-54.1.11 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).

**5-23-54.2 General Standards for Residential Developments.** 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.

**5-23-54.2.1 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.

**5-23-54.2.2 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 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 ft<sup>2</sup> 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.

**5-23-54.2.3 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.

**5-23-54.3 General Standards for Nonresidential Buildings and Apartments.** The following standards shall apply to all buildings containing nonresidential uses and to apartment buildings.

**5-23-54.3.1 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.

**5-23-54.3.2 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.

**5-23-54.3.3 Encroachments.** Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

**5-23-54.3.3 Pedestrian** access shall be provided from street sidewalks to principal entrances by means of a sidewalk or other all-weather walkway.

**5-23-54.3.4 Roofs.** Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

#### 5-23-54.4 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.

**5-23-54.5 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 ft <sup>2</sup>
Maximum No. of Structures:	1

**5-23-54.6 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 ft <sup>2</sup>
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.

**5-23-54.7 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

**5-23-65 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.

**5-23-65.1 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.

**5-23-65.2 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 Planning 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.

**5-23-65.3 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.

**5-23-65.4 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.

**5-23-65.5 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.

**5-23-65.5.1 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:

<b>LINEAR FRONTAGE</b>	<b>NUMBER OF PERMITTED</b>
Less than 350 feet	1
Greater than 350 feet	2
Greater than 1000 feet	3 <sup>1</sup>

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

<b>CLEARANCE TYPE</b>	<b>ALONG MAJOR THOROUGHFARE</b>	<b>ALONG SIDE STREET</b>
Corner Clearance <sup>2</sup>	250 feet	100 feet
Side Clearance <sup>3</sup>	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.

---

<sup>1</sup> With approval of the City after demonstration of need in the required TIS.

<sup>2</sup> Corner clearance shall be measured from the point of tangency of the radius curvature of the intersection streets.

<sup>3</sup> Side clearance shall represent the distance from the driveway to the side property line.

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.

**5-23-65.5.2 Outparcels.** Access to development outparcels shall be oriented to the interior of the development site, not to the roadway.

**5-23-65.5.3 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 5-23S HMUSU Highway Mixed Use Special Use Zoning District Classification.** The purpose and requirements of this classification are identical to the HMU Highway Mixed Use Zoning District Classification except that a special use permit, as provided for in Article VII herein, is required as a prerequisite to any use or development.~~

**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 the HMUCZD.

Telecommunications towers, subject to special requirements 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: *(added 01-06-05)*

- 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 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 ~~Planning Director~~ 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. ~~and, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII, below.~~ No permit shall be issued for any development within a UV Urban Village Conditional Zoning District except in accordance with an approved ~~special use permit 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 special use permit is issued 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 ft<sup>2</sup> of office floor area; one residential unit shall be regarded as the equivalent of 200 ft<sup>2</sup> of commercial floor area; and 1,000 ft<sup>2</sup> of office space shall be regarded as the equivalent of 350 ft<sup>2</sup> commercial. For other uses, the Planning Director shall determine the equivalency factor.

**5-24-2 Permitted Uses.** ~~Unlike other planned development districts, the application for a special use permit for an urban village district is not required to specify intended uses other than the amount of retail or office space and the number of residential dwelling units. The applicant may, however, choose to limit such uses, to impose restrictions on those which are allowed, and to have such limitations and restrictions incorporated into the special use permit issued for the development. Unless limited as noted above, 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 contained in Section 16-4, below  
Accessory uses & structures  
Adult care centers registered with the NC Department of Human Resources  
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 contained in Section 16-4, below  
Child care homes  
Civic clubs and fraternal organizations  
Congregate care facilities, subject to special requirements contained in Section 16-4, below  
Cultural arts buildings  
Dance, health & fitness facilities  
Dry cleaning and laundry establishments containing less than 6,000 ft<sup>2</sup> 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 (*amended 04-07-11*)  
Schools, primary & secondary  
Signs, subject to the provisions of Article XIII, below  
Telecommunications antennas, subject to special requirements contained in Section 16-4, below  
Theaters, indoors or outdoors but not including drive-in theaters

~~**5-24-3 Conditional Uses.** The following uses shall be permitted in the UV Urban Village Zoning District Classification only upon issuance of a conditional use permit pursuant to Article X and shall be subject to special requirements contained in Section 16-4, below:~~

~~Civic clubs & fraternal organizations  
Public utility facilities~~

**5-24-43 Development Standards.** 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 special use permit for the project. The following standards shall apply to development within the UV Urban Village Conditional Zoning District Classification.

**5-24-43.1 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.

**5-24-43.2 Structure Size.** The maximum size of any structure shall be established by City Council in the special use permit for the project.

**5-24-43.3 Area.** The minimum area required to establish an urban village district is ten acres.

**5-24-43.4 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.

**5-24-43.5 Lot Width.** There is no minimum lot width required.

**5-24-43.6 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.

**5-24-43.7 Height.** There are no maximum height restrictions. The applicant shall propose minimum and maximum height restrictions for all building types and locations.

**5-24-43.8 Design Considerations.** 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 special-use permit 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.

**5-24-43.8.1 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.

**5-24-43.8.2 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.

**5-24-43.8.3 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.

**5-24-43.8.4 Architectural Character.** 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.

**5-24-43.8.5 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.

**5-24-43.8.6 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.

**5-24-43.8.7 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.

**5-24-43.8.8 Architectural Details.** 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.

**5-24-43.8.9 Building Walls.** 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.

**5-24-43.8.10 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.

**5-24-43.8.11 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.

**5-24-43.8.12 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.

**5-24-43.8.13 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. If 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.

**5-24-43.8.14 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.

**5-24-43.8.15 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.

**5-24-43.8.16 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 ft<sup>2</sup> 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 1,500ft<sup>2</sup> 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 ft<sup>2</sup> 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.

**5-24-43.8.17 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.

**5-24-43.8.18 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 ft<sup>2</sup> 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.
- c) **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 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 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 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 an Urban Residential District is required to meet with the ~~Planning Director~~ 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. ~~and, at the same time, for a special use permit specifying the nature of the proposed development. The two applications shall be processed simultaneously in accordance with the provisions of Article VII, below.~~ No permit shall be issued for any development within an Urban Residential Conditional Zoning District except in accordance with an approved ~~special use permit~~ 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 special use permit is issued 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. For the purpose of determining overall development intensity, one residential unit shall be regarded as the equivalent of 500 ft<sup>2</sup> of office floor area; one residential unit shall be regarded as the equivalent of 200 ft<sup>2</sup> of commercial floor area; and 1,000 ft<sup>2</sup> of office space shall be regarded as the equivalent of 350 ft<sup>2</sup> of commercial. For other uses, the ~~Planning Director~~ Development Assistance Director or 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 ft<sup>2</sup> 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

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 (*amended 04-07-11*)

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 contained in Section 16-4, below

**5-25-4 Dimensional Requirements.** Dimensional requirements for each parcel within the 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 <sup>4</sup>
Maximum Height	64 Feet
Maximum Floor Area Ratio (gross floor space on entire parcel/parcel size)	1.5: 1

**5-25-5 Design Considerations.** 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 obtain a special use permit 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.

---

<sup>4</sup> 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.

**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 otherwise indicated in Section 5-25-3. This limitation shall not apply to small commercial uses accessory to 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.** 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.** 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.** 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.

**5-25-5.10 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.** 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 .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.
  - 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 when 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 1,500ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> 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:** 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 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 contained in Section 16-4, below
- Accessory uses & structures
- Adult care centers registered with the NC Department of Human Resources
- 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 contained in Section 16-4, below
- Child care homes
- Civic clubs & fraternal organizations, subject to special requirements contained in Section 16-4
- Congregate care facilities, subject to special requirements 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 ft<sup>2</sup> 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 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 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 contained in Section 16-4, below  
Theaters, indoors

**5-27-2 Conditional 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 pursuant to Article X and shall be subject to special requirements contained in Section 16-4, below:

Bus stations  
Public utility facilities

~~**5-27-3 Special Uses.** Within the CHMU Commercial Highway Mixed Use Zoning District Classification, the following uses may only be authorized by issuance of a special use permit and shall be processed under special use review in accordance with Section 7-4 of the Zoning Ordinance. Such development shall not require rezoning of the property to a special use or planned development district.~~

~~Development or redevelopment exceeding 50,000 ft<sup>2</sup> of gross floor area.  
Telecommunications towers, subject to special requirements contained in Section 16-4, below.~~

**5-27-43 Development Standards.** The following standards shall apply to development within the CHMU Commercial Highway Mixed Use Zoning District Classification.

**5-27-43.1 Parking & Loading.** The requirements of Section 6-5, below, shall apply.

**5-27-43.2 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.

**5-27-43.3 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

**5-27-54 Design Standards.** 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.

**5-27-54.1 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.

**5-27-54.1.1 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.

**5-27-54.1.2 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.

**5-27-54.1.3 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.

**5-27-54.1.4 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 1000 ft<sup>2</sup> 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.

**5-27-54.1.5 Architectural Details.** 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).

**5-27-54.1.6 Building Façades.** 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.

**5-27-54.1.7 Windows.** 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.

**5-27-54.1.8 Building Scale.** 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.

**5-27-54.1.9 Streets and Sidewalks.** Streets and sidewalks shall comply with the circulation and access requirements contained in Section 18-6-4.6, below.

**5-27-54.1.10 Building Materials.** 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.

**5-27-54.1.11 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).

**5-27-54.2 General Standards for Residential Developments.** 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 5-27-5.3, below.

**5-27-54.2.1 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.

**5-27-54.2.2 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 ft<sup>2</sup> 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.

**5-27-54.2.3 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.

**5-27-54.3 General Standards for Nonresidential and Multi-Family Buildings.** The following standards shall apply to all buildings containing nonresidential uses and multi-family dwellings.

**5-27-54.3.1 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.

**5-27-54.3.2 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.

**5-27-54.3.3 Encroachments.** Balconies, stoops, chimneys and bay windows are permitted to encroach into any setback up to five feet.

**5-27-54.3.4 Roofs.** Parapets and decorative cornices are required for buildings with a flat roof. Eaves shall be provided with a pitched roof.

**5-27-54.4 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

**5-27-54.5 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
-------------------	---------------

Minimum Lot Width:	Sides: 0 feet (Corner 8 feet). Buildings within a development must be separated by a minimum of 15 feet
Maximum Height:	Rear: 15 feet from centerline of alley, if applicable.
Encroachments:	16 feet
	3 stories.
	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 ft <sup>2</sup>
Maximum No. of Structures:	1

**5-27-54.6 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 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:	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 ft <sup>2</sup>

**5-27-54.7 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 CHMUSU CZD Commercial Highway Mixed Use ~~Special 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 special use permit, 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 upon rezoning to the CHMUCZD.

Development or redevelopment exceeding 50,000 ft<sup>2</sup> of gross floor area.

Telecommunications towers, subject to special requirements 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 for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in 5-27-1, above.

**3. Article VI General Provisions is hereby amended as follows:**

**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 more 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 from such setback requirements by the Board of Adjustment in accordance with the provisions of Article X.
- c) With regard to residential dwellings, 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.
- 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 ~~Zoning Administrator~~ 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 Administrator~~ 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, shall be prohibited. Permitted uses subject to special requirements, conditional uses and special uses shall be permitted only according to the additional regulations imposed. Permits for a conditional 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.

**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 5-6-4.1 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 Planning Director or Zoning Administrator 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 ft <sup>2</sup> of gross floor area
Animal boarding facilities	1 per each 400 ft <sup>2</sup> of gross floor area
Art galleries, museums	1 per each 500 ft <sup>2</sup> of gross floor area
Automobile sales, service & repair	1 per 2 employees at maximum employment on a single shift and 2 per each 300 ft <sup>2</sup> 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

USES	PARKING SPACE REQUIREMENT
Breweries <i>(added 07-02-15)</i>	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
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 ft <sup>2</sup> 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 independent 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 ft <sup>2</sup> 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 ft <sup>2</sup> of floor or ground area used for amusement or assembly but not containing fixed seats
Fitness, athletic & dance facilities	1 per each 150 ft <sup>2</sup> of gross floor area
Financial services	1 per each 300 ft <sup>2</sup> of gross floor area

USES	PARKING SPACE REQUIREMENT
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 ft <sup>2</sup> of gross floor area.
Hardware & home improvement center	1 per each 300 ft <sup>2</sup> 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 ft <sup>2</sup> of public meeting area And restaurant area
Libraries	1 per each 4 seats provided for patron use
Manufacturing	1 per each 2 employees at maximum employment on a single shift
Microbreweries ( <i>added 07-02-15</i> )	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
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 ft <sup>2</sup> 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 <sup>2</sup> of indoor gross floor area plus 1 per each 1000 ft <sup>2</sup> 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 ft <sup>2</sup> of gross floor area

USES	PARKING SPACE REQUIREMENT
Offices, professional, business or public	1 per each 400 ft <sup>2</sup> of gross floor area
Personal services	1 per each 200 ft <sup>2</sup> of gross floor area
Pharmacy/Drug store	1 per each 300 ft <sup>2</sup> 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 ft <sup>2</sup> of floor or ground area used for amusement or assembly but not containing fixed seats
Recreational facilities, indoors	1 per each 200 ft <sup>2</sup> 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
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 ft <sup>2</sup> 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 ft <sup>2</sup>
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 ( <i>amended 01-08-15</i> )	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 ft <sup>2</sup> of floor or ground area used for amusement or assembly but not containing fixed seats

USES	PARKING SPACE REQUIREMENT
Theaters, outdoor	1 per 4 seats provided for patron use plus 1 per each 100 ft <sup>2</sup> of floor or ground area used for amusement or assembly but not containing fixed seats
Veterinary clinics	1 per each 200 ft <sup>2</sup> of gross floor area
Wineries ( <i>added 07-02-15</i> )	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 ~~Planning Director or Zoning Administrator~~ 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. ~~The Planning Director or Zoning Administrator~~ Development Assistance Director or a designee may require this record be provided when the owner applies for a new use 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 ~~Planning Department or Zoning Department~~ 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 ~~Planning Director or Zoning Administrator~~ 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 ~~Planning Director or Zoning Administrator~~ Development Assistance Director or a designee. The ~~Planning Director or Zoning Administrator~~ 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 ~~Planning Director or Zoning Administrator~~ 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 ~~Planning Director or Zoning Administrator~~ 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** (Repealed 02-06-14)~~

**6-5-5.76** 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)
30°	14'	18'
45°	15'	19'
60°	17'	21'
90°	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 ft<sup>2</sup> of gross floor area or fraction thereof.  
Wholesale and Industrial Operations:

Building Area in ft <sup>2</sup>	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

~~PM~~ PMDCZD Planned Manufacturing Development Conditional Zoning District

I-1 Industrial

~~PC~~ PCDZD Planned Commercial Development Conditional Zoning District

CMU Central Mixed Use

GHMU Greenville Highway Mixed Use

HMU Highway Mixed Use

UVCZD Urban Village Conditional Zoning District

**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 ~~Planning Director~~ Development Assistance Director, ~~or, for commercial, industrial, or institutional development consisting of less than 5,000 ft<sup>2</sup> of floor area, the Zoning Administrator.~~

**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 ~~Zoning Administrator;~~ 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 ~~PRD~~ 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 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 Variances.** A 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, 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. (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 shall not be regarded as a self-created hardship. (4) The requested 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 developments 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 ft<sup>2</sup> 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 ~~Planning Director~~; 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 ~~Planning Director~~; 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 the ~~Planning Director~~ Development Assistance Director or a designee. Any conveyance to a homeowners association shall be subject to restrictive covenants and easements reviewed by the ~~Planning Director~~ 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 ~~special-use review~~ 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 Planning 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 causal 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 (existing 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 data 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.

#### **4. Article VII Development Review, is hereby amended as follows:**

### **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) special use 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 ft<sup>2</sup> 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 special use review 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 Planning Director on forms prescribed by the Planning 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 ~~Planning Director~~ Development Assistance Director. The application shall also designate an agent for the project to whom notice may be given by the City. The ~~Planning Director~~ 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 ft<sup>2</sup> 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 development for which a special use permit has been issued; and~~
- e) 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 ft<sup>2</sup> to less than 20,000 ft<sup>2</sup> 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 ~~Planning Director~~ 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 ~~Planning Director~~ Development Assistance Director or a designee determines that an application is incomplete, the ~~Planning Director~~ 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 ~~Planning Director~~ 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 ~~Planning Director~~ Development Assistant Director or a designee determines the application to be complete, the ~~Planning Director~~ 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 ~~Planning Director~~ Development Assistance 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 ~~Planning Director's~~ 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 ~~Planning Director~~ 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 ~~Planning Director~~ 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 ~~Planning Director~~ 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 ~~preliminary~~ 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.

**7-3-3.6 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 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. ~~and development which has received a special use permit pursuant to Section 7-4, below.~~

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 Planning Director~~ Development Assistance Director or designee shall conduct a preliminary review of an application to determine if it contains all items required by Section 7-3-4.3. If the ~~Planning Director~~ Development Assistance Director or a designee determines that an application is incomplete, the ~~Planning Director~~ Development Assistance Director or designee shall notify the applicant in writing of all deficiencies. Once the ~~Planning Director~~ Development Assistance Director or designee determines the application to be complete, the ~~Planning Director~~ Development Assistance Director or 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 ~~Planning Director~~ 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 ~~final~~ site plan approval shall not be approved unless the City Manager, or a designee appointed by the City Manager, determines that the application and ~~final~~ site plan (1) conform with preliminary site plan approval, if applicable, (2) conform with a special use permit, if applicable, and (3) demonstrate compliance with this ordinance, including the 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 Planning Director 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 note 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 Planning 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 ~~Planning Director~~ Development Assistance Director may establish additional requirements for site plans, which may be triggered by conditions such as density, topography, location and anticipated traffic volumes on or near the site. In addition, if the ~~Planning Director~~ 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 Special Use Review.** ~~Special use review provides an alternative to traditional zoning by coupling an application for rezoning with an application for a special use permit specifying the intended use(s) along with a conceptual site plan and any proposed conditions to be placed upon the property.~~

Development or uses required to undergo special use review pursuant to this article shall occur only after issuance and recordation of a special use permit. The following developments or uses are required to undergo special use:

- a) Any uses in special use districts as described in Article IV;
- b) Any uses in any of the planned development districts, which include the following: PRD Planned Residential Development; PCD Planned Commercial Development; PID Planned Institutional Development; or PMH Planned Manufactured Housing Development; or PMD Planned Manufacturing Development;
- e) Any uses designated as special uses in Article V, above;
- d) Any applications to create an urban village pursuant to Section 5-24, above;
- e) Any applications to create an urban residential district pursuant to Section 5-25, above.

Uses which may be permitted in special use districts or planned development districts, including the UV Urban Village Zoning District classification and Urban Residential Zoning District classification are all permitted by right in other zoning district classifications; however, within these districts they are not permitted "by right." Rather, they are permissible only in conjunction with a rezoning to such a district. This allows City Council to exercise its legislative decision making power, thus assuming greater discretion, when reviewing such developments. On the other hand, it allows applicants to tailor a development in such a way that it addresses potential concerns about compatibility with neighboring properties.

Although lists of permissible uses are included in each of the planned development districts and incorporated by reference in the special use districts, this does not give rise to a presumption of compatibility for such uses. Rather, the listing of such uses is an indication that they have the potential to be compatible. In each instance of special use zoning, the applicant must carry the burden of demonstrating that the proposed use(s) will be located, designed, and proposed to be operated so as to be compatible with adjacent properties and neighborhoods. Indeed, the planned development district classifications are founded on the presumption that large-scale development has unique potential to adversely impact neighboring properties and neighborhoods and, thus, is only permissible within an appropriate planned development district. In this light, all projects undergoing special use review are required to participate in a neighborhood compatibility meeting where there is an opportunity for a face-to-face dialogue with neighboring property owners in order to describe the project and address their concerns, if any, about compatibility.

**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 limitations 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 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 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 the property owner. If, for any reason, any condition imposes pursuant to these regulations is found to be illegal or invalid or if the applicant 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 ~~special use permit~~ rezoning to a Conditional Zoning District to cover the costs of advertising and other administrative expenses. The fee shall be set by a resolution of City Council.

**7-4-2 Pre-application conference.** It is recommended that any person desiring to ~~use or develop land pursuant to a special use permit~~ rezone a property to a conditional zoning district schedule a pre-application conference with the ~~Planning Director~~ Development Assistance Director or designee to become familiar with the ~~special use permit~~ 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 ~~Planning Director~~ Development Assistance Department staff.

**7-4-3 Application.** ~~Applications for a special use permit shall be made to the Planning Director on forms prescribed by the Planning Director.~~ 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 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 Contents.~~ Applications shall include the name, address and signature of the applicant. Applications shall also include the name, address and signature of at least one owner of each parcel making up any part of the property that is subject to the application. The application may also designate an agent for the project to whom notice may be given by the City. The Planning Director shall prescribe any other material that may reasonably be required to determine compliance with this article, with sufficient copies for necessary referrals and records.

~~For previously approved special use permit developments that are incomplete or expired or both, the application shall include the name, address and signature of at least one owner of each parcel to be developed.~~

**7-4-3.21 Conceptual Plan.** To facilitate the discussion during the neighborhood compatibility meeting required by Section 7-4-4, the applicant shall submit to the ~~Planning Director~~ Development Assistance Department, as a part of the application for a ~~special use permit~~ 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 ~~Planning Director, or a designee appointed by the Planning Director~~ 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 ~~planning director~~ 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 ~~Planning Director~~ 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 ~~Planning Director~~ Development Assistance Director or a designee shall record the opinions in the ~~planning director's~~ Development Assistance Director's report. The ~~Planning Director's~~ Development Assistance Director's report shall become a part of the application file.

~~7-4-5 Preliminary~~ **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 ~~preliminary~~ final site plan meeting the requirements of Section ~~7-4-5.1, below:~~ 7-3-4.3, above.

~~7-4-5.1 Contents of Preliminary Site Plan.~~ The ~~preliminary site plan for projects undergoing special use review shall show the following:~~

- ~~a) The date of the preliminary site plan or submittal, including any revisions thereto;~~
- ~~b) The proposed title of the project; the name of the engineer, architect, landscape architect, planner and / or licensed surveyor; the name of the developer; and the name of the owner of record;~~
- ~~e) The north arrow point, scale (not to exceed 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 the site by an insert vicinity map at a scale not less than one inch equals 2,000 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 and any adjoining parcels are totally within or without the city limits;~~
- g) ~~Names of adjacent property owners, and property identification numbers (PINs) for such parcels;~~
- h) ~~Boundary survey of the site and the location of all existing easements, buildings, rights-of-way or other encroachments;~~
- i) ~~Location of 100-year floodway and special flood hazard area, if applicable. Other significant natural features affecting the site including, but not limited to, wetlands, major rock outcrops and lakes or streams;~~
- j) ~~The proposed transportation network for the project including, but not limited to, the following:~~
  - 1) ~~all proposed streets, clearly identified as public or private, with proposed names, pavement widths and rights-of-way;~~
  - 2) ~~sight distances for all entrances and exits and their relationship to street and driveway intersections within a 200-foot radius of the intersection of such entrance and exit with any public right-of-way;~~
  - 3) ~~all alleys, driveways, and curb cuts for public streets;~~
  - 4) ~~all handicap ramps;~~
  - 5) ~~off-street loading and unloading areas;~~
  - 6) ~~provisions for off-street parking spaces including calculations indicating the number of parking spaces required and the number provided;~~
  - 7) ~~typical cross-sections of public or private streets; and~~
  - 8) ~~pedestrian and bicycle facilities.~~
- k) ~~A traffic impact analysis, if one is required by the terms of Section 6-19 above, demonstrating compliance with the adequate facilities standards contained in Section 7-11, below;~~

- l) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines;
- m) 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*; *(amended 07-05-07)*
- n) Proposed reservations or dedications for parks, playground, school sites and open spaces and a note indicating ownership and maintenance provisions;
- o) 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 areas to be screened, fenced, walled and/or landscaped; *(amended 07-05-07)*
- p) 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. If several models of units are being offered for sale and the type of unit at each building location is not known, then a general outline of the unit to be constructed may be shown at the building location;
- q) 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, common space, streets and parking and other facilities;
- r) General location, size, height, orientation and appearance of proposed signs;
- s) General location of proposed project phasing lines and notation including special conditions pertinent to establishing sales or model units, if applicable;
- t) Elevations of all façades, including existing structures to remain, drawn to a reasonable scale which shall be not less than 1/8 inch equals one foot. Plans shall designate proposed materials and colors of architectural features.

The Planning Director has the authority to waive any application requirement where the type of use or the scale of the project makes providing that information unnecessary or impractical. The Planning Director, Planning Board, or City Council may request 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.

**7-4-5.2 Completeness Review.** Upon receipt of a preliminary site plan, the Planning Director shall cause the application to be reviewed for completeness and shall notify the

applicant in writing if the application is incomplete, specifying what additional information is needed in order for the application to be deemed complete. The applicant shall then provide the additional information requested by the Planning Director. Upon receipt of all requested information, the Planning Director shall refer copies of the proposal to such other representatives as may be appropriate to determine if it conforms to the provisions of this Zoning Ordinance and to such other regulations applicable in the matter.

**7-4-65 Processing of Application.** The completion date for the application shall be the date of receipt of all information requested by the ~~Planning Director~~ Development Assistance Director pursuant to Section ~~7-4-5~~ 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. ~~For purposes of this section, the application shall include the preliminary or conceptual site plan, as the case may be.~~

**7-4-6 Conditions to Approval of Conditional Zoning District.** In approving 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 Planning Board Review.** The Planning Board shall review the application and shall submit to City Council a written recommendation based on the findings required in Section 7-4-10.~~

**7-4-87 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.

**7-4-98 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.

~~**7-4-102 Final Action.** City Council shall review the record of the public hearing and the Planning Board's recommendation and shall act on the application based on the findings of fact contained herein. Action on the application shall be one of the following: (1) Approval; (2) Approval subject to conditions; or (3) Denial. The Planning Director shall notify the applicant of Council's decision in writing. If the application is approved or approved with conditions, the Planning Director shall issue the necessary special use permit in accordance with the action of Council. The special use permit, including all conditions attached thereto, shall run with the land and shall be binding on the original applicant as well as all successors.~~

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.

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.

**Section 7-4-10.1 Findings of Fact.** No special use permit shall be approved by City Council unless each of the following findings is made: *(amended 03-08-01)*

- a) ~~The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.~~
- b) ~~There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11, below.~~
- c) ~~The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, below, and with all other applicable regulations.~~
- d) ~~The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.~~
- e) ~~The use or development conforms with the general plans for the physical development of the City as embodied in this Ordinance and in the Comprehensive Plan and the Comprehensive Transportation Plan. *(amended 06-04-09)*~~

~~The burden of establishing these findings of fact shall lie upon the applicant. In addressing the issue of compatibility, as required in paragraph d), above, the applicant must demonstrate compatibility with the particular neighborhood in which the development or use is to be located. The fact that a use is authorized as a special use within a zoning district classification shall not give rise to a presumption that such special use is compatible with other uses authorized in the zoning district classification.~~

**7-4-10.29.1 Conditions to Approval of the Special Use Permit Rezoning to a Conditional Zoning District.** In approving a petition for the reclassification of property to a ~~planned development district or a special use district~~ 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.

**7-4-10.39.2 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 ~~planned development or special use district~~ 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.

~~The issuance of a special use permit authorizing any use which is a conditional use in a particular zoning district classification shall eliminate the need to obtain a conditional use permit for that use.~~

**7-4-11 Revised Final Site Plans.** ~~Revised~~ Final site plans shall be reviewed by the ~~Planning Director~~ Development Assistance Director or a designee to ensure conformance with the requirements set forth in 7-3-4. ~~Final site plans shall include any modifications agreed to as conditions of issuance of the special use permit as well as a list of any conditions and a list of any uses as stipulated in the special use permit-~~ a petition for the reclassification of property to a conditional zoning district.

**7-4-1211 Issuance of Zoning Compliance Permit.** ~~A special use permit does not authorize development; rather, it approves a development concept for a particular property. In order to develop the property in accordance with the special use permit, a zoning compliance permit is required. A zoning compliance permit shall be issued upon certification by the Planning Director~~ Development Assistance Director or a designee ~~receives that a revised final site plan demonstrating compliance with the preliminary or conceptual site plan, as well as all terms and conditions of the special use permit~~ 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 may 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.

~~7-4-13 Expiration and Revocation of Special Use Permits.~~ A special use permit or modification of a special use permit shall run with the land covered by the permit or modification. Once construction authorized by a special use permit or modification of special use permit is started, no development other than that authorized by the permit or modification shall be approved on that land unless the permit or modification is first modified in accordance with Section 7-6-3 or voided or revoked in accordance with the provisions of this section.

~~7-4-13.1 Commencement.~~ If the use, construction, or activity authorized by City Council approval of an application for a special use permit (or modification thereof) is not commenced within two years 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. City Council may, upon application prior to the expiration of a special use permit, or any extensions thereof, extend such special use permit for an additional period not to exceed 24 months.

~~7-4-13.2 Completion.~~ Unless a different period of time is authorized by City Council, the right to construct improvements or otherwise develop land pursuant to a special use permit shall expire three years after issuance of the special use permit. If all of the construction and actions authorized or required by a special use permit are not completed within the time established for completion, or any authorized extensions thereof, the permit holder may request an extension of the completion time limit from City Council. Council may grant one or more extensions upon making the following determinations:

- ~~a) The permit holder requested the extension prior to the expiration of the special use permit, as it may have been previously extended;~~
- ~~b) The permit holder has proceeded with due diligence and good faith; and~~
- ~~c) Conditions have not changed so substantially as to warrant City Council reconsideration of the approved special use.~~

~~7-4-13.3 Abandonment.~~ On request by the holder of a special use permit, City Council shall approve the abandonment of such permit upon making one of the following determinations:

- ~~a) No construction or activity authorized by the permit has been started and the starting time limit has not yet expired; or~~
- ~~b) The development or use authorized by the permit no longer requires a special use permit, and all conditions of the special use permit have been satisfied.~~

~~In addition, Council must determine that the permit holder has submitted a signed affidavit clearly stating the holder's intent to abandon the permit.~~

~~7-4-13.4 Revocation.~~ If any conditions of a special use permit, including completion time limits, or requirements of this chapter applicable to the permit are violated, Council may revoke the permit.

~~Council may reinstate a revoked special use permit if it determines the following: a) the holder of the revoked permit submitted a request for reinstatement to the City Manager within 90 days of the 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 and all applicable requirements of this chapter.~~

~~On request by the holder of a special use permit, Council may revoke such permit if it determines the following:~~

- ~~a) Construction authorized by the permit has been started and the completion time limit has not yet expired;~~
- ~~b) The request is made in conjunction with an application for approval of a development other than that authorized the permit; and~~
- ~~e) The proposed development as approved by Council incorporates adequate consideration for the site's already disturbed land area in its design and previous commitments made under the special use permit process.~~

~~7-4-14 Variances.~~ For applications undergoing special use review, City Council may authorize variances in specific cases from the dimensional and improvements standards of the zoning ordinance upon finding that a literal enforcement of such standards will result in practical difficulty or unnecessary hardship and so long as the granting of such variance or variances will not result in a use or development which would violate the findings of fact required by Section 7-4-10, above. Variances may not be granted with regard to uses or to intensity.

**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.

By way of illustration, if the owner of a commercial development with an established intensity of 45,000 ft<sup>2</sup> of floor area proposed a 6,000 ft<sup>2</sup> addition, the entire development, including that which is existing or previously approved, will be required to undergo ~~special use review~~ conditional zoning district rezoning in accordance with Section 7-4. If the owner of such development proposed a 4,000 ft<sup>2</sup> 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 approve 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 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 special

use review. 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 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 City Council.

If the proposed action is determined to be a major modification, the City Manager shall require the filing of ~~an application for approval of the modification~~ a request for a zoning map amendment for a conditional zoning district. The City Manager shall prescribe the form(s) of application as well as any other material reasonably required to determine compliance with this

~~article. An application for major modification of a development authorized under special use review shall be reviewed in accordance with the procedures established for special use review.~~

~~No modification shall be allowed to a special use permit issued in a special use zoning district or a planned development district unless the applicant accepts all of the requirements and conditions City Council proposes to impose on the modification. Acceptance of conditions by the applicant may be indicated at the Council hearing on the special use permit modification or by affidavit submitted prior to Council taking action on the modification application.~~

**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 special use review are governed by the provisions of Subsection 7-4-13.

**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.

The City Manager 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.

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 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.

~~**7-8-4 Development Standards for Planned Residential Developments.**~~

~~**7-8-5 Minor Planned Residential Developments.**~~

~~**7-8-6 Procedures for Reviewing Rest Homes, Nursing Homes, Congregate Care Facilities and Progressive Care Facilities.**~~

**Section 7-9 “As-Built” or Record Drawings.** This section applies only to development which has undergone site plan, ~~or~~ special use review 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 ~~special-use~~ 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 special use review 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.** Development decisions rendered pursuant to this article are subject to review in the manner set forth herein.

**7-13-1 Administrative Remedies.** There are two separate bodies charged with responsibility for administrative review of development 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.

The following development decisions are subject to administrative review in the manner indicated:

- a) **Zoning compliance permits.** 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.** 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.

- c) **Final site plans.** 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.

**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.
- 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.
- d) ~~**Special use review.** Judicial review of decisions regarding applications processed under the provisions of special use review, established in Section 7-4, above, require special treatment due to the fact that they involve two separate applications which, though processed simultaneously, require Council to make two separate decisions exercising two different types of decision making authority. One application requests enactment of an ordinance amending the Official Zoning Map, and the other requests issuance of a special use permit. The first application involves a legislative decision on the part of Council, and the second a quasi-judicial decision. The quasi-judicial decision, that is, the one concerning the application for a special use permit, may be appealed to the Superior Court by any aggrieved party in the manner prescribed in paragraph b), above. Such appeal shall be in the nature of certiorari. The legislative decision, which is the one concerning the request for rezoning, may be contested, in accordance with NCGS Section 160A-364.1, by a cause of action commenced within two months of the date of the decision.~~

**5. Article IV Section 9-7 Penalties for Violations, is hereby amended as follows:**

**Section 9-7. Penalties for 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, 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.
- 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 ~~special use~~ conditional zoning districts or conditional use permits, may be prosecuted as a misdemeanor, punishable as provided in NCGS 14-4.

**6. Article XI Section 11-5-3 Protest Petitions, is hereby amended as follows:**

**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. ~~or otherwise, or to an amendment to an adopted special use or planned development district if the amendment does not accomplish any of the following:~~

- ~~a) Change the types of uses that are permitted within the district;~~
- ~~b) Increase the land area included within the district;~~
- ~~e) Increase the approved density for a residential development;~~
- ~~d) Increase the total approved floor area of nonresidential development; or~~
- ~~e) Reduce the size of any buffers or screening approved for the district.~~

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.

**7. Article XI Section 11-6 Scope of Proceedings, is hereby amended as follows:**

**Section 11-6 Scope of Proceedings.** It is the intent of this ordinance that applicants for rezoning to any district other than a ~~special use district or a planned development district~~ conditional zoning district shall be prohibited from ~~offering any testimony or evidence concerning~~ discussing the specific manner in which they intend to use or develop the property.

**8. Article XIII Sign Regulation Maintenance and Enforcement, is hereby amended as follows:**

**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 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 ft<sup>2</sup> in area and bearing only address numbers, names of occupants or business and professional signs not exceeding 2 ft<sup>2</sup> 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 ft<sup>2</sup> per face for property zoned residential or do not exceed eight feet in height and do not exceed 32 ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> in area.
- f) Legal notices, identification, information or directional signs required by governmental bodies.
- g) Signs not exceeding six ft<sup>2</sup> 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 ft<sup>2</sup> 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 ft<sup>2</sup> 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 ~~special-use~~ 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 ~~special-use~~ 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**

- c) 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 special-use 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 ft<sup>2</sup> for each linear foot of the front facade for that business plus one ft<sup>2</sup> for each three linear feet of any additional facade which has a door designed and used for public access or 250 ft<sup>2</sup>, 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 ft<sup>2</sup> 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 ft<sup>2</sup> for each linear foot of the building facade on which it is located or 250 ft<sup>2</sup>, 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 ft<sup>2</sup> 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 for Signs in Downtown Special Tax District.** The following special requirements 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 Planning Director, Development Assistance Director or a designee ~~appointed by the Planning Director,~~ 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 Planning Director 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. ~~and the Zoning Administrator may issue the permit.~~

**13-1-9 Design Guidelines for Signs in Downtown Special Tax District.** The following design guidelines shall guide decisions of the Planning Director Development Assistance Director, or a designee appointed by the Planning Director 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 Planning Director, Development Assistance Director or a designee appointed by the Planning Director, 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 use 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 ft<sup>2</sup> or larger shall be 500 lineal feet. The minimum spacing required for adjacent advertising signs measuring less than 300 ft<sup>2</sup> 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 appendages or 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 <sup>2</sup> )	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.

**9. Article XVI Section 16-2 Applicability, is hereby amended as follows:**

**Section 16-2 Applicability.** These standards apply to a particular use only when it is designated as a conditional use, ~~a special use~~, conditional zoning district or a “permitted use subject to special requirements” 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 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 ~~special use review~~; 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.

**10. Article XVI Section 16-3 Procedures for Applying Standards, is hereby amended as follows:**

**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 ~~special-use~~ conditional zoning district, a conditional use or a permitted use subject to special requirements. If it is a conditional use, then a conditional use permit must be obtained from the Zoning Board of Adjustment in accordance with Article X, above. If the proposed use is a ~~special-use~~ conditional zoning district or a permitted use subject to special requirements, then the standards will be applied during the applicable development review procedure in accordance with Article VII, above.

**11. Article XVI Section 16-4 Standards, is hereby amended as follows:**

**Section 16-4 Standards.** As stated herein, the following standards apply to the indicated use when such use is either a ~~special-use~~, conditional zoning district, a conditional use or a permitted use subject to special requirements. These standards are in addition to other applicable development standards contained in this ordinance.

**12. Article XVI Section 16-4-2 Adaptive Reuses, is hereby amended as follows:**

**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 ~~special-use permits~~ a rezoning to a conditional zoning district processed through the ~~special-use review~~ conditional zoning districts 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 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 ft<sup>2</sup> 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, violation of which shall be grounds for revocation of the permit.

**13. Article XVI Section 16-4-4 Adaptive Animal Boarding Facilities, is hereby amended as follows:**

**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 or ~~special-use permit~~ 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 rodents or 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 statutes 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.

**14. Article XVI Section 16-4-17 Nursing Homes, is hereby amended as follows:**

**16-4-17 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.

- e) No application for a ~~special-use permit~~ 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.

**15. Article XVI Section 16-4-26.1 Telecommunication Towers and Antennas Application Requirements, is hereby amended as follows:**

**16-4-26 Telecommunications Towers and Antennas.** Special application requirements, procedures, and permitting standards, as set forth herein, apply to telecommunication towers and antennas.

**16-4-26.1 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 ~~the issuance of a special-use permit~~ 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 16-4-24.4, 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 and 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) **Variiances.** Identification of any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse effects of the proposed variance(s).

- g) **Feasible Alternatives.** Towers to be sited in zoning districts requiring the issuance of a ~~special-use permit~~ conditional zoning district shall demonstrate the lack of a feasible alternative as required by Paragraph 16-4-23.4, below.

**16. Article XVI Section 16-4-26.4 Additional Standards for Siting Telecommunications Towers Pursuant to Special Use Permits, is hereby amended as follows:**

**16-4-26.4 Additional Standards for Siting Telecommunications Towers Pursuant to ~~Special-Use Permits~~ Conditional Zoning Districts.** The following standards shall supplement the Basic Standards for Siting Telecommunications Towers contained in Subsection 16-4-23.3 when an application requires the issuance of a special use permit.

- 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 ~~special-use permit~~ rezoning to a conditional zoning district shall be ~~issued~~ 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 ~~special-use permit~~ 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 ~~special-use permits~~ 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 ~~special-use permit~~ 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 16-4-24.3(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 16-4-24.3, above. Notwithstanding the fact that development in such districts requires ~~the issuance of a special-use permit~~ 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.
17. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 9-8 of the Zoning Ordinance.
  18. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
  19. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
  20. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

21. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Barbara Volk, Mayor

Attest:

\_\_\_\_\_  
Tammie K. Drake, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 12/22/2017

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 01/04/2017

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 10

In accordance with N.C. General Statute 160A-400.20-160A-400.32 local governments may enter into very specific Development Agreements to govern large-scale multi-phase development projects that require long-term commitment and careful integration of both public and private resources over several years. Prior to adoption of the aforementioned Development Agreement the City Council must conduct an appropriately advertised public hearing.

The City of Hendersonville is proposing to enter into a Development Agreement (Agreement) with Belmont Sayre LLC to govern the redevelopment of the former Grey Hosiery Mill property. The Agreement will govern the redevelopment of the property over the next 20 years. The Agreement outlines specific standards for redevelopment of the site and the respective obligations of each party over the 20 year period.

A public hearing has been appropriately advertised and staff is seeking the City Council's approval of the Agreement.

**Budget Impact:** \$ TBD \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

## Suggested Motion:

I move that City Council approve the Development Agreement between the City of Hendersonville and Grey Mill Ventures, LLC.

## Attachments:

Proposed Development Agreement

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**GREY MILL VENTURES, LLC**

**AND**

**THE CITY OF HENDERSONVILLE, NORTH CAROLINA**

**Effective Date: January 4, 2018**

Henderson County Parcel Identifier Numbers: 9568887505

9568887545

9568887586

9568888544

9568887494

9568889495

9568980317

**Table of Contents**

	<b>Page</b>
<b>ARTICLE 1. LEGAL FRAMEWORK.....</b>	<b>1</b>
<b>ARTICLE 2. DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE 3. RECITALS .....</b>	<b>4</b>
<b>ARTICLE 4. TERMS .....</b>	<b>6</b>
<b>ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES.....</b>	<b>20</b>
<b>EXHIBITS INCORPORATED BY REFERENCE</b>	
EXHIBIT A. Property Map	
EXHIBIT B. Master Plan	
EXHIBIT C. Development Agreement Compliance Permit Application	
EXHIBIT D. Legal Description of the Property	
EXHIBIT E. Brownfields Notice and Agreement	
EXHIBIT F. Purchase Agreement	

## STATE OF NORTH CAROLINA

## DEVELOPMENT AGREEMENT

## COUNTY OF HENDERSON

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the 4th day of January, 2018, by and among **GREY MILL VENTURES, LLC** ("Developer"), and the **CITY OF HENDERSONVILLE**, North Carolina, a municipal corporation of the State of North Carolina ("City").

**ARTICLE 1. LEGAL FRAMEWORK**

- 1.1 North Carolina General Statutes (hereinafter "G.S.") §160A-400.20(a) provides that large-scale development projects require long-term commitment and careful integration of both public and private resources, often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.
- 1.2 Because of the scale, duration, and commitment required in a development project, G.S. §§ 160A-400.20(b) and 160A-400.22 expressly authorize local governments and agencies, with required approval of the governing body of a local government by ordinance, to enter into development agreements with developers pursuant to the procedures and requirements of G.S. §§ 160A-400.20 through 160A-400.32.
- 1.3 G.S. § 160A-400.23 provides that "a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes."
- 1.4 G.S. § 160A-400.23 requires a development agreements to be of a reasonable term specified in the agreement.
- 1.5 In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a significant inducement and consideration to enter into this Agreement, and may be enforced as contractual terms.

**ARTICLE 2. DEFINITIONS**

In the construction of this Agreement and its incorporated Exhibits, the following capitalized terms shall have the respective meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Zoning Ordinance of the City of Hendersonville, North Carolina as of the Effective Date ("Zoning Ordinance") shall have the same meanings as employed in those statutes and ordinances.

- 2.1 *Agreement.* The word "Agreement" shall mean this Development Agreement.
- 2.2 *Annual Report.* The words "Annual Report" shall mean the annual report required by the City pursuant to Section 4.17 and Section 5.16 of this Agreement.
- 2.3 *Board.* The words "Board" or "Board of Commissioners," shall mean the legislative body of the City of Hendersonville, which together with the Mayor of the City shall constitute the governing body of the City.

- 2.4 *City.* The words "City" or "the City" shall mean the City of Hendersonville in the County of Henderson and the State of North Carolina and its successors in interest.
- 2.5 *City Attorney.* The words "City Attorney" shall mean the City attorney appointed by the City Council for the City.
- 2.6 *City Regulations.* The words "City Regulations" shall have the meaning ascribed in Section 4.8 of this Agreement.
- 2.7 *Developer.* The word "Developer" shall mean GREY MILL VENTURES, LLC, individually and collectively, and any successor in title who acquires any part of the Property whereby the transferring Developer expressly assigns all of its rights and obligations as Developer under this Agreement to the Person acquiring any part of the Property from the Developer, which assignment shall be recorded in the Registry.
- 2.8 *Development or Develop.* The words "Development" or "Develop" shall mean any activity on the Property involving, requiring, or consisting of: (i) the construction of a new building; (ii) the construction or installation of structures or facilities such as roads, greenways, paved trails, sidewalks, parking lots, or utility infrastructures; (iii) the clearing or alteration of land as an adjunct of such construction; or (iv) the expansion of an existing building where such expansion consists of an increase in excess of ten (10) percent of the existing square feet of space to the building.
- 2.9 *Development Agreement Compliance Permit.* The words "Development Agreement Compliance Permit" shall mean the permit issued by the City Manager authorizing Development or portions thereof in accordance with this Agreement. A Development Agreement Compliance Permit required by this Agreement shall be in lieu of any Zoning Permit that might otherwise be required by Section 7-1 of the Zoning Ordinance.
- 2.10 *Development Property.* The words "Development Property" refer to the Mill Building property, indicated as Lot A on Exhibit A and includes all that real property shown as a 1.103 acre tract on that plat recorded at Plat Slide 9482, Henderson County Registry [PIN # 9568887494].
- 2.11 *Effective Date.* The words "Effective Date" shall mean the effective date of this Agreement, which is January 4, 2018.
- 2.12 *Grey Hotel Project or Project* shall mean the Property as defined in Section 2.18 and the project developed on the site.
- 2.13 *Manager.* The words "Manager" or "City Manager" shall mean the City Manager of the City of Hendersonville or her/his designee and anyone acting pursuant to authority vested by state statute or local ordinance to issue local permits for Development on behalf of the City of Hendersonville. Any rights or duties assigned to the City Manager defined herein may be carried out by the Manager at the Manager's discretion.
- 2.14 *Noise Ordinance.* The words "Noise Ordinance" or "the City's Noise Ordinance" shall mean Article II, Sec. 31-38 of the Hendersonville Code of Ordinances, in effect as of the Effective Date.
- 2.15 *Party or Parties.* The words "Party" or "Parties" shall mean the City and the Developer.

- 2.16 *Periodic Review.* The words "Periodic Review" shall have the meaning ascribed in Section 4.18 of this Agreement.
- 2.17 *Person.* The word "Person" shall mean a natural person, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.
- 2.18 *Property.* The word "Property" shall mean the parcel of land owned by the City of Hendersonville and identified as Parcel Identifier Numbers (PIN) 9568887494, 9568889495, 9568887505, 9568887545, 9568887586, and 9568888544. The Property is surrounded by North Grove Street, Fourth Avenue East, Pine Street, and Fifth Avenue East as depicted in Exhibit A, attached hereto. The Property also includes any public rights-of-way and private streets that may be located within the boundaries of Exhibit A. The Property is composed of the Mill Building, the Mill Building Lot, the Pilgrim Property, and the Williams Property as depicted in Exhibit A and described as follows:
- a) Mill Building (Labeled A on Exhibit A) ALL OF THAT REAL PROPERTY identified as that 1.103 acre tract on plat recorded at Plat Slide 9482 of the Henderson County Registry, reference to which plat is hereby made for a more particular description. ALSO BEING a portion of that real property described in deed of record in Deed Book 1318, page 101, Henderson County Registry and is also all of that property described as the First Tract in deed of record in Deed Book 757, page 467, Henderson County Registry [PIN # 9568887494].
  - b) Mill Building Extra Lot (Labeled B on Exhibit A): All that real property shown as a 0.582 acre tract on that plat recorded at Plat Slide 9482, Henderson County Registry [PIN # 9568889495].
  - c) Pilgrim Property (Labeled C on Exhibit A) All of those four tracts identified as Property #2, Property #3, Property #4, and Property #5 in that deed recorded in Deed book 1478 at page 683 of the Henderson County Registry and being further identified respectively in that same deed as PIN #9568887505, PIN #9568887545, PIN #9568887586, and PIN #9568888544. Being all that real property conveyed to the City of Hendersonville by Pilgrim Property Associates, LLC in that deed recorded in Deed Book 3029 at 374, Henderson County Registry.
  - d) Williams Property (Labeled D on Exhibit A) Beginning on a stake at the intersection of the northern margin of Fourth Avenue East with the western margin of Pine Street, and runs thence with the western margin of Pine Street, North 13° West 75 feet to a stake, thence South 77° West 60 feet to an iron pin in the old Hampton Hunter line, thence with the old Hampton Hunter line, South 13° East 75 feet to an iron pin in the north margin of Fourth Avenue East; thence with the north margin of Fourth Avenue East, North 77° East 60 feet to the point of Beginning, and being the southern half of that lot conveyed to Weldon Miller and wife by Columbus Few and wife, and recorded in Deed Book 77 at page 93, Henderson County Registry, and also that lot conveyed by F.H. Waldrop and wife, Mae M. Waldrop, by deed dated November 25, 1958 and recorded in Deed Book 372 at page 47, Henderson County Registry. Also being all of that real property conveyed to the City of Hendersonville by that deed recorded in Deed Book 1684 at page 55, Henderson County Registry [PIN # 9568980317].
- 2.19 *Registry.* The word "Registry" shall mean the Henderson County Register of Deeds.

- 2.20 *Representative*. The words "Representative" or "Representatives" shall mean those Persons designated by the Developer to act for and on behalf of the Developer wherever indicated and subject to the terms of this Agreement, and the Representatives' successors and assigns. As of the Effective Date, the Representative is Kenneth M. Reiter. The Representatives shall be responsible for coordinating and tracking the requirements of this Agreement and reporting the same to the Parties pursuant to this Agreement. The Representatives' successors and assigns shall mean a Person designated by the Developer to replace the then existing Representative. The Developer shall give written notice to the City of any such replacement.
- 2.21 *State*. The word "State" shall mean the State of North Carolina.
- 2.22 *Zoning Ordinance*. The words "Zoning Ordinance" shall mean the Zoning Ordinance of the City of Hendersonville, North Carolina, in effect as of the Effective Date.

### ARTICLE 3. RECITALS

- 3.1 Prior to December 27, 2017, the City was the fee simple owner of approximately 2.28 acres of land located within the corporate and regulatory limits of the City along Grove Street between 5<sup>th</sup> Avenue East and 4<sup>th</sup> Avenue East, which comprise the Property. A legal description of the Property is attached hereto and incorporated herein as Exhibit D.
- 3.2 The City became the sole owner of the Mill Building by purchase on May 23, 1990. The City became the sole owner of the Mill Building Extra Lot by purchase on May 9, 2007. The City became the sole owner of the Pilgrim Property by purchase on March 17, 2017. The City became the sole owner of the Williams Property by purchase on October 20, 2016.
- 3.3 Pursuant to Board action duly noticed for public hearing on December 7, 2017, the City conveyed the Mill Building to Developer on December 27<sup>th</sup>, 2017 for the purpose of facilitating the Development of property within the Grey Hotel Property. The terms of the conveyance of the Mill Building are set forth in the Purchase Agreement attached hereto and incorporated herein as Exhibit F. The City intends to convey to Developer by sale or lease within 30 days and as agreed upon by both parties, the Mill Building Extra Lot, Williams Property, and Pilgrim Property, upon Board action after duly noticed public hearing.
- 3.4 The purpose of this Agreement is to facilitate the Development of the Property in a way that best realizes the public benefits to the City and the Developer. The Development of the Property requires a major investment by the Developer in facilities, substantial front-end investment in on-site and off-site improvements, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve the benefits of the Development for the Developer and the City. The Developer will be unable to make and realize the benefits from such commitments without the assurances of as provided by this Agreement.
- 3.5 The City intends to apply for Community Development Block Grants for the Project (the "CDBG"). The CDBG is a forgivable loan for which the City has received initial approval in connection with the Project. The City intends to receive these funds from the North

Carolina Department of Commerce and disburse them to the developer per the conditions and terms of a forgivable loan agreement.

- a) It is the intention of both parties that a promissory note and the terms of the forgivable loan agreement between the City and developer will be completed no later than June 30th, 2018.
- b) The City intends to complete the full CDBG forgivable loan application by the NC Department of Commerce deadline of March 22nd, 2018.
- c) The Developer is willing to assist as needed with the provision of information required by the CDBG application that is otherwise unavailable to City.
- d) The Developer intends to continue to pursue the appropriate federal registrations for the legal entity developing the property, Grey Mill Ventures, LLC.
- e) The Developer agrees to be responsible for coordinating with the City of Hendersonville and the Prime Contractor on elements of grant compliance, specifically the Davis Bacon Act, Copeland Act and Contract Work Hours and Safety Standards Act. These acts apply to construction, specifically laborers, mechanics and trade workers.

3.6 The general benefits to be received by the City from the implementation of the Development include, without limitation:

- a) The integration of the Property with Main Street and the Historic Seventh Avenue District;
- b) A contribution to the vitality, culture, and economy of the City;
- c) Assurance the Development respects existing City character and design aesthetics through an integrated site plan;
- d) Maximization of public benefit while minimizing public investment; and
- e) Provision of an efficient, effective, and practical overall plan for addressing the infrastructure needs of the Development of the Property, including but not limited to streets, sidewalks, curbing, public space, water, sewer, and additional utilities.

3.7 The general benefits to be received by the Developer from the implementation of the Development include, without limitation:

- a) Obtaining sufficient certainty, timeliness, and predictability in the City's development review and approval process to justify the required substantial up-front capital investment for a project that will require multiple years to build out;
- b) Realization of the opportunity to implement the Development plan – a development that is consistent with City's and the Developer's goals and needs;
- c) Security provided by certain City ordinances, standards, policies and guidelines to achieve the Development; and
- d) Participation from the City for the financing and construction of infrastructure to achieve the public benefits necessary for the Development.

3.8 In exchange for providing these benefits to the City, the Developer desires to receive the assurance that it may proceed with the Development of the Property in accordance with any and all existing City development regulations and conditions of approval of the City as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein and subject to periodic potential amendments to this Agreement made in accordance with this Agreement.

- 3.9 After careful review and deliberation, the Developers have determined that the latitude afforded the proposed Development of the Property and the certainty, timeliness, and predictability regarding City development approval afforded by this Agreement provide important benefits for long-range planning and Development by the Developer and justify the provision of the mitigation measures specified in Article 5 of this Agreement, which the Developer freely and with full knowledge and consent agrees to provide.
- 3.10 The terms and conditions of this Agreement have undergone extensive review by the City's staff and the Board and have been found to be fair, just and reasonable. After careful review and deliberation, the Board has determined and concluded that the Agreement meets the goals and needs of the City, and complies with all statutory requirements.
- 3.11 The City, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the City shall survive beyond the term or terms of the present Board and that such action will serve to bind the City and future Boards to the obligations thereby undertaken. By approving this Agreement, the Board has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.12 Based on the foregoing considerations, the Developer and the City desire to enter into this Agreement for the purposes of:
- a) Agreeing upon the plan, design, and density of Development on the Property and the types of uses thereon, and promoting sustainability, reflecting consideration of economic, environmental and social issues;
  - b) Coordinating the construction and provision of infrastructure that will help to integrate the Main Street area and the Historic Seventh Avenue District;
  - c) Confirming the dedication and/or provision of the public infrastructure and amenities described herein;
  - d) Providing assurances to the Developer and the Representatives that they may proceed with the Development of the Property in accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to Develop the Property under the terms of this Agreement;
  - e) Providing for the financing and information necessary to create and support a Brownfields Management Plan; and
  - f) Providing certainty that the Developer and Representatives can obtain permits necessary for the Development pursuant to a predictable and expeditious process.
- 3.13 Pursuant to G.S. § 160A-400.24, the Board conducted a public hearing on January 4, 2017 to consider the approval of this Agreement. The notice of public hearing specified, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property and a place where a copy of the proposed Agreement could be obtained.
- 3.14 On January 4, 2017, the Board considered and approved this Agreement and authorized the City's execution of the same. The approval of this Agreement constitutes a legislative act of the Board.

#### **ARTICLE 4. TERMS**

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the City and the Developer do hereby agree as follows:

- 4.1 Recitals. The Parties agree the foregoing Recitals in Article 3 are true and correct and are incorporated herein by reference.
- 4.2 Term. The term of this Agreement shall commence upon the Effective Date and it shall expire twenty (20) years thereafter unless sooner terminated by the mutual consent of the Parties, or is otherwise terminated pursuant to the terms of this Agreement. This twenty (20) year term has been established by the Parties as a reasonable estimate of the time required to carry out the Development of the Property subject to this Agreement and to obtain the public benefits of the Development. The City finds that a term of twenty (20) years is reasonably necessary to assure the City of the realization of the public benefits from the Development of the Property. All of the Development which the Developer elects to commence pursuant to this Agreement which is authorized by this Agreement will be initiated by obtaining a Development Agreement Compliance Permit within the term of the Agreement, but expiration of the twenty (20) year term shall not terminate (a) mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the term of the Agreement or (b) rights and obligations that are related to Development for which a Development Agreement Compliance Permit has been issued within the twenty (20) year term but the Development of which has not been completed by the expiration of the twenty (20) year term. The term of this Agreement may be extended or renewed by the mutual consent of the Parties in accordance with state and federal law.
- 4.3 Pre-Development Fee Agreement. In accordance with the executed contract between the University of North Carolina School of Government and the City dated December 1, 2015, the conveyance or lease of the Development Property to the Developer and its successors and assigns was conditioned upon the execution of this Agreement (the "Pre-Development Fee Agreement"). Pursuant to the Pre-Development Fee Agreement, the Developer shall pay a fee to the City's consultant ("SOG") and its successors and assigns for predevelopment services provided to the City within thirty (30) days following the execution of this Agreement. The fee shall be the amount equal to 1.5% of the total costs of Development as calculated by the Developer in the most recent version of the pro forma and other financial projections prepared by the Developer ("Developer Financials") and delivered to lenders and/or investors prior to the execution of this Agreement, and in the event of any inconsistencies in the projected total costs among different versions of the Developer Financials, the version of the Developer Financials showing the greatest total costs of development of the Project shall be used to calculate the Development Services Fee. An alternative payment schedule for payment of the Development Services Fee to SOG may be developed as mutually agreed in writing by Developer and SOG; by way of illustration only, such schedule of payments could be tied to the receipt of any developer fees by Developer. Developer's obligation to pay Development Services Fee shall not be assignable by Developer to any other entity, nor shall any assignment relieve Developer of its obligation to pay Development Services Fee, except upon written consent of SOG. SOG is an intended third party beneficiary to this Agreement.
- 4.4 Development Uses Permitted on the Property. The Project shall consist of a downtown hotel including a restaurant, event space, shared kitchen, event lawn conference room, fitness room, and pool. Additional outdoor event space and restaurant or other retail space will adjoin the hotel. The Project will function as an economic catalyst for the Main

Street and Historic Seventh Avenue Municipal Service Districts. The population density, building types, placement and design of all buildings and other structures are set forth on the Master Plan attached hereto and incorporated herein as Exhibit B.

- 4.5 Zoning of the Property. Pursuant to the "Official Zoning Map, City of Hendersonville, North Carolina" dated September, 2017, the Property, including all parcels, are zoned in the City's Central Mixed Use Zoning District.
- 4.6 Public Facilities. The public facilities that will service the development, including who shall construct or maintain the facilities and a timeline for the construction of any new facilities, are provided herein by Section 4.20. The City's final delivery of any public facilities is conditioned upon the Developer initiating Development of the Development Property.
- 4.7 Law in Effect at Time of the Agreement Governs the Development; Vested Rights. Except as provided in G.S. §§160A-400.26 and G.S. § 160A-400.29(b), the City may not apply subsequently adopted ordinances or development policies to the Property during the term of this Agreement without the written consent of the Developer. Accordingly, during the term of this Agreement the Developer shall have a vested right to Develop the Property in accordance with the terms of Article 5 of this Agreement, the terms of the Zoning Ordinance, and any applicable laws and regulations, all of the foregoing as they exist as of Effective Date. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with State and federal law. In accordance with G.S. § 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the City may modify the affected provisions with the consent of the Developer, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing and upon such modification the City shall record the modification in the Registry. If the Developer fails to consent, this Agreement shall be terminated (with the Developer retaining any rights with respect to any Development Agreement Compliance Permit obtained prior to termination) and said termination will be recorded in the Registry.
- 4.8 Development of the Property; Zoning Ordinance.
  - a) Should the Developer Develop the Property pursuant to this Agreement, then the Property shall be Developed in accordance with the terms and conditions of the Zoning Ordinance in effect as of the Effective Date. Any future modifications or revisions to the Zoning Ordinance would not apply to the Property. The maximum height, bulk, size, and design of buildings and the placement, location, and configuration of the Development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance with Article 5 of this Agreement. Except as limited by this Agreement or as otherwise provided in this Agreement, Development shall be substantially consistent with the City's Comprehensive Plan, Land Use Plan, Historic District Guidelines, Design Guidelines, and other City standards or policies (collectively, "City Regulations"). Notwithstanding the foregoing, in the event of any conflict between the provisions of the City Regulations, and the express provisions of this Agreement, the terms of the Agreement shall be controlling. A certified copy of the Zoning Ordinance and any other applicable City ordinances in effect as of the Effective Date shall be

provided to and maintained on file and online by the City Clerk, the Developer and the Representatives.

- b) Developer shall Develop a hotel with approximately 57 hotel rooms and accompanying amenities including 2100 square feet of event space, and 64 parking spaces. Estimates of the size and units of developments are approximations on the Effective Date. However, a change in square footage of event space greater than ten (10) percent or an increase or decrease in hotel rooms planned greater than ten (10) percent as stated in this subsection requires notice and consent to the City in order to establish a baseline for determining the size of modifications as set forth in Section 4.15. Hotel Development must equal a total investment of at least \$11 million.
- 4.9 Development of the Property. Should the Developer Develop the Property pursuant to this Agreement, then the Development of the Property shall be in substantial compliance with the specific standards and mitigation measures approved by the Parties as set forth in Article 5 of this Agreement.
- 4.10 Bonds. Prior to commencing construction, Developer shall secure a payment bond and a performance bond (collectively, "P&P Bonds") acceptable to City, in its sole discretion. To the extent P&P Bonds apply to constructing any public improvements, P&P Bonds must name City as a protected party and must remain in effect through full (not substantial) completion of Project.
- 4.11 Environmental Management Plan. The Property is subject to a Notice of Brownfields Property, as shown in Exhibit E. Before initiating construction or rehabilitation work on the Property, the Developer must obtain approval of a Brownfields Management Plan ("BMP") from the North Carolina Department of Environmental Quality (NCDEQ), and the obligations of each Party concerning the BMP are set forth in Section 5.4. The provisions necessary in the Development of the Property to protect environmentally sensitive land will be dictated by the BMP. The City and Developer shall act in good faith to comply with the requirements of the NCDEQ in creating and receiving approval for the EMP.
- 4.12 Development of the Property – Special Uses. In the event a proposed Development does not comply with this Agreement or applicable City Regulations, and is not considered a Minor Modification (as hereinafter defined) to this Agreement, the Developer, in its sole discretion, may:
- a) apply to the Board for a Major Modification (as hereinafter defined) to this Agreement, or
  - b) apply for a conditional use permit under Article X, Section 10-7 of the Zoning Ordinance to permit the proposed Development.
- 4.13 Local Development Permits.
- a) In accordance with G.S. § 160A-400.25(a)(6), the local development permits approved or needed to be approved for the Development shall include the following:
    - 1) Development Agreement Compliance Permits;
    - 2) Building, stormwater and other applicable construction permits as set forth in Article IX of the Zoning Ordinance; and

3) Permits for Street Cuts and Street Closures.

Any such approvals and permits shall be consistent with the requirements of Article 5 of this Agreement. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer or the Representatives of the necessity of complying with such permitting requirements, conditions, terms or restrictions, except as may be limited or otherwise provided in this Agreement.

- b) Application may be made for more than one type of local permit at a time, and such permit applications shall be reviewed concurrently by the City to the extent possible. Additionally, the City shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the Development of the Property. The Developer and the Representatives shall in a timely manner provide the City with all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder.

4.14 Development of the Property – Development Agreement Compliance Permit.

- a) Permit Required for Development. A Development Agreement Compliance Permit shall be required prior to the commencement of any Development, as defined in Section 2.9, or construction work related to Development. The Development Agreement Compliance Permit required by this section shall be in lieu of any Zoning Permit that might otherwise be required by Section 4.9 of the Zoning Ordinance. The Developer intending to undertake Development of the Property (the "Applicant") shall apply for a Development Agreement Compliance Permit by filing and delivering to the City Manager the application provided for in Exhibit C.
- b) Schedule of Review.
- 1) Prior to submitting an application for a Development Agreement Compliance Permit, the Applicant shall meet with the City Manager to review the proposed Development.
  - 2) Upon receiving an application from the Applicant, the City Manager shall review the application to determine whether or not it is complete within five (5) working days from the date of submission.
  - 3) The City Manager shall review a complete application for compliance with this Agreement and the applicable City Regulations that are not expressly superseded by this Agreement.
  - 4) Within fifteen (15) working days following the date on which an application is deemed complete, the City Manager shall provide written comments to the Applicant regarding whether the submitted application is in compliance with this Agreement and applicable City Regulations or whether the submitted application requires revision.
  - 5) If the application is not in compliance, the Applicant may submit a revised application to the City Manager. Upon receiving a revised application, the City shall process the revised application in the manner described in this Section of the Agreement, and such process shall be repeated until the application is in compliance with this Agreement and applicable City Regulations. Throughout this review period, the Applicant and the City will strive to review and respond to information in an expeditious manner and provide updates to one another every ten (10) working days to ensure open communication and accountability.
  - 6) The City Manager shall approve or deny of the Development Agreement Compliance Permit application within forty-five (45) days following

submission of a complete application, unless (i) an extension of time is requested by the Applicant, or (ii) the Applicant submits a revised application to the City Manager fewer than fifteen (15) working days before the forty-fifth (45th) day of the review period, in which case the review period shall be automatically extended by fifteen (15) working days.

- i. The City Manager shall approve the application upon finding it complies with and does not violate any term of this Agreement and the applicable City Regulations, and shall deny the application upon finding it does not comply with the terms of this Agreement and the applicable City Regulations.
- 7) If the application is approved, the City shall issue the Applicant a Compliance with Development Agreement Compliance Permit.
  - 8) If the application is denied, the City Manager shall specify the grounds for finding that it is inconsistent or in violation and refer the Applicant to the conditional use permit process described in Section 4.5 of the Zoning Ordinance. The Applicant may modify the Development Agreement Compliance Permit application or submit a new application for a Major Modification to this Agreement.
  - 9) Notwithstanding anything to the contrary, a change in floor area constituting a ten (10) percent difference in square feet or less shall not be deemed either a Minor Modification or a Major Modification of this Agreement, nor require approval or modification of a Development Agreement Compliance Permit. Such changes shall be reported by the Applicant on a Development Agreement Compliance Permit application form for review within seven (7) working days for consistency with this Agreement prior to issuance of a building permit, if applicable, but will not require approval or modification of a Development Agreement Compliance Permit.
- c) Construction Management Plan. The Development Agreement Compliance Permit application shall include a construction management plan. The construction management plan shall, at a minimum:
- 1) Show how construction vehicle traffic will be managed and where the construction vehicle routes will be located.
  - 2) Show parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods.
  - 3) Identify construction staging and material storage areas.
  - 4) Identify construction trailers and other associated temporary construction management structures.
  - 5) Indicate how the project construction will comply with the City's Noise Ordinance.
  - 6) Propose times and days when construction and noise from the Development are permitted.
  - 7) The project will provide a phone number for noise notifications during the construction period. The owner will post a sign on-site stating that noise issues can be reported by calling the posted phone number.
  - 8) Submit written confirmation that Representatives have provided information to contractors and subcontractors regarding noise mitigation requirements for Development for contractor and subcontractor review and compliance with same.

4.15 Amendment and Modification. The terms of this Agreement may be amended or modified by the mutual consent of the Parties. Either party may propose a modification to this Agreement. A modification of this Agreement that is considered a Major Modification of the terms of this Agreement shall follow the same procedures as required by North Carolina law for the adoption of a development agreement outlined in Section 14.14. Upon receipt of a proposed modification, the City Manager shall determine within fifteen (15) working days of receipt of a proposed amendment and modification whether a proposed amendment or modification is a Major or Minor Modification and shall promptly notify the Board and Applicant of that determination. The City Manager shall consider the following criteria in making the determination:

a) Major Modification. A substantial change to the Master Plan, attached as Exhibit B, within or concerning the boundaries of the Property shall constitute a Major Modification. Any single proposed (a) increase or decrease in the number of hotel rooms subject to this Agreement of more than fifteen (15) percent or (b) demolition of a portion of any building reducing the building's footprint by more than fifteen (15) percent shall be considered substantial. A Major Modification requires a Development Agreement Compliance Permit as described in Section 4.14.

1) All proposed Major Modifications to this Agreement shall be publicly posted in such a manner that citizens of the City will have the opportunity to express any concerns to the Board and/or the City Manager

b) Minor Modification. Any other amendment or modification to this Agreement that is not a Major Modification shall be considered a Minor Modification, and therefore would not require the procedures for adoption of a development agreement. All Minor Modifications require notice to Board and shall be subject to review and approval by the City Manager. Such approval shall be memorialized by letter from the City Manager and acknowledged by the Developer and Representatives. A copy of the Minor Modifications shall be maintained on file by the City Clerk, the Representatives, and the Developer.

1) Minor Modifications to this Agreement may be approved by the City Manager as long as such changes: (i) continue to be in substantial compliance with the Agreement and all other applicable requirements; and (ii) result in a configuration of buildings/development that is generally consistent with this Agreement. The City Manager shall not have the authority to approve changes that constitute a Major Modification to this Agreement.

2) Notwithstanding the above, some proposed Minor Modifications to this Agreement that do not meet the threshold to constitute a Major Modification may in the judgment of the City Manager, because of size, traffic or parking impacts, and/or historic characteristic modifications, merit public review. In the event the City Manager makes such a determination, the City Manager may submit a proposed Minor Modification as notification to the Board to allow an opportunity for Board review.

4.16 Recordation/Binding Effect. Within fourteen (14) days after the date upon which the City enters into this Agreement, the Developer shall record this Agreement in the Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the City and its successors in interest, to the Developer and its successors and assigns in title. All of the provisions of this Agreement shall be enforceable during the term

as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

4.17 Annual Report. The Developer or its designee shall on an annual basis submit a written report to the City Manager on the Development undertaken pursuant to this Agreement in the previous year (the "Annual Report"). The Annual Report shall set forth all individual Development Agreement Compliance Permits issued, infrastructure installed, the status of participation by the Developer and the Representatives in the provision of or financing of public infrastructure for the Development, dedications and acquisitions of infrastructure by the Developer and Representatives, and the projected schedule for Development of the Property in the forthcoming year. The Annual Report shall include all of the information required pursuant to Section 5.17 of this Agreement and shall be provided at the times specified by that Section. The Annual Report shall also include a report demonstrating good faith compliance by the Developer and the Representatives with the terms of this Agreement. Upon receipt of the Annual Report, the Manager shall undertake the Periodic Compliance Review as set forth in Section 4.18 of this Agreement.

4.18 Periodic Compliance Review and Enforcement.

- a) Periodic Review. Pursuant to G.S. § 160A-400.27, the City Manager shall conduct a periodic compliance review (the "Periodic Review") at least every twelve (12) months, at which time the Developer and or the Representatives shall be required to demonstrate good faith compliance with the terms of this Agreement. The City Manager shall promptly report the results of this review to the Board. The City Manager will use the Annual Report as the basis for preparing the Periodic Review.
- b) Material Breach. If, as a result of the Periodic Review, the City Manager finds and determines that any Developer or Representative has committed a material breach of the terms or conditions of the Agreement (the "Breaching Developer"), the City Manager shall serve notice in writing to the Breaching Developer (the "Notice"), within fifteen (15) days after the Periodic Review setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination.
- c) Right to Cure. After Notice has been served, the Breaching Developer shall have a reasonable time in which to cure the material breach (the "Breaching Developer's Cure"), but in no event shall the Breaching Developer have less than thirty (30) days for the Breaching Developer's Cure. Notwithstanding the foregoing, the Breaching Developer, as applicable, shall be afforded an additional reasonable period of time to cure the breach if cure is commenced within the time period and thereafter diligently pursued but cannot be completed within said time frame.
- d) Termination or Modification by the City. If the Breaching Developer fails to cure the material breach under Section 4.18(c) of this Agreement, then the Board may elect to terminate or modify the Agreement after complying with mediation requirements as stated in Section 4.19 of this Agreement. Any notice of termination or modification or finding of breach by the City may be appealed to the City Zoning Board of Adjustment in the manner provided by G.S. § 160A-388(b1). If after mediation, the Board elects to unilaterally modify the Agreement, the Developer may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Board by giving written notice to the City within sixty (60) days after the proposed modification. In such event, Section 4.34(a), Section 4.34(b) and Section 4.34(c) of this Agreement shall apply and the Developer shall have the right to file a termination in the Registry. Failure of the City to conduct this Periodic Review shall not constitute a waiver by the City

of its rights to otherwise enforce the provisions of this Agreement, nor shall the Developer or the Representatives have or assert any defense to such enforcement by reason of such failure to conduct a Periodic Review.

- e) Termination Prior to Developer Obtaining Construction Financing. Should the City terminate the Agreement at a time prior to the Developer obtaining construction financing and initiating construction on June 30, 2018, as a result of the Developer's failure to cure a material breach under Section 4.18(c) of this Agreement, and upon the notice of a final judgment of any litigation resulting from the breach after mediation has been pursued, if any are commenced, as set forth in Section 4.19(c) of this Agreement, the City shall have the option of purchasing the Development Property from the Developer in return for consideration equal to consideration paid to the City by Developer. In the event that the City exercises the option to re-purchase the property, the Developer shall transfer the property by Special Warranty Deed conveying the same title received by Developer free of all liens and encumbrances.
- f) Time in Which to Verify Title. If Developer, after attempting in good faith using reasonable diligence, is unable to verify title of the Development Property on or before January 29th, 2018, and provides proper notice to the City, except as otherwise agreed upon in writing by the Parties, the Development Agreement shall terminate immediately without further force or effect, the Developer shall convey the Development Property, with no additional liens, interests, claims, encumbrances, or other impairment of title since the conveyance to the Developer to the City within five (5) days pursuant to Section 6(c) of the Purchase Agreement.

4.19 Mediation. In the event any Party believes another Party is in default or is in material breach, the Parties shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement. In the event of an impasse between the Parties in reaching any mutual agreement mandated by this Agreement, the Parties shall make good faith efforts to negotiate and informally resolve the issue in dispute (the "Claim"). If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the notice of default, the Parties agree to submit the claim to mediation pursuant to the following process:

- a) The non-defaulting Party (the "Claimant") shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency or certified individual providing similar services upon which the Parties may mutually agree.
- b) If Claimant does not submit the claim to mediation within thirty (30) days after notice of default, Claimant shall be deemed to have waived the claim, and the defaulting Party (the "Respondent," and collectively with the Claimant, "Participants") shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Participant to the foregoing proceedings.
- c) If the Participants do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings. Such notice shall set forth when and where the Participants met, that the Participants are at an impasse, and the date that mediation was terminated.

- d) If settlement does not occur and mediation is terminated, the Participants may pursue any and all actions at law and equity permitted under this Agreement subject to the right to notice and cure as provided in this Agreement.
- 4.20 Subordination of the City's First Priority Lien on the Mill Building. The City agrees to subordinate its lien on that real property described as the Mil Building to a deed of trust for the benefit of a lender to Buyer for purposes of funding construction up to the amount of \$13.5 million dollars. The City shall execute a customary subordination agreement in favor of such construction lender upon reasonable request of Buyer.
- 4.21 Development Timing and Moratoria. The Developer and Representatives shall be obligated to Develop the Property pursuant to this Agreement. When any such Developer or Representative so elects to Develop a portion of the Property, such Participant shall carry out the Development of such portion of the Property in such order and sequence as the Developer and Representatives, as applicable, shall determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the Development shall be based on sound engineering practices as determined by Developer's or Representative's engineers to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Property will be provided when or before they are necessary for that phase of the Development. Absent an imminent threat to public health or safety, neither the right to Develop nor the timing of Development shall be affected by a moratorium or suspension of development rights adopted by the City except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.
- a) Timeline for Commencement and Completion of Construction.
- 1) Initial construction of Infrastructure shall commence by January 1, 2019, and the parties will use commercially reasonable best efforts to complete construction in accordance with the Infrastructure Schedule by October 1 2019; however, a failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances as set forth in G.S. 160A-400.25. The Parties may agree to initiate construction of Infrastructure at an earlier date or with additional deadlines for completion in order to align with Development of the Development Property. The City Engineer shall conduct Infrastructure improvements and construction in accordance with the Infrastructure Schedule.
  - 2) Project Development shall commence by June 30, 2018. The parties will use commercially reasonable best efforts to complete construction by July 1, 2019.
- 4.22 Infrastructure. The City shall construct and/or maintain any infrastructure required to be completed by the City as set forth in Article 5 (the "Infrastructure").
- 4.23 Default. Apart from the Periodic Review process set forth in Section 4.18 of this Agreement, the failure of the Developer, the Representatives, or the City to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Party or Parties to pursue such remedies as allowed under applicable law against the defaulting party, after following mediation requirements in Section 4.19 of this Agreement, provided,

however, that no termination of this Agreement may be declared by the City or the Developer absent the notice and opportunity to cure set out in Section 4.18 of this Agreement. A Party believing another Party to be in default shall provide notice of that default to the other Party within fifteen (15) days of such default, and shall provide the defaulting Party and the Developer on behalf of the defaulting Party, an opportunity to cure any default as provided in Section 4.18 of this Agreement.

- 4.24 Force Majeure. In addition to specific provisions of this Agreement, neither the Developer, the Representatives, nor the City shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding Parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, interference duly caused by any other Party, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control or due to interference by another Party, any date or times by which the Parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be deemed granted and will be agreed to by the Parties in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.25 Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Developer, the Representatives, and/or the City, or to impose any partnership obligation or liability upon such Parties. Neither the Developer, the Representatives, nor the City shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party except for the participation by the Representatives on behalf of the Developer as provided in this Agreement.
- 4.26 No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party that is not a Party.
- 4.27 Legal Actions. In addition to any other rights or remedies, and subject to the mediation requirements in Section 4.19 of this Agreement, and further subject to the notice and right to cure provisions in Section 4.18 of this Agreement, any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Henderson, State of North Carolina, and the Participating Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction. In the event that it becomes necessary for a Party to pursue a civil action against a defaulting Party, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting Party if such fees are awarded by a court of competent jurisdiction.
- 4.28 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the

other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

All notices, demands, requests, consents, approvals or communications to the City shall be addressed to:

City Manager  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, NC 28792  
jconnett@hvlnc.gov (email)

City Attorney  
City of Hendersonville  
145 Fifth Avenue East  
Hendersonville, NC 28792  
sfritsch@hvlnc.gov (email)

All notices, demands, requests, consents, approvals or communications to the Developer shall be addressed to:

Grey Mill Ventures, LLC  
Attn: Kenneth M. Reiter  
P.O. Box 1622  
Carrboro, NC 27510  
kreiter@belmontsayre.com (email)

All notices, demands, requests, consents, approvals or communications to the Representatives shall be addressed to:

Grey Mill Ventures, LLC  
Attn: Kenneth M. Reiter  
P.O. Box 1622  
Carrboro, NC 27510  
kreiter@belmontsayre.com (email)

4.29 Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Parties relative to the Property and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement or as contained in the Zoning Ordinance as of the Effective Date.

4.30 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are

to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

- 4.31 Assignment. After notice to the City, the Developer may at any time and from time to time assign its respective rights and responsibilities hereunder as provided in Section 2.7 of this Agreement to Persons as Developers who will also retain the right to assign its respective rights and/or responsibilities hereunder or any part of all or any portion of the Property as Developer. No assignment as to a portion of the Property will relieve the assigning Developer of responsibility with respect to the remaining portion of the Property owned by the assigning Developer for the period prior to the transfer without the written consent of the City. However, the assigning Developer will be relieved of any further obligations or responsibilities hereunder for the portion of the Property assigned for the period after the transfer. Any violation of the terms and conditions of this Agreement occurring after said transfer will be the responsibility of the then current Developer(s) in violation.
- 4.32 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.33 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.34 Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action; provided, however, each Party shall retain the right to pursue its own independent legal defense.
- 4.35 Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in Section 4.2 of this Agreement or a specific termination made by operation of the provisions of this Agreement, or by agreement of the Parties. If termination occurs, Developer shall complete any construction commenced pursuant to a Development Agreement Compliance Permit issued prior to the date of termination. All construction activities shall be bonded or guaranteed for completion at a level satisfactory to the City as set forth in Section 4.10. Any Termination other than by expiration of the term shall be recorded in the Registry. Termination of this Agreement as to the Developer shall not affect any of the following:
- a) any requirements to comply with the applicable terms and conditions of the Zoning Ordinance, Development Agreement Compliance Permits, approval and acceptance of Infrastructure improvements, and any applicable permits;
  - b) rights under this Agreement with respect to which a Development Agreement Compliance Permit has been issued by the City Manager prior to the termination or expiration but for which construction is not completed by the expiration of the twenty (20) year term or not completed prior to termination; or
  - c) provided, if this Agreement shall have run for the entire twenty (20) year term or if this Agreement has otherwise been extended or renewed, in accordance with the terms of this Agreement, the covenants expressly specified in this Agreement with respect to Development Agreement Compliance Permits issued shall continue after termination of this Agreement.

In the event consideration is given to (i) suspension of this Agreement, (ii) termination of this Agreement, or (iii) suspension or termination of any approval of an individual Development Agreement Compliance Permit issued pursuant to this Agreement prior to completion of the twenty (20) year term of this Agreement, the Parties agree that each will identify appropriate representatives to meet and participate in good faith negotiations and mediation as provided in Section 4.19 of this Agreement, aimed at resolving the issues prompting that consideration.

- 4.36 No Deemed Waiver. Failure of a Participant to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.
- 4.37 Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.
- 4.38 Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the City, the Developer and the Representatives.
- 4.39 Transparency and Public Involvement. It is the intent of the Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The City, the City Manager, the Developer, and the Representatives shall take reasonable steps to make information about all aspects of the implementation of this Agreement (including required studies, analysis, plans, reports, and applications which are public record) fully available for public review with the exception of any attorney-client privileged information, financing documentation, market analysis, internal financial documentation, reports, pro formas, returns or other personal information.
- 4.40 Estoppel. Each of the Parties agree, from time to time, within twenty (20) days after request of the other Party, to deliver to the requesting Party or such Party's designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such Party's knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the Parties' obligation to furnish such estoppel certificates in a timely fashion is a material inducement for the other's execution of this Agreement.
- 4.41 Representations and Warranties of the Owners. The Developer represents and warrants to the City that:
- a) it is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina;
  - b) it is duly qualified to do business and is in good standing in every jurisdiction in which such licensing and qualification is required; and
  - c) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder.

## ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES

The Parties do hereby agree to the specific standards and mitigation measures set forth in this Section.

### 5.1 Scale of Development and Uses Permitted.

- a) The land uses permitted by this Agreement are limited to those allowed in the Central Mixed Use Zoning District.

### 5.2 Building Elevation.

- a) The structure shall be renovated in a manner consistent with the Secretary of Interior's Standards for Rehabilitation of Historic Structures with a specific focus on retaining the historic character of the original 1915 and 1919 portions of the building.

### 5.3 Stormwater Management.

- a) Stormwater management to comply with the Stormwater Ordinance, Hendersonville N.C. Code of Ordinances, Article III. Sec. 24-131 *et seq.* shall be the responsibility of the Developer. Any additional onsite stormwater infrastructure desired on the Development Property shall be the responsibility of the Developer.

### 5.4 Brownfields Management.

- a) The Developer shall Develop the Property pursuant to and in compliance with the Environmental Management Plan as defined under Section 4.11.
- b) The Developer shall be responsible for obtaining and complying with the Environmental Management Plan.
- c) The Developer shall be responsible for any associated costs or support of the Property pursuant to the Environmental Management Plan.
- d) The City shall comply with all requirements of the Environmental Management Plan and provide the Developer with other necessary support to obtain and enter into the Environmental Management Plan.

### 5.5 Transportation: Parking, Streets, and Sidewalks.

#### a) Parking.

Necessary Infrastructure improvements to parking shall be performed by the Developer.

#### b) Site Improvements – Sidewalks.

In accordance with the City of Hendersonville Zoning Ordinance, the Developer shall construct sidewalks or repair sidewalks along any public street directly adjacent to the project.

The City of Hendersonville will assume maintenance of sidewalks adjacent to public streets upon completion of project.

c) Streetscape.

The City commits to the improvement of pedestrian facilities along the 4th Avenue corridor between Main Street and Grove Street in downtown Hendersonville. Pedestrian facility improvements will include activities like improved pedestrian level lighting, enhanced pedestrian crossing facilities at intersections and improved sidewalk conditions along this length of 4th Avenue.

The construction of these improvements will be coordinated to coincide, to the degree practicable, with the completion and opening of the Grey Mill Project. It is expected that design will be facilitated within the City and will include interaction with the Developer to coordinate complimentary design solutions.

5.6 Design Standards.

- a) The design standards of the City as they exist on the date of adoption of this Agreement shall control the development of the projects, unless changes are mutually agreed to by the Developer and the City.

5.7 Open Space, Parks, and Recreation Areas.

- a) Open space requirements, if any, shall be as required by the City Zoning Ordinance.

5.8 Historic and Cultural Features.

- a) Prior to completion of the Development, the Developer or the Representatives shall place historical photos of the Grey Hotel Property and text describing the history of the location, its development, the people who worked in the mills, and other historical facts as appropriate, at a place in the Development that is convenient and accessible to the public.

5.9 Solid Waste Management.

- a) The solid waste regulations and policies of the City applicable to any and all commercial operations, as they may be amended from time to time, shall apply to this development at the Grey Hotel Project.

5.10 Trees and Landscaping in Developed Areas.

- a) The regulations and policies of the City applicable to the category of development undertaken shall apply to this development at the Grey Hotel Project and the City shall be responsible for this scope of work.

5.11 Sedimentation.

- a) Construction of the Development shall comply with applicable soil and erosion control regulations and State oversight. The Developer and the Representatives, if any, shall incorporate erosion and sediment control measures for all land-

disturbing activities into their portions of the project. All individual construction projects at the Property shall include erosion and sedimentation control measures. The Developer and the Representatives shall be responsible for implementing erosion and sedimentation control measures for all land disturbing projects arising from and/or affecting each of its portions of the Project.

- b) The Developer and Representatives shall provide a courtesy copy of sedimentation and erosion control plans for projects at the Property to the City's Planning Department.

#### 5.12 Neighboring Lands and Compatibility.

- a) The Development shall strive to respect existing development adjacent to the Development.

#### 5.13 Noise.

- a) The City's Noise Ordinance shall be applicable to the Development during construction and occupancy of the Property.
- b) As provided in Section 4.14 (Development Agreement Compliance Permit application section) of this Agreement, prior to the Development of or construction on the Property, a Developer or Representative who intends to Develop or construct upon the Property shall apply for a Development Agreement Compliance Permit application, which shall include a construction management plan and provide the following noise-mitigation information at a minimum:
  - 1) Indicate how the project construction will comply with the City's Noise Ordinance; and
  - 2) provide a phone number for noise notifications during the construction period.

#### 5.14 Lighting.

- a) All City lighting standards in effect as of the Effective Date of this Agreement shall apply to any and all Development commenced after the Effective Date of this Agreement.
- b) Lighting at the Property shall not have a negative effect on adjacent users, neighborhoods, the community, or other uses of the Property. Street lighting shall be energy efficient and appropriate for the program requirements and times of use.
- c) Street lighting shall be energy efficient and appropriate for the program requirements and times of use.
- d) New lighting within the Development shall comply with the following:
  - 1) All lighting, including that used in and around buildings, active recreation areas, parking areas, walkways, roadways, and signs, shall be designed to minimize spillover light onto property adjacent to the Property.
  - 2) All lighting shall be designed to prevent glare that could impair vision and/or otherwise deteriorate normally accepted qualities and uses of property adjacent to the Property.

#### 5.15 Engineering Standard Requirements.

- a) The regulations, policies, and standards of the City in existence on the effective date of this agreement shall control development unless an amendment is mutually agreed to by the Parties.

5.16 Existing Conditions.

- a) All existing buildings may be continued as they exist as of the Effective Date of this Agreement and shall not be considered to be in violation of the City Regulations, this Agreement, the Zoning Ordinance, or considered as a "non-conforming use" under the Zoning Ordinance.
- b) Any new construction, Development, or site improvements associated with continuation of existing conditions shall be consistent with the terms of this Agreement.

5.17 Annual Report.

- a) The Developer, or the Representatives on behalf of the Developer, shall submit to the City Manager an Annual Report that includes the information required by this Agreement and that provides all necessary information for the City Manager to assess the Developer's and the Representatives' good faith compliance with the terms of this Agreement. This report shall form the basis for the Manager's periodic review of the Agreement as required by G.S. § 160A-400.27(a). This required report is generally referred to as the "Annual Report."
- b) The initial Annual Report shall be filed on or before December 1, 2018, and shall report on activities from the Effective Date through December 1, 2018. Subsequent reports shall be filed on or before December 31st each year and shall report on activities in the preceding calendar year.
- c) The Annual Report shall include the specified items set forth in this Agreement and listed in Section 5.17(d) (the next subsection) of this Agreement. The failure to include in the Annual Report an item expressly required to be included by other sections of this Agreement shall not relieve the Developer or the Representatives of the responsibility to include that item in the Annual Report.
- d) The Annual Report shall include the following specific information (parenthetical cross-referenced sections provide additional information on the contents of the information to be provided):
  - 1) all individual Development Agreement Compliance Permits issued;
  - 2) infrastructure installed;
  - 3) the status of participation by the Developer and the Representatives in the provision of or financing of public infrastructure for the Development;
  - 4) dedications and acquisitions of infrastructure by the Developer and Representatives; and
  - 5) the projected schedule for Development of the Property in the forthcoming year.

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

City of Hendersonville

By: \_\_\_\_\_

Title: \_\_\_\_\_

=====  
State of North Carolina

County of Henderson

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he or she is \_\_\_\_\_ of the City of Hendersonville and acknowledged, on behalf of the City of Hendersonville, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

=====

State of North Carolina  
County of Henderson

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he or she is \_\_\_\_\_ of \_\_\_\_\_ and acknowledged, on behalf of \_\_\_\_\_, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## EXHIBITS INCORPORATED BY REFERENCE

### EXHIBITS INCORPORATED BY REFERENCE

EXHIBIT A. Property Map

EXHIBIT B. Master Plan

EXHIBIT C. Development Agreement Compliance Permit Application

EXHIBIT D. Legal Description of the Property

EXHIBIT E. Brownfields Notice and Agreement

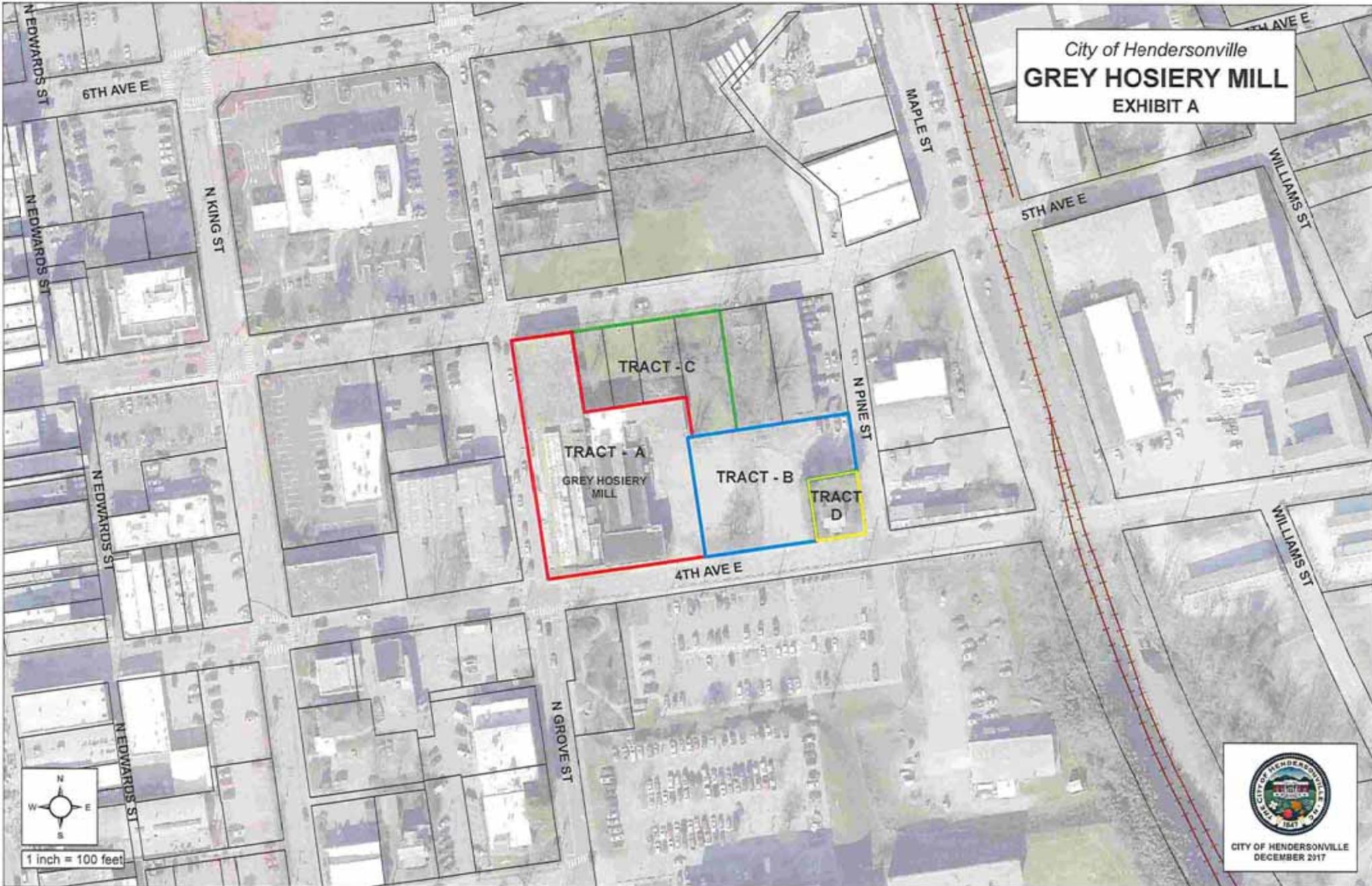
EXHIBIT F. Purchase Agreement

# EXHIBITS TO FOLLOW

# EXHIBIT A

## Property Map

City of Hendersonville  
**GREY HOSIERY MILL**  
EXHIBIT A



1 inch = 100 feet



# EXHIBIT B

## Master Plan

# EXHIBIT C

Development Agreement Compliance  
Permit Application

**Development Agreement Compliance Permit  
City of Hendersonville**

Permit No: \_\_\_\_\_ Date: \_\_\_\_\_ Parcel No: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_

Lot No: \_\_\_\_\_ Area of Lot (square feet) \_\_\_\_\_

Use: (as define in ordinance) \_\_\_\_\_

Use: (District Zone) \_\_\_\_\_

Setbacks: Front: \_\_\_\_\_ Side: \_\_\_\_\_ Rear: \_\_\_\_\_

Height: \_\_\_\_\_ Lot Size: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Approved: \_\_\_\_\_ Approval Date \_\_\_\_\_  
(City Manager)

Rejected: \_\_\_\_\_ Rejected Date \_\_\_\_\_  
(City Manager)

Paid: \_\_\_\_\_ Check No: \_\_\_\_\_ Cash: \_\_\_\_\_

Send Bill to:

\_\_\_\_\_  
\_\_\_\_\_

**CITY OF HENDERSONVILLE**

100 N. King Street  
Hendersonville, NC 28792  
Ph. 828-697-3010  
Fax 828-698-6185

**DEVELOPMENT COMPLIANCE SIGN PERMIT**

City of Hendersonville – Extraterritorial Jurisdiction

1. Type of Sign: Attached Permanent Sign

2. Zone: \_\_\_\_\_

3. Cost of Sign: \_\_\_\_\_ Permit Fee: \_\_\_\_\_

4. Identification:

Owner: \_\_\_\_\_

Sign Contractor: \_\_\_\_\_

5. Description of Sign:

Number of Signs: \_\_\_\_\_

Description of each Sign:

\_\_\_\_\_  
\_\_\_\_\_

**Attach sketch of sign with dimensions.**

6. Building Frontage: \_\_\_\_\_ linear feet

Corner lot: Yes: \_\_\_\_\_ No: \_\_\_\_\_

If permit is granted, I/We agree to conform to all City Ordinances.

Signature of Applicant: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Refused by: \_\_\_\_\_ Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Paid by: Check \_\_\_\_\_ Cash \_\_\_\_\_ or

Send statement to the following address: \_\_\_\_\_

Permit Number: \_\_\_\_\_

# EXHIBIT D

## Legal Description of the Property

Mill Building (A on map):

All that real property shown as a 1.103 acre tract on that plat recorded at Plat Slide 9482, Henderson County Registry.

Mill building extra lot (B on map)

All that real property shown as a 0.582 acre tract on that plat recorded at Plat Slide 9482, Henderson County Registry.

Pilgrim Property (C on map):

All of those four tracts identified as Property #2, Property #3, Property #4, and Property #5 in that deed recorded in Deed book 1478 at page 683 of the Henderson County Registry and being further identified respectively in that same deed as PIN #9568887505, PIN#9568887545, PIN# 9568887586, and PIN#9568888544.

Being all that real property conveyed to the City of Hendersonville by Pilgrim Property Associates, LLC in that deed recorded in Deed Book 3029 at 374, Henderson County Registry.

Williams Property (D on map):

Beginning on a stake at the intersection of the northern margin of Fourth Avenue East with the western margin of Pine Street, and runs thence with the western margin of pine Street, North 13° West 75 feet to a stake, thence South 77° West 60 feet to an iron pin in the old Hampton Hunter line, thence with the old Hampton Hunter line, South 13° East 75 feet to an iron pin in the north margin of Fourth Avenue East; thence with the north margin of Fourth Avenue East, North 77° East 60 feet to the point of Beginning, and being the southern half of that lot conveyed to Weldon Miller and wife by Columbus Few and wife, and recorded in Deed Book 77 at page 93, Henderson County Registry, and also that lot conveyed by F.H. Waldrop and wife, Mae M. Waldrop, by deed dated November 25, 1958 and recorded in Deed Book 372 at page 47, Henderson County Registry.

Also being all of that real property conveyed to the City of Hendersonville by that deed recorded in Deed Book 1684 at page 55, Henderson County Registry.

# EXHIBIT E

## Notice of Brownfields Property



This document presented and filed:  
11/10/2014 02:32:22 PM

NEDRA W. MOLES, Henderson COUNTY, NC

Property Owner: City of Hendersonville  
Recorded in Book \_\_\_\_, Page \_\_\_\_  
Associated plat recorded in Plat Book \_\_\_\_, Page \_\_\_\_

→ CITY BOX

**NOTICE OF BROWNFIELDS PROPERTY**

This documentary component of a Notice of Brownfields Property ("Notice"), as well as the plat component, have been filed this 17<sup>th</sup> day of October, 2014 by the City of Hendersonville, (hereinafter "Prospective Developer").

The Notice concerns contaminated property.

A copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter "DENR") is required to be filed in the Register of Deeds' Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes (hereinafter "NCGS"), Section (hereinafter "§") 130A-310.35(b).

This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property (hereinafter the "Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5 (hereinafter the "Act").

Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer's receipt of DENR's approval of the Notice or Prospective Developer's entry into the Brownfields Agreement required by the Act, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DENR must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under Prospective Developer's name.

The Brownfields Property is located at 301 Fourth Avenue East, Hendersonville, Henderson County, North Carolina. It comprises 1.103 acres, historically the property was primarily operated as a hosiery mill and outlet for mill products, more recently the City of Hendersonville has used the property for limited storage. Prospective Developer desires to sell the property for redevelopment as residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval.

The Brownfields Agreement between Prospective Developer and DENR is attached hereto as **Exhibit A**. It sets forth the use that may be made of the Brownfields Property and the measures to be taken to protect public health and the environment, and is required by NCGS § 130A-310.32. The Brownfields Agreement's Exhibit 2 consists of one or more data tables reflecting the concentrations of and other information regarding the Property's regulated substances and contaminants.

The plat component of this Notice is recorded at the plat book and page number shown at the top of this documentary component of the Notice. **Exhibit B** to this Notice is a reduction, to 8 1/2" x 11", of said plat. The plat shows areas designated by DENR, has been prepared and certified by a professional land surveyor, and complies with NCGS § 130A-310.35(a)'s requirement that the Notice identify:

- (1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.
- (2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property.

Attached hereto as **Exhibit C** is a legal description of the Brownfields Property that would be sufficient as a description of the property in an instrument of conveyance.

### LAND USE RESTRICTIONS

NCGS § 130A-310.35(a) also requires that the Notice identify any restrictions on the current and future use of the Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the Brownfields Property and that are designated in the Brownfields Agreement. **The restrictions shall remain in force in perpetuity unless canceled by the Secretary of DENR (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). All references to DENR shall be understood to include any successor in function. The restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No use may be made of the Property other than for residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval. For purposes of this restriction, the following definitions apply:
  - a. "Residential" refers to duplexes, triplexes or quadriplexes, condominiums, town homes, apartments or other multi-family structures used as human dwellings.
  - b. "Retail" refers to the sale of goods, products, or merchandise directly to the consumer.
  - c. "Office" refers to the provision of business or professional services.
  - d. "Entertainment" refers to private, public, and community activities (such as, for example, festivals, theater, musical events or shows), which may include food and beverage service.
  - e. "A brewery or food production facility" refers to an establishment for the manufacture, sale and distribution of beverages or food products, including without limitation beer and ale, together with associated public roadways and related infrastructure.

f. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

2. Unless compliance with this Land Use Restriction is waived in writing in advance by DENR in relation to particular buildings, no use of the Property may occur prior to assessment and remediation if necessary, of any buildings being redeveloped on the Property depicted on the plat component of the Notice referenced in paragraph 19 below in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.

3. Soil underlying paved and other impervious surfaces and buildings at the Property, and soil proposed to be exposed in association with any construction on the Property, may not be exposed unless DENR has been given a minimum of ten (10) business days advance written notice and has approved a plan to protect public health and the environment during the activities that would expose such soil. DENR may inspect, and require screening or sampling for contaminants in, the exposed soil. If screening or sampling discloses contamination that DENR determines may pose an unacceptable level of risk to public health or the environment, as much soil as DENR requires shall be removed and disposed of in accordance with applicable law, or treated in place, and any other actions DENR requires to make the Property suitable for the uses specified in this Agreement shall be taken. If DENR determines that the exposed soil is contaminated at levels that would not pose an unacceptable risk to public health or the environment if capped, DENR may require the soil to be capped, with perpetual maintenance of the cap or treated in place, to the satisfaction of DENR.

4. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular activity, no activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) or surface water may occur on the Property without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

5. Within 30 days following recordation of this Notice, the then owner of the Property shall submit to DENR a written plan for monitoring groundwater at the Property through sampling and analysis. The plan shall not be considered satisfactory unless and until DENR states as much in writing.

a. The plan shall require:

- i. installation and/or designation of three (3) monitoring wells to be sampled pursuant to the plan;
- ii. sampling of the designated wells for volatile organic compounds at least once each year during the same thirty-day period;
- iii. analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260;
- iv. provision of the sampling analyses to DENR in writing within 30 days after sampling; and

v. replacement of any of the designated wells if DENR determines it warranted in writing due to redevelopment activities.

b. When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion(s) of the Property shall be responsible for compliance. The plan shall be available from DENR and may be amended with DENR's prior written approval. The required monitoring shall continue until sampling pursuant to the plan shows the concentrations of any and all volatile organic compounds present in excess of the standards set forth in the most current version of Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 1, 2013 version), are stable, declining or undetected for a minimum of three (3) consecutive years.

6. None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 to this Agreement, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

7. The owner of any portion of the Property where any existing, or subsequently installed, DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR, unless compliance with this Land Use Restriction is waived in writing by DENR in advance.

8. Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DENR, may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Property.

9. During January of each year after the year in which this Notice is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Henderson County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Henderson County Register of Deeds office and that the land use restrictions are being complied with, and stating:

a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

b. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year.

For purposes of the land use restrictions set forth above, the DENR point of contact shall be the DENR official referenced in paragraph 34.a. of Exhibit A hereto, at the address stated therein.

**ENFORCEMENT**

The above land use restrictions shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. The land use restrictions shall be enforced by any owner of the Brownfields Property. The land use restrictions may also be enforced by DENR through the remedies provided in NCGS §130A, Article 1, Part 2 or by means of a civil action; by any unit of local government having jurisdiction over any part of the Brownfields Property; and by any person eligible for liability protection under the Brownfields Property Reuse Act who will lose liability protection if the restrictions are violated. Any attempt to cancel any or all of this Notice without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

**FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS**

When any portion of the Brownfields Property is sold, leased, conveyed or transferred, pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this 17<sup>th</sup> day of October, 2014.

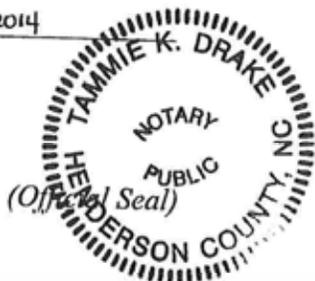
City of Hendersonville

By: Barbara G. Volk  
Barbara G. Volk  
Mayor

STATE OF NORTH CAROLINA  
Henderson COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Barbara G. Volk

Date: 10.20.2014



Tammie K. Drake  
Official Signature of Notary

Tammie K. Drake, Notary Public  
Notary's printed or typed name, Notary Public  
My commission expires: 08.12.16

**APPROVAL AND CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES**

The foregoing Notice of Brownfields Property is hereby approved and certified.

North Carolina Department of Environment and Natural Resources

By: Michael E. Scott  
Michael E. Scott  
Deputy Director, Division of Waste Management

10/1/14  
Date

\*\*\*\*\*

**CERTIFICATION OF REGISTER OF DEEDS**

The foregoing documentary component of the Notice of Brownfields Property, and the associated plat, are certified to be duly recorded at the date and time, and in the Books and Pages, shown on the first page hereof.

Register of Deeds for Henderson County

By: \_\_\_\_\_  
Name typed or printed: \_\_\_\_\_  
Deputy/Assistant Register of Deeds

\_\_\_\_\_  
Date

**EXHIBIT A**

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: City of Hendersonville

UNDER THE AUTHORITY OF THE	)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT	)	<u>Grey Hosiery Mill</u>
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>	)	<u>301 Fourth Avenue East</u>
Brownfields Project # 06009-02-45	)	<u>Hendersonville, Henderson County</u>

I. INTRODUCTION

This Brownfields Agreement ("Agreement") is entered into by the North Carolina Department of Environment and Natural Resources ("DENR") and the City of Hendersonville (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the "Act").

The City of Hendersonville was incorporated on January 7, 1847 and encompasses 6.93 square miles. The Mayor is Barbara G. Volk, with offices located at 145 Fifth Avenue East, Hendersonville, North Carolina 28792. The City of Hendersonville intends to sell the property for redevelopment as residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval. The property, the former Grey Hosiery Mill located at 301 Fourth Avenue East, Hendersonville, Henderson County, North Carolina has been vacant for a number of years and only used for limited storage by the City of Hendersonville. A map showing the location of the property which is the subject of this Agreement is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the

potential liability of the City of Hendersonville for contaminants at the property which is the subject of this Agreement.

The Parties agree that the City of Hendersonville's entry into this Agreement, and the actions undertaken by the City of Hendersonville in accordance with the Agreement, do not constitute an admission of any liability by the City of Hendersonville.

The resolution of this potential liability, in exchange for the benefit the City of Hendersonville shall provide to DENR, is in the public interest.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in N.C.G.S. 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean the City of Hendersonville.

## III. STATEMENT OF FACTS

3. The Property comprises 1.103 acres located at 301 Fourth Avenue East, Hendersonville, North Carolina. Prospective Developer has committed itself to redevelopment of the Property for no uses other than for multi-family residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval.
4. The Property is bordered to the north by residences, to the south by Fourth Avenue East beyond which is the Henderson County Courthouse and Sheriff's Detention Center, to the east by an automotive garage and Youngblood Oil (a bulk oil distributor), and to the west by

Brunson's Patio Shoppe and Hearth Center (a furniture store).

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the "Environmental Reports," regarding the Property:

Title	Prepared by	Date of Report
Phase I Environmental Site Assessment	William G. Lapsley and Associates, P.A.	1995
Findings Report and Analytical Data	Blue Ridge Environmental Services, Inc.	May 1996
Phase I Environmental Site Assessment Update	Rindt - McDuff	June 2004
Phase II Site Assessment Report	Hart & Hickman	April 2005
Phase II Environmental Site Assessment Update	Altamont Environmental, Inc.	October 28, 2013
Soil-Gas Sampling Results	Altamont Environmental, Inc.	March 27, 2014

6. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use and ownership of the Property:

- a. In 1922 James P. Grey owned the Property; Grey Hosiery Mill, Inc. operated there and continued to do so until 1965.
- b. From 1965 to 1976, Holt Hosiery Mills operated on the site.
- c. In 1981 the Young Generation Factory Outlet occupied the property.
- d. Mills River Industries occupied the property in 1985 and 1986.
- e. The City of Hendersonville has owned the Property since 1990.
- f. From 1991 to 1996 the Blue Ridge Literacy Council used the one (1) building on the Property.
- g. The City of Hendersonville currently uses the Property for maintenance vehicle

parking and maintenance supply storage.

7. Pertinent environmental information regarding the Property includes the following:

a. Groundwater at the property has been impacted with the volatile organic compounds tetrachloroethylene, methyl tertiary butyl ether (MTBE), and chloroform.

b. One or more data tables reflecting the concentrations of and other information regarding the Property's contaminants appear in Exhibit 2 to this Agreement.

8. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Letter of Intent dated April 26, 2002, leasing to Blue Ridge Literacy Council and maintaining the property for vehicle storage with secure fencing.

9. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, sufficient to demonstrate that:

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. as a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and

e. Prospective Developer has complied with all applicable procedural requirements.

10. Prospective Developer has paid to DENR the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$6,000 at the time Prospective Developer and DENR enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that such fees will suffice as the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfield document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

#### IV. BENEFIT TO COMMUNITY

11. The redevelopment of the Property proposed herein would provide the following public benefits:

a. a return to productive use of the Property and elimination of the drawbacks of unoccupied property;

b. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise;

c. an increase in tax revenue for affected jurisdictions;

d. additional retail or office space for the area; and

e. "smart growth" through use of land in an already developed area, which avoids

development of land beyond the urban fringe ("greenfields").

#### V. WORK TO BE PERFORMED

12. In redeveloping the Property, Prospective Developer shall make reasonable efforts to apply sustainability principles at the Property, using the nine (9) areas incorporated into the U.S. Green Building Council Leadership in Energy and Environmental Design certification program (Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, Locations & Linkages, Awareness & Education, Innovation in Design and Regional Priority), or a similar program.

13. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DENR's Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property.

14. By way of the Notice of Brownfields Property referenced below in paragraph 19, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment, instead of remediation to unrestricted use standards. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than for residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval. For purposes of this restriction, the following definitions apply:

i. "Residential" refers to duplexes, triplexes or quadriplexes, condominiums, town homes, apartments or other multi-family structures used as human dwellings.

ii. "Retail" refers to the sale of goods, products, or merchandise directly

to the consumer.

iii. "Office" refers to the provision of business or professional services.

iv. "Entertainment" refers to private, public, and community activities (such as, for example, festivals, theater, musical events or shows), which may include food and beverage service.

v. "A brewery or food production facility" refers to an establishment for the manufacture, sale and distribution of beverages or food products, including without limitation beer and ale, together with associated public roadways and related infrastructure.

vi. "Commercial" refers to an enterprise carried on for profit by the owner, lessee or licensee.

b. Unless compliance with this Land Use Restriction is waived in writing in advance by DENR in relation to particular buildings, no use of the Property may occur prior to assessment and remediation if necessary, of any buildings being redeveloped on the Property depicted on the plat component of the Notice referenced in paragraph 19 below in accordance with applicable legal requirements, including without limitation those related to lead and asbestos abatement that are administered by the Health Hazards Control Unit within the Division of Public Health of the North Carolina Department of Health and Human Services.

c. Soil underlying paved and other impervious surfaces and buildings at the Property, and soil proposed to be exposed in association with any construction on the Property, may not be exposed unless DENR has been given a minimum of ten (10) business days advance written notice and has approved a plan to protect public health and the environment during the activities that would expose such soil. DENR may inspect, and require screening or sampling for contaminants in, the exposed soil. If screening or sampling discloses contamination

that DENR determines may pose an unacceptable level of risk to public health or the environment, as much soil as DENR requires shall be removed and disposed of in accordance with applicable law, or treated in place, and any other actions DENR requires to make the Property suitable for the uses specified in this Agreement shall be taken. If DENR determines that the exposed soil is contaminated at levels that would not pose an unacceptable risk to public health or the environment if capped, DENR may require the soil to be capped, with perpetual maintenance of the cap or treated in place, to the satisfaction of DENR.

d. Unless compliance with this Land Use Restriction is waived in writing by DENR in advance in regard to particular activity, no activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) or surface water may occur on the Property without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for such activities, and submittal of the analytical results to DENR. If such results reflect contaminant concentrations that exceed the standards and screening levels applicable to the uses authorized for the Property, the groundwater-related activities proposed may only occur in compliance with any written conditions DENR imposes.

e. Within 30 days following recordation of the Notice referenced below in paragraph 19, the then owner of the Property shall submit to DENR a written plan for monitoring groundwater at the Property through sampling and analysis. The plan shall not be considered satisfactory unless and until DENR states as much in writing.

i. The plan shall require:

A. installation and/or designation of three (3) monitoring wells to

be sampled pursuant to the plan;

B. sampling of the designated wells for volatile organic compounds at least once each year during the same thirty-day period;

C. analysis of the samples by the most current version of U.S. Environmental Protection Agency Method 8260;

D. provision of the sampling analyses to DENR in writing within 30 days after sampling; and

E. replacement of any of the designated wells if DENR determines it warranted in writing due to redevelopment activities.

ii. When the plan requires sampling, analysis, reporting or replacement of a well installed pursuant to the plan, the then owner of the affected portion(s) of the Property shall be responsible for compliance. The plan shall be available from DENR and may be amended with DENR's prior written approval. The required monitoring shall continue until sampling pursuant to the plan shows the concentrations of any and all volatile organic compounds present in excess of the standards set forth in the most current version of Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 1, 2013 version), are stable, declining or undetected for a minimum of three (3) consecutive years.

f. None of the contaminants known to be present in the environmental media at the Property, including those appearing in Exhibit 2 to this Agreement, may be used or stored at the Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

g. The owner of any portion of the Property where any existing, or subsequently installed, DENR-approved monitoring well is damaged shall be responsible for repair of any

such wells to DENR's written satisfaction and within a time period acceptable to DENR, unless compliance with this Land Use Restriction is waived in writing by DENR in advance.

h. Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DENR, may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize interference with authorized uses of the Property.

i. During January of each year after the year in which the Notice referenced below in paragraph 19 is recorded, the owner of any part of the Property as of January 1<sup>st</sup> of that year shall submit a notarized Land Use Restrictions Update ("LURU") to DENR, and to the chief public health and environmental officials of Henderson County, certifying that, as of said January 1<sup>st</sup>, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Henderson County Register of Deeds office and that the land use restrictions are being complied with, and stating:

i. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

ii. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year.

15. The desired result of the above-referenced land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

16. The guidelines, including parameters, principles and policies within which the desired results are to be accomplished are, as to field procedures and laboratory testing, the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version.

17. The consequence of achieving the desired results will be that the property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that modifications to land use restrictions and/or remediation in some form may be necessary to fully protect public health and/or the environment.

#### VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

18. In addition to providing access to the Property pursuant to subparagraph 14.h. above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DENR at the Property. Except as may be set forth in the Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

19. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, *inter alia*, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to

N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Henderson County, North Carolina, Register of Deeds' office. Within three (3) days thereafter, Prospective Developer shall furnish DENR a copy of the documentary component of the Notice containing a certification by the Register of Deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

20. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Henderson County land records, Book \_\_\_\_, Page \_\_\_\_." *Plat slide 948Z SHF*

A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

21. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property within seven days of the effective date of this Agreement and shall ensure that, to the extent it can legally do so, any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound) of this Agreement.

#### VII. DUE CARE/COOPERATION

22. The Prospective Developer shall exercise due care at the Property with respect to the manner in which regulated substances are handled at the Property and shall comply with all

applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

#### VIII. CERTIFICATION

23. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Letter of Intent dated April 26, 2002 by which it applied for this Agreement. That use is for residential, retail, offices, entertainment, brewery or food production facility, and other commercial uses with prior DENR written approval. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property.

#### IX. DENR'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

24. Unless any of the following apply, Prospective Developer shall not be liable to

DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

- a. The Prospective Developer fails to comply with this Agreement.
- b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.
- c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.
- d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.
- e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the

risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

25. Except as may be provided herein, DENR reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act.

26. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North Carolina Environmental Policy Act, N.C.G.S. § 113A-1, et seq.

27. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 24 through 26 above, apply to all of the persons listed in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as prospective developer, so long as these persons are not otherwise potentially responsible parties

or parents, subsidiaries, or affiliates of potentially responsible parties.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

28. In consideration of DENR's Covenant Not To Sue in Section IX of this Agreement and in recognition of the absolute State immunity provided in N.C.G.S. § 130A-310.37(b), the Prospective Developer hereby covenants not to sue and not to assert any claims or causes of action against DENR, its authorized officers, employees, or representatives with respect to any action implementing the Act, including negotiating, entering, monitoring or enforcing this Agreement or the above-referenced Notice of Brownfields Property.

XI. PARTIES BOUND

29. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

XII. DISCLAIMER

30. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

31. Except for the Land Use Restrictions set forth in paragraph 14 above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

XIII. DOCUMENT RETENTION

32. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of six (6) years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR. To the extent DENR retains any copies of such documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

XIV. PAYMENT OF ENFORCEMENT COSTS

33. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

34. Unless otherwise required by DENR or a Party notifies the other Party in writing of a change in contact information, all notices and submissions pursuant to this Agreement shall be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Tracy Wahl  
N.C. Division of Waste Management  
Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

b. for Prospective Developer:

Mayor Barbara G. Volk  
145 Fifth Avenue East  
Hendersonville, NC 28792

Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

#### XVI. EFFECTIVE DATE

35. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, signed, from DENR. Prospective Developer shall sign the Agreement within seven (7) days following such receipt.

#### XVII. TERMINATION OF CERTAIN PROVISIONS

36. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

#### XVIII. CONTRIBUTION PROTECTION

37. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

38. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

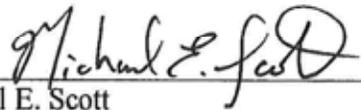
39. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

#### XIX. PUBLIC COMMENT

40. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

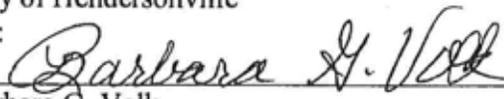
By:

  
\_\_\_\_\_  
Michael E. Scott  
Deputy Director, Division of Waste Management

*10/1/14*  
\_\_\_\_\_  
Date

IT IS SO AGREED:  
City of Hendersonville

By:

  
\_\_\_\_\_  
Barbara G. Volk  
Mayor

*10-17-14*  
\_\_\_\_\_  
Date



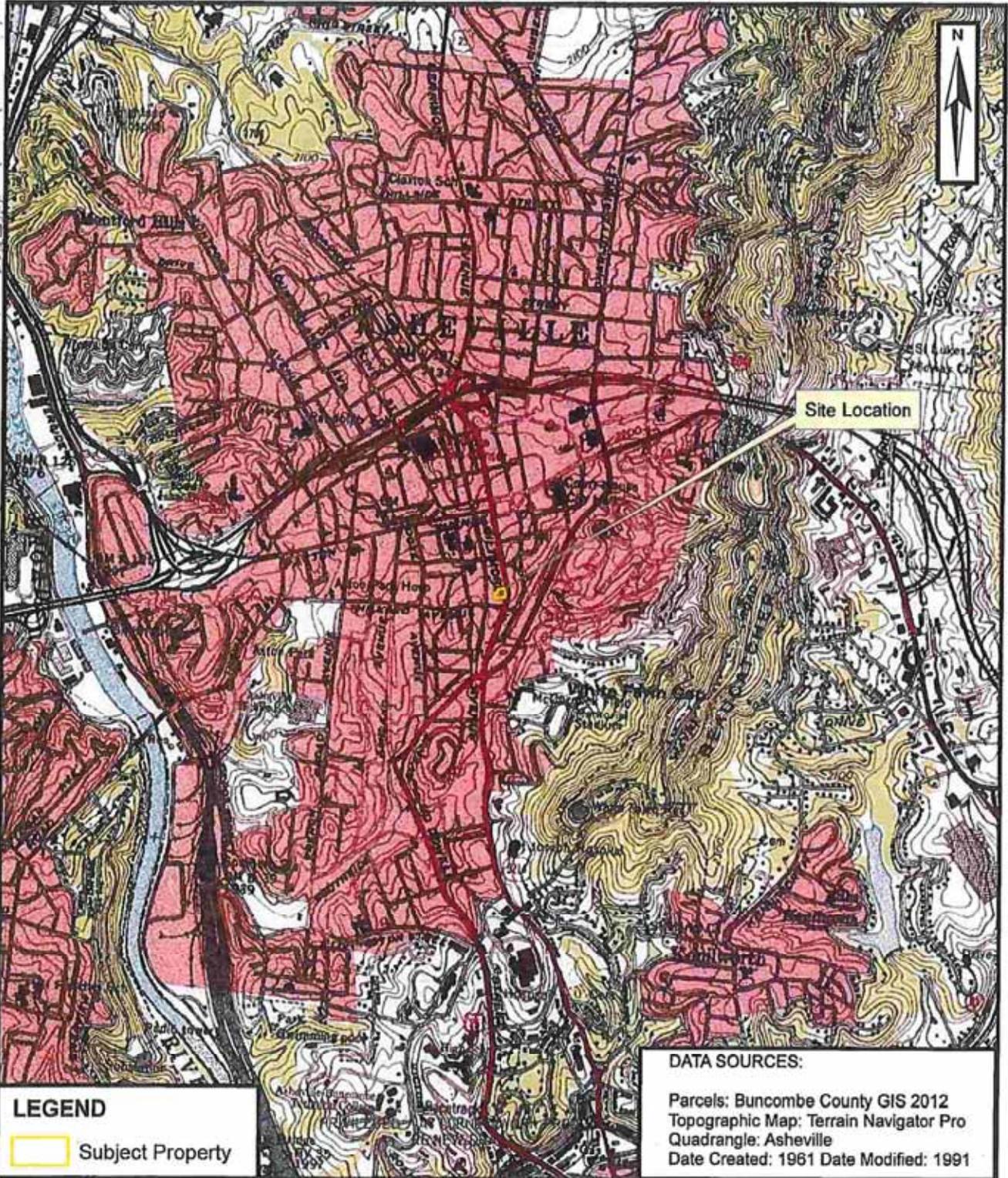
**Exhibit C**  
**Legal Description**  
**Former Grey Hosiery Mill**

Beginning at a 1/2-inch open top pipe located in the southern right-of-way of Fifth Avenue East, said pipe having N.C. grid NAD 83(2001) coordinates of Northing: 588647.93 feet and Easting: 968750.04 feet and being located South 19°02'46" West, grid distance of 665.27 feet, ground distance of 665.42 feet from North Carolina Geodetic Survey monument "Station", said monument having N.C. grid NAD 83(2001) coordinates of Northing: 589276.78 feet and Easting: 968967.13 feet; thence, from the point of beginning thus established, leaving the southern margin of Fifth Avenue East and on a line with a bearing of South 08°28'30" East, a distance of 99.93 feet to a 1/2-inch open top pipe; thence on a line with a bearing of North 81°54'48" East, a distance of 130.95 feet to a 1/2-inch open top pipe; thence on a line with a bearing of South 08°08'22" East, a distance of 51.99 feet to an unmarked point, said point being located South 81°47'47" West, a distance of 192.56 feet from a 1/2-inch open top pipe with nail located in the western right-of-way of Pine Street and also being located North 10°23'26" West, a distance of 0.27 feet from a disturbed 1/2-inch open top pipe; thence on a line with a bearing of South 81°47'47" West, a distance of 6.42 feet to a 1/2-inch open top pipe; thence on a line with a bearing of South 08°08'22" East, a distance of 150.00 feet to an unmarked point, said point being located in the northern right-of-way of Fourth Avenue East near a railroad tie retaining wall and also being located South 06°02'39" East, a distance of 5.31' from a disturbed 1/2-inch open top pipe and furthermore being located South 80°33'03" West, a distance of 139.18 feet from a 1/2-inch open top pipe; thence with the northern right-of-way of Fourth Avenue East a bearing of South 81°47'47" West, a distance of 198.35 feet to a magnetic nail located at the intersection of said right-of-way with the eastern right-of-way of North Grove Street; thence with the eastern right-of-way of North Grove Street a bearing of North 08°28'30" West, a distance of 302.34 feet to a magnetic nail located at the intersection of said right-of-way with the southern right-of-way of Fifth Avenue East; thence with the right-of-way of Fifth Avenue East a bearing of North 81°54'48" East, a distance of 75.00 feet to the Point of Beginning.

Containing 1.103 acres or 48,055 square feet and being a tract referenced in a deed of correction and agreement recorded in Deed Book 1318 at Page 101 between the County of Henderson and City of Hendersonville and described in Deed Book 757 at Page 467, First Tract.

All bearings are North Carolina grid bearings and all distances are U.S. survey feet (unless otherwise noted).

This map is not a survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.



**LEGEND**

Subject Property

**DATA SOURCES:**  
 Parcels: Buncombe County GIS 2012  
 Topographic Map: Terrain Navigator Pro  
 Quadrangle: Asheville  
 Date Created: 1961 Date Modified: 1991

**ALFAMONT ENVIRONMENTAL, INC.**  
 ENGINEERING & HYDROGEOLOGY  
 231 HAYWOOD STREET, ASHEVILLE, NC 28801  
 TEL. 828.281.3300 FAC. 828.281.3331  
 WWW.ALFAMONTENVIRONMENTAL.COM

SCALE  
 0 1,000 2,000 Feet

DRAWN BY: NATALIE BOUCHARD  
 PROJECT MANAGER: CHRIS GILBERT  
 CLIENT: PUBLIC INTEREST PROJECTS, INC.  
 DATE: 10/23/2012

**SITE LOCATION MAP**

91 BILTMORE AVENUE  
 ASHEVILLE, NORTH CAROLINA 28801

P:\PUBLIC INTEREST\FIGURES\FIGURE1 SITE MAP.HXD

**EXHIBIT**

1

**Exhibit 2**

The most recent environmental sampling at the Property reported in the Environmental Reports occurred in August 2013. The following tables set forth, for contaminants present at the Property above unrestricted use standards, the maximum concentration found at each sample location and the applicable standard:

Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202 (April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Maximum Concentration	Maximum Concentration (µg/L)	Date of Most Recent Sampling	Maximum Concentration at Most Recent Sampling (µg/L)	Standard (µg/L)
Chloroform	MW-1	2/2/2005	19	8/28/2013	6.3	70
Tetrachloroethylene	MW-4	2/2/2005	53	8/28/2013	19.7	0.7
MTBE	MW-6	8/28/2013	188	8/28/2013	188	20

**EXHIBIT F**  
**Purchase Agreement**



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Chief Herbert Blake

**Department:** Police

**Date Submitted:** 12/21/17

**Presenter:** Chief Herbert Blake

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 11

The Laurel Park Police Department has formally requested that the Hendersonville Police Department take over dispatching all emergency and non-emergency calls. This will require them to purchase new software and hardware to join the HPD dispatch system. The purchases have already been approved by the Laurel Park Town Council pending a decision of the Hendersonville City Council on this request.

The Laurel Park Police Department answers around 3,000 calls per year as opposed to the Hendersonville Police Department who answered 45,123 calls in 2016. We have answered 42,793 so far this year as of December 18, 2017. The number of calls that this change will add to the daily work of the Hendersonville Police 911 center is minimal. There are several benefits to dispatching them, to include that they are our officers closest backup units. At the current time, they are on a completely different radio system that does not allow us to easily listen to each others calls for service. Being on the same radio system will quicken response times for back up for each agency and will assist in officer safety. Our Extended Territorial Jurisdiction area on the west side of the city covers half of the town on Laurel Park. Their officers assist in the city multiple times during each shift.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? *N/A* If no, describe how it will be funded.

### Suggested Motion:

I move to authorize City Staff to prepare an agreement between the City of Hendersonville and the Town of Laurel Park for Laurel Park police to be dispatched by the Hendersonville Police 911 center. Memorandum of Understanding is pending.

### Attachments:

Letter from Laurel Park Town Manager

December 18, 2017

John Connet  
City Manager  
145 Fifth Avenue E  
Hendersonville, NC 28792

Dear John,

At the December 14, 2017 Council Meeting, the Laurel Park Town Council unanimously voted to support moving to the City of Hendersonville for dispatch services. This will be done as the Town also implements CAD through Southern Software.

The Laurel Park Police Department looks forward to working with the City to establish a timeline and implementation plan. Please feel free to contact me or Chief Trotter with any questions.

Sincerely,

Alison Lee Alexander  
Town Manager



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 12/22/2017

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 01/04/2017

**Nature of Item:** Discussion/Staff Direction

### Summary of Information/Request:

**Item #** 12

In effort to coordinate review of the upcoming NCDOT projects, City staff is asking City Council to provide comments regarding the following projects:

1. U.S. 64/ I-26 Interchange - NCDOT will attend the meeting and provide three proposed options.
2. White Street / S. Main Street Project - A public meeting has been held and limited feedback has been received at this point from the City Council.

**Budget Impact:** \$ None \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

None

### Attachments:

Project information

**TECHNICAL  
MEMORANDUM - DRAFT**

**To**  
Mr. Jim Dunlop, P.E.  
NCDOT  
Congestion Management Unit

**From**  
Craig Scheffler, P.E., PTOE  
HNTB North Carolina, P.C.

**Cc**  
HNTB Project File: 64445

**Subject**  
I-4400/I-4700 – US 64 and I-26 Interchange Analysis –  
Addendum - **DRAFT**  
Hendersonville, Henderson County

**Date**  
12/5/2017

**Introduction**

The North Carolina Department of Transportation (NCDOT) is proposing to improve approximately 22.2 miles of I-26 from US 25 south of Hendersonville, Henderson County to I-40 in Asheville, Buncombe County. The project is needed to improve existing and projected roadway capacity deficiencies, and improve insufficient pavement structure and deteriorating existing road surface conditions. The purpose of the project is to reduce congestion, with a goal of achieving an overall Level of Service (LOS) D in the design year (2040), and improve the pavement structure.

NCDOT has contracted HNTB North Carolina, P.C. (HNTB) to prepare a technical analysis of traffic operations for five proposed Build design concepts at the system interchange of I-26 and US 64, as part of the larger *I-26 System Interchange Access Request* study currently underway. An initial evaluation of a partial cloverleaf design was submitted to NCDOT in April 2016. This analysis addendum provides design recommendations and capacity analysis results and comparisons in the 2040 design year for the following proposed Build alternative concepts:

- Partial Cloverleaf with Free-Flow Ramp Connections to US 64 (Original Concept from April 2016 analysis)
- Compact Partial Cloverleaf with Signalized Ramp Connections to US 64 and Dual Left-Turn Lanes to On-Ramps
- Compact Partial Cloverleaf with Signalized Ramp Connections to US 64 and Single Left-Turn Lanes to On-Ramps
- Diverging Diamond Interchange (DDI)
- Contraflow Left-Turn Interchange

The Compact Partial Cloverleaf concepts were studied to assess operational performance with the ability to provide enhanced safety for pedestrians and bicycles along US 64 through the interchange area. The variation in left-turn lanes in the vicinity of the bridge deck was studied to assess whether or not a single left-turn lane in both directions could provide adequate capacity and potentially smaller bridge deck width.

The DDI interchange concept proposes to eliminate all existing I-26 Eastbound and Westbound on-ramp loops and back-to-back weaves on I-26 and US 64 by replacing these features with singular on-ramps/off-ramps and a standard DDI laneage configuration along US 64 that would tie into existing roadway cross-sections beyond the interchange while preserving the existing bridge deck width across I-26. These similar assumptions were made for the Contraflow Left-Turn concept, with design changes that also include separation of left-turn vehicles for I-26 on-ramp movements upstream of each interchange ramp terminal.

The existing I-26 and US 64 interchange is a full cloverleaf with loops and ramps in all four quadrants. All movements currently operate under free-flow conditions except for the I-26 Eastbound off-ramp to US 64 Westbound that currently operates under signal control. The existing interchange aerial and proposed alternative concepts are shown on Figure 1 in *Appendix A*.

### Analysis Methodology

The TransModeler microsimulation models prepared for the initial Par-Clo design analysis completed in April 2016 were revised for the additional conceptual design scenarios studied in this technical memorandum. No formal functional designs were prepared and geometric assumptions were made for each design concept to allow each design to tie into existing ramps along I-26 and roadway mainline geometry along US 64. On-ramp and off-ramp designs were modified, as necessary, along with laneage along the US 64 corridor to meet the requirements of each design concept. All design concepts were assumed to include improvements/changes within the existing right-of-way footprint of the existing interchange. Model boundaries for the I-26 mainline and US 64 were kept consistent from the original TransModeler models originally prepared.

Analysis volumes were based on the 2040 Build – 8 / 6 Lanes Traffic Forecast prepared by NCDOT Transportation Planning Division (TPD) dated December 16, 2013. The 2040 Build traffic volumes and analysis results are shown on Figures 2 through 6. Capacity analyses at signalized intersections were conducted using TransModeler. All analysis inputs conform to the NCDOT Congestion Management guidelines for preparation of TIP analyses. Signal phasing, timing, and coordination protocols were updated for each alternative concept to provide the most efficient signal operations to minimize delays and observed queuing during the 2040 AM and PM peak hours. The measures of effectiveness (MOEs) for this technical memorandum include overall network output using the TransModeler Trip Statistics Report, intersection level of service (LOS), vehicular delay, and projected maximum vehicle queues. MOEs were compiled from 10 runs for each alternative concept in the AM and PM peak hours.

### Network MOE Results and Comparison

Table 1 provides a summary of network-wide MOE results for the 2040 Build Scenarios. These MOEs include all traffic traversing the interchange area including I-26 mainline traffic volumes.

As shown in Table 1, the Par-Clo with Free Flow Ramps design concept provides the highest level of overall mobility in the area of the interchange when compared to the other alternatives, followed closely by the Contraflow design concept. These scenarios allow the most trips completed/least amount of trip queued and highest vehicle-miles traveled with lowest vehicle-hours traveled. This corresponds to the highest average vehicle speeds and lowest per vehicle delay results for both the 2040 AM and PM peak hours.

The DDI and Compact Par-Clo (dual left-turn lane) design concepts provide very similar levels of network operations in both 2040 AM and PM peak hours. The Compact Par-Clo (single left-turn lane) design concept has the lowest network performance in both peak hours due to excessive delay and congestion caused by queuing from the single left-turn lanes that backs up in both directions along US 64.

Table 1. 2040 Design Concepts - AM and PM Peak Hour Network Summary MOE Comparison

2040 AM Peak Hour					
MOE	Par-Clo w/ Free-Flow Ramps	DDI	Compact Par-Clo (2 LTLs)	Compact Par-Clo (1 LTL)	Contraflow
Trips Completed	13,143	12,988	12,885	12,214	13,133
Trips Queued	1	43	145	733	1
Vehicle Miles Traveled (VMT)	13,016	12,695	12,863	12,354	13,070
Vehicle Hours Traveled (VHT)	257	366	394	655	278
Network Speed (mph)	50.6	34.6	32.7	19	47
Network Delay (Hours)	51	165	185	392	70
Delay Per Vehicle (Seconds)	14	46	52	116	19

2040 PM Peak Hour					
MOE	Par-Clo w/ Free-Flow Ramps	DDI	Compact Par-Clo (2 LTLs)	Compact Par-Clo (1 LTL)	Contraflow
Trips Completed	13,138	12,896	12,919	12,206	13,135
Trips Queued	1	92	138	744	1
Vehicle Miles Traveled (VMT)	13,009	12,625	12,900	12,360	13,072
Vehicle Hours Traveled (VHT)	256	384	387	673	280
Network Speed (mph)	50.7	32.8	33.3	18	47
Network Delay (Hours)	50	182	178	382	73
Delay Per Vehicle (Seconds)	14	51	50	113	20

**Intersection Capacity Analysis MOE Results and Comparison**

Table 2 and Figures 2 through 6 provide a summary of intersection capacity analysis results for the 2040 Build Scenarios. As shown in Table 2, the Par-Clo design with free-flow ramps operates very efficiently (LOS A or B) for the three signalized intersections in its design, due to the fact that these signals are only affecting one direction of traffic flow through the interchange along US 64. The DDI concept’s individual intersections perform well (LOS B or C), though all movements through the interchange will be forced to traverse multiple signalized intersections and the coordination of some movements may be impaired to favor others. The Compact Par-Clo (dual left-turn lanes) design concept results show a projected overall LOS D for both signalized ramp terminals for both AM and PM peak hours in the 2040 design year. Some individual left-turn and right-turn movements are expected to operate at deficient LOS E/F but not cause the overall intersection operations to be impaired. The Compact Par-Clo (single left-turn lanes) alternative has more overall congestion and lengthier per vehicle delays than the dual left-turn lane design and at least one of the two signalized ramp terminal intersections experiences LOS E operation in each peak hour with 2040 design year traffic demand. The Contraflow design concept works very efficiently (LOS A or B) for all four signalized intersections in the 2040 design year, with the ability to progress traffic independently in each direction along US 64.

Table 2. 2040 Build Scenarios - TransModeler Intersection Delay and Equivalent LOS Analysis Results

Vehicular Delay/Equivalent LOS Tables By Alternative			2040 AM Peak Hour									2040 PM Peak Hour														
Alternative	Intersection	Node ID #	LOS	Delay (sec/veh)	Approach	LOS	Delay (sec/veh)	Movement	LOS	Delay (sec/veh)	Vehicles	LOS	Delay (sec/veh)	Approach	LOS	Delay (sec/veh)	Movement	LOS	Delay (sec/veh)	Vehicles						
Par-Clo with Free Flow Ramps	US 64 EB & I-26 EB On-Ramp	19	A	9.2	SW	A	7.5	TH	A	7.5	813	B	9.3	SW	A	6.9	TH	A	6.9	1,045						
					NE	B	10.6	LT	C	28.2	296			NE	B	12.5	LT	D	35.6	230						
								TH	A	3.2	712						TH	A	3.1	565						
	US 64 WB & I-26 WB On-Ramp	20	A	7.8	SW	A	8.5	LT	C	29.7	199	A	8.0	SW	B	8.8	LT	C	28.5	250						
					NE	A	7.2	TH	A	7.2	1,089			NE	A	7.0	TH	A	7.0	848						
								N	C	27.1	RT			C	27.1	252				N	C	31.1	RT	C	31.1	202
	I-26 EB Off-Ramp & US 64 WB	10	A	7.6	NE	A	2.6	TH	A	2.6	975	A	7.1	NE	A	1.0	TH	A	1.0	794						
DDI	US 64 EB - WB Crossover & I-26 EB Off-Ramp RT	25	C	21.9	SW	C	30.0	TH	C	30.0	536	C	21.8	SW	C	25.4	TH	C	25.4	647						
					NE	B	14.6	TH	B	14.6	624			NE	C	20.4	TH	C	20.4	520						
								NW	C	22.5	RT			C	22.5	370	NW	B	17.5	RT	B	17.5	391			
	US 64 EB & I-26 EB Off-Ramp LT	10	B	14.2	NW	C	34.6	LT	C	34.6	310	B	14.2	NW	C	33.1	LT	C	33.1	315						
					NE	A	2.4	TH	A	2.4	536			NE	A	4.9	TH	A	4.9	646						
								SE	B	12.9	RT			B	12.9	232				SE	B	19.1	RT	B	19.1	296
	US 64 EB-WB Crossover & I-26 WB Off-Ramp RT	13	B	18.5	NE	C	22.6	TH	C	22.6	692	C	20.0	NE	C	29.9	TH	C	29.9	555						
								SW	B	15.9	TH			B	15.9	608				SW	B	12.6	TH	B	12.6	697
								NE	A	0.1	TH			A	0.1	692				NE	A	0.3	TH	A	0.3	555
	US 64 WB & I-26 WB Off-Ramp LT	21	B	12.1	SE	E	57.9	LT	E	57.9	181	B	11.9	SE	D	47.4	LT	D	47.4	181						
Compact Par-Clo (2 LTLs)	US 64 & I-26 Westbound Ramps	15	D	42.7	SW	D	47.8	TH	D	51.6	1,988	D	36.6	SW	C	28.9	TH	C	33.3	1,668						
								RT	C	34.5	580						RT	B	16.9	616						
					NE	C	31.1	TH	B	15.6	1,839			NE	D	36.4	TH	C	21.2	2,076						
								LT	F	102.7	400						LT	F	103.8	469						
					SE	D	44.6	RT	D	44.6	375			SE	D	38.5	RT	D	38.5	371						
				N	E	67.9	RT	E	67.9	472				N	E	65.0	RT	E	65.0	604						
	US 64 & I-26 Eastbound Ramps	21	D	35.6	NE	C	26.8	TH	C	29.6	1,608	D	40.2	NE	D	54.0	TH	E	56.9	1,904						
								RT	B	14.1	366						RT	D	37.9	338						
					SW	C	33.9	TH	B	17.6	1,816			SW	B	19.5	TH	B	13.0	1,583						
								LT	F	89.2	538						LT	D	41.6	464						
S					E	67.6	RT	E	67.6	515	S			E	64.1	RT	E	64.1	407							
			NW	D	43.1	RT	D	43.1	627				NW	D	42.9	RT	D	42.9	636							

**BOLD/ITALICS** = Movement/Approach/Overall Intersection is At/Over Capacity Per Highway Capacity Manual Delay Thresholds

Table 2. (Continued) 2040 Build Scenarios - TransModeler Intersection Delay and Equivalent LOS Analysis Results

Vehicular Delay/Equivalent LOS Tables By Alternative			2040 AM Peak Hour									2040 PM Peak Hour								
Alternative	Intersection	Node	LOS	Delay (sec/veh)	Approach	LOS	Delay (sec/veh)	Movement	LOS	Delay (sec/veh)	Vehicles	LOS	Delay (sec/veh)	Approach	LOS	Delay (sec/veh)	Movement	LOS	Delay (sec/veh)	Vehicles
Compact Par-Clo (1 LTL)	US 64 & I-26 Westbound Ramps	15	<i>E</i>	<i>57.5</i>	<i>SW</i>	<i>F</i>	<i>82.0</i>	<i>TH</i>	<i>F</i>	<i>88.9</i>	1,671	D	52.8	<i>SW</i>	<i>E</i>	<i>70.1</i>	<i>TH</i>	<i>E</i>	<i>78.5</i>	1,531
								<i>RT</i>	<i>E</i>	<i>58.7</i>	490						<i>RT</i>	<i>D</i>	47.4	569
					<i>NE</i>	<i>C</i>	34.7	<i>TH</i>	<i>B</i>	19.5	1,642			<i>TH</i>	<i>C</i>	21.5	1,723			
								<i>LT</i>	<i>F</i>	<i>108.6</i>	337			<i>LT</i>	<i>F</i>	<i>104.9</i>	356			
					<i>SE</i>	<i>C</i>	31.0	<i>RT</i>	<i>C</i>	31.0	369			<i>RT</i>	<i>C</i>	28.4	364			
								<i>N</i>	<i>E</i>	<i>62.2</i>	462			<i>N</i>	<i>E</i>	<i>66.3</i>	591			
	US 64 & I-26 Eastbound Ramps	21	D	52.9	<i>NE</i>	<i>F</i>	<i>103.4</i>	<i>TH</i>	<i>F</i>	<i>109.0</i>	1,358	<i>E</i>	<i>62.7</i>	<i>NE</i>	<i>F</i>	<i>109.7</i>	<i>TH</i>	<i>F</i>	<i>115.7</i>	1,433
								<i>RT</i>	<i>E</i>	<i>78.4</i>	309						<i>RT</i>	<i>E</i>	<i>75.9</i>	253
					<i>SW</i>	<i>B</i>	15.4	<i>TH</i>	<i>B</i>	10.3	1,589			<i>TH</i>	<i>C</i>	22.6	1,490			
								<i>LT</i>	<i>C</i>	33.2	458			<i>LT</i>	<i>E</i>	<i>69.8</i>	432			
					<i>S</i>	<i>E</i>	<i>73.1</i>	<i>RT</i>	<i>E</i>	<i>73.1</i>	514			<i>S</i>	<i>E</i>	<i>64.0</i>	392			
								<i>NW</i>	<i>C</i>	23.9	614			<i>NW</i>	<i>C</i>	26.0	626			
Contraflow	I-26 EB Off-Ramp & US 64 WB	10	A	9.2	<i>S</i>	<i>C</i>	28.7	<i>TH</i>	<i>C</i>	28.7	506	A	8.4	<i>S</i>	<i>C</i>	27.5	<i>TH</i>	<i>C</i>	27.5	399
								<i>SW</i>	<i>A</i>	4.1	1,945						<i>SW</i>	<i>A</i>	3.6	1,588
	US 64 EB & I-26 EB Ramps	18	B	16.8	<i>NE</i>	<i>B</i>	15.0	<i>TH</i>	<i>C</i>	16.2	1,228	B	16.7	<i>NE</i>	<i>B</i>	13.7	<i>TH</i>	<i>C</i>	15.1	1,578
								<i>RT</i>	<i>A</i>	11.0	366						<i>RT</i>	<i>A</i>	8.0	368
					<i>SW</i>	<i>C</i>	22.9	<i>LT</i>	<i>C</i>	22.9	594			<i>SW</i>	<i>C</i>	24.7	465			
								<i>NW</i>	<i>B</i>	15.7	619			<i>NW</i>	<i>B</i>	19.8	629			
	I-26 WB Off-Ramp & US 64 EB	22	B	10.8	<i>N</i>	<i>C</i>	27.5	<i>RT</i>	<i>C</i>	27.5	465	B	13.0	<i>N</i>	<i>C</i>	28.8	<i>RT</i>	<i>C</i>	28.8	593
								<i>NE</i>	<i>A</i>	6.6	1,840						<i>NE</i>	<i>A</i>	8.7	2,203
	US 64 WB & I-26 WB Ramps	24	B	15.0	<i>SW</i>	<i>B</i>	11.0	<i>TH</i>	<i>B</i>	11.7	1,581	B	16.2	<i>SW</i>	<i>B</i>	14.6	<i>TH</i>	<i>B</i>	15.0	1,228
								<i>RT</i>	<i>A</i>	9	628						<i>RT</i>	<i>A</i>	14	619
					<i>NE</i>	<i>C</i>	30.9	<i>LT</i>	<i>C</i>	30.9	399			<i>NE</i>	<i>C</i>	22.0	506			
								<i>SE</i>	<i>B</i>	21.6	368			<i>SE</i>	<i>B</i>	16.1	365			

**BOLD/ITALICS** = Movement/Approach/Overall Intersection is At/Over Capacity Per Highway Capacity Manual Delay Thresholds

**2040 Maximum Queue Estimates & Alternatives Comparison**

TransModeler maximum queue length analysis results are shown in Table 3 for each design concept’s study area intersections. Assumed initial lane geometry and storage lengths are provided in Figures 2-6.

Table 3. 2040 Build Scenarios - TransModeler Queue Analysis Results

<b>Par-Clo With Free Flow On-Ramps</b>					
Intersection	Approach	Movement	Initial Design Storage Length (ft)	Max Queue Length (ft)	
				AM	PM
US 64 EB & I-26 EB On-Ramp	SW	TH	N/A	180	88
	NE	LT	400 Dual	169	38
		TH	N/A	71	173
US 64 WB & I-26 WB On-Ramp	SW	LT	400 Dual	140	134
		TH	N/A	73	192
	NE	TH	N/A	207	210
I-26 EB Off-Ramp & US 64 WB	N	RT	475 Dual	169	142
	NE	TH	N/A	117	55
<b>DDI</b>					
Intersection	Approach	Movement	Initial Design Storage Length (ft)	Max Queue Length (ft)	
				AM	PM
US 64 EB - WB Crossover & I-26 EB Off-Ramp RT	SW	TH	N/A	276	281
	NE	TH	N/A	227	227
	NW	RT	300 Dual	162	117
US 64 EB & I-26 EB Off-Ramp LT	NW	LT	275 Dual	220	217
	NE	TH	150	115	141
US 64 EB-WB Crossover & I-26 WB Off-Ramp RT	SE	RT	300 Dual	123	189
	NE	TH	N/A	316	322
	SW	TH	N/A	204	203
US 64 WB & I-26 WB Off-Ramp LT	NE	TH	150	57	85
	SE	LT	275 Dual	232	208
<b>Compact Par-Clo (2 LTLs)</b>					
Intersection	Approach	Movement	Initial Design Storage Length (ft)	Max Queue Length (ft)	
				AM	PM
US 64 & I-26 Westbound Ramps	SW	TH	N/A	1,128	556
		RT	525	178	204
	NE	TH	1,075	299	469
		LT	500 Dual	350	372
	SE (loop)	RT	300 Dual	226	202
N	RT	450 Dual	314	372	
US 64 & I-26 Eastbound Ramps	NE	TH	N/A	498	<b>1,169**</b>
		RT	550	139	184
	SW	TH	1,075	345	233
		LT	500 Dual	465	261
	S	RT	375 Dual	352	268
	NW (loop)	RT	275 Dual	<b>371</b>	<b>343</b>

**BOLD/ITALICS** = Projected Maximum Queue Exceed Storage Provided or **\*\*** Vehicles Denied Entry to Network

Table 3. (Continued) 2040 Build Scenarios - TransModeler Queue Analysis Results

<b>Compact Par-Clo (1 LTLs)</b>					
Intersection	Approach	Movement	Initial Design Storage Length (ft)	Max Queue Length (ft)	
				AM	PM
US 64 & I-26 Westbound Ramps	SW	TH	N/A	<b>1,315**</b>	<b>1,317**</b>
		RT	525	213	282
	NE	TH	1,075	372	427
		LT	550	<b>659</b>	<b>815</b>
	SE (loop)	RT	300 Dual	184	162
N	RT	450 Dual	304	373	
US 64 & I-26 Eastbound Ramps	NE	TH	N/A	<b>1,185**</b>	<b>1,190**</b>
		RT	550	315	123
	SW	TH	1,075	174	414
		LT	550	277	524
	S	RT	375 Dual	<b>391</b>	266
	NW (loop)	RT	275 Dual	239	249
<b>Contraflow</b>					
Intersection	Approach	Movement	Initial Design Storage Length (ft)	Max Queue Length (ft)	
				AM	PM
I-26 EB Off-Ramp & US 64 WB	S	RT	250 Dual	199	156
	SW	TH	1,100	145	134
US 64 EB & I-26 EB Ramps	NE	TH	N/A	262	259
		RT	550	146	121
	SW	LT	1,700	289	249
I-26 WB Off-Ramp & US 64 EB	NW (loop)	RT	250 Dual	181	182
	N	RT	350 Dual	178	210
US 64 WB & I-26 WB Ramps	NE	TH	1,100	181	221
		RT	N/A	232	226
	SW	TH	N/A	232	226
		RT	525	178	226
NE	LT	1,700	325	265	
SE (loop)	RT	300 Dual	133	112	

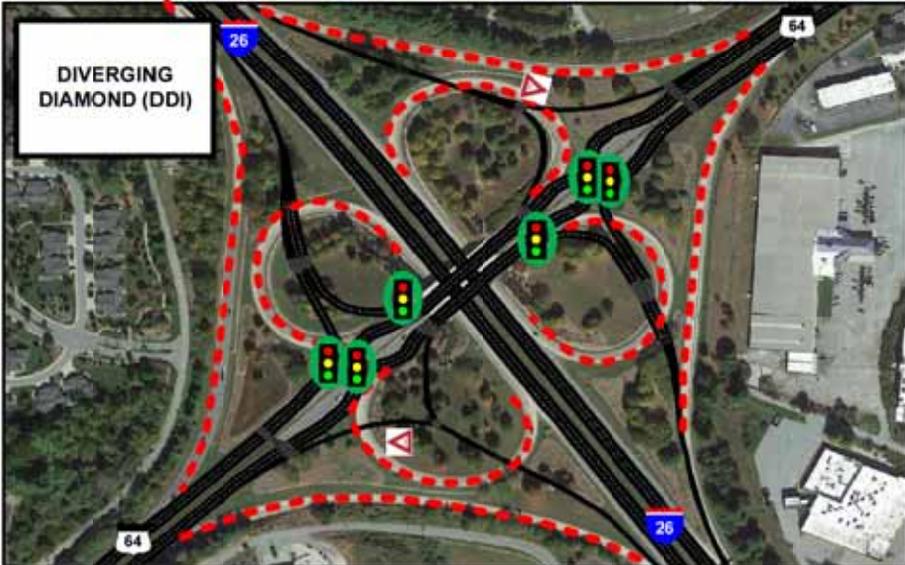
As shown in Table 3, the Par-Clo with Free Flow Ramps, DDI and Contraflow alternatives 2040 AM and PM peak hour averaged maximum queue results from the TransModeler microsimulation runs all can be contained within assumed concept design storage distances. For the Compact Par-Clo (with two left-turn lanes) design concept, most maximum queues were contained within the assumed design storage lengths. However, in both peak hours, the average maximum reported queue for the I-26 Eastbound loop ramp at its ramp terminal intersection with US 64 exceeds the assumed storage length. Additional signal timing measures (including provision for right-turns on red) or a revised design with additional storage length may be necessary for this location. For the Compact Par-Clo (with single left-turn lanes), the single left-turn lanes along US 64 that connect to I-26 on-ramps have average maximum queues spilling back to the US 64 through travel lanes and cause those lanes to back up to the extent of the modeled network. This occurs in both 2040 AM and PM peak hours, with no signal timing or storage lane lengthening mitigation that can easily be designed to rectify the queuing issues.

### Conclusion / Recommendations

The operational analysis of 2040 Build design concept alternatives was conducted to achieve the following goals and yielded the following summary results:

- Eliminate the existing I-26 Eastbound and Westbound on-ramp loops and back-to-back weaves on I-26 and US 64 by replacing with left-turns from US 64 onto I-26 Eastbound and Westbound on-ramps (this was part of the concept design for all alternatives studied).
- The initial study of the Par-Clo with Free Flow Ramps onto US 64 design concept showed that, operationally, this concept provides good mobility and intersection LOS along the US 64 corridor but is not desirable for pedestrians or bicycles traversing the interchange. To better accommodate those modes of transportation, the Compact Par-Clo alternatives (where all movements were brought under signalized control) and DDI alternative were tested.
- The DDI Alternative provides adequate overall capacity along the US 64 corridor but may not be the most desirable design for vehicular operation and pedestrian/bicycle accommodation.
- The Compact Par-Clo (with dual left-turn lanes) design provides a “conventional” interchange concept that provides adequate overall intersection operations along the US 64 corridor with the potential to accommodate pedestrian and bicycle operations. Some additional modifications to the assumed design tested in the TransModeler microsimulation models may be necessary to ensure that projected 2040 traffic demands can be adequately stored in the laneage provided for left and right-turn lanes at the signalized ramp terminals.
- The Compact Par-Clo (with single left-turn lanes) design concept fails to provide adequate LOS and has excessive queuing along the US 64 corridor and thus, is not recommended.
- The Contraflow design concept provides enhanced mobility along the US 64 corridor compared to the Compact Par-Clo alternative designs but because it is a unique alternative interchange design, may have issues with driver familiarity and constructability.

## Appendix A: Figures



**LEGEND**

- = Yield Control
- = Proposed Signal
- = Signalized Intersection
- = Roadway to be Removed



NOT TO SCALE

**PROJECT STUDY AREA – PROPOSED DESIGN CONCEPTS**

S.T.I.P. I-4400I-4700  
 US 64 AT I-26 INTERCHANGE  
 HENDERSON COUNTY

DATE: December 2017

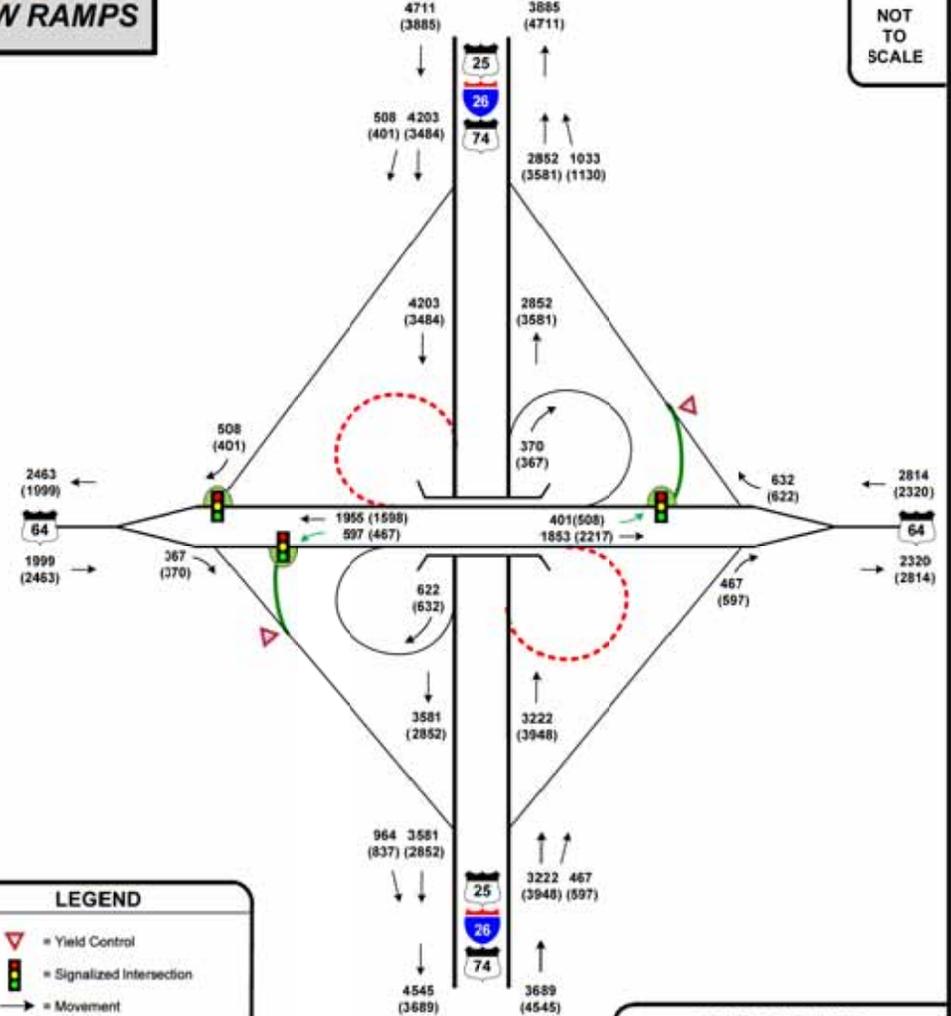
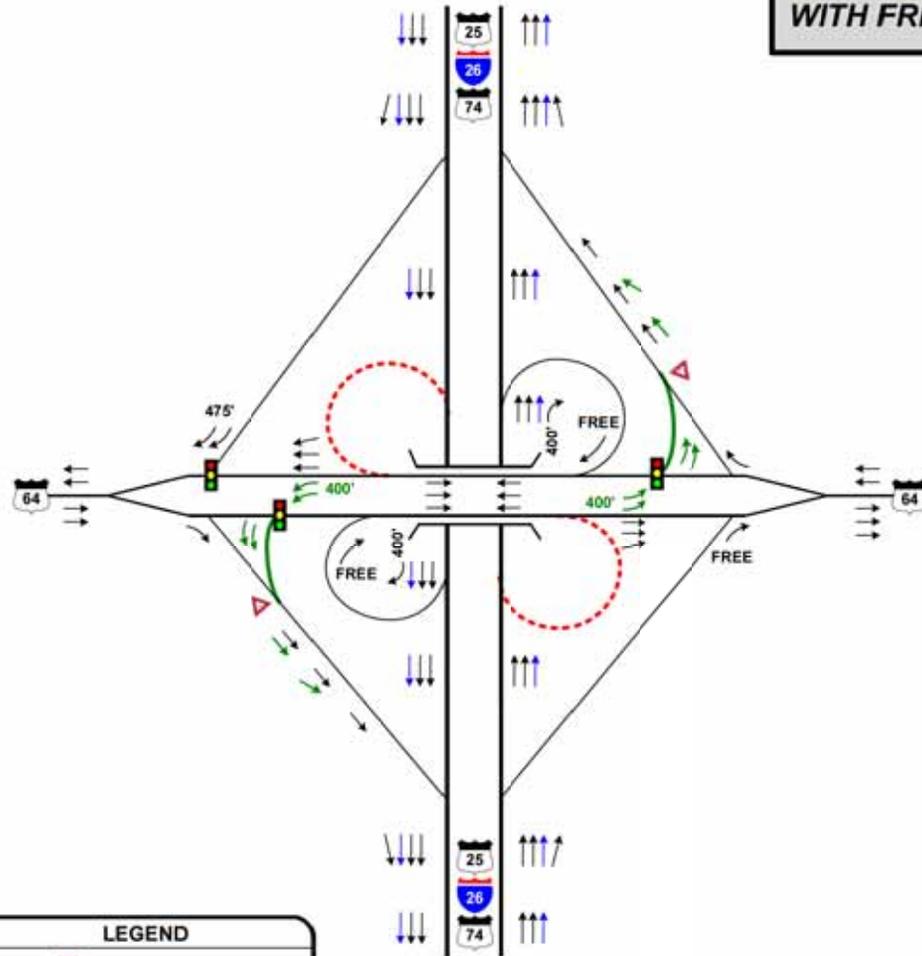
**FIGURE 1**

**DRAFT**

**I-26/US 64 INTERCHANGE  
PAR-CLO ALTERNATIVE  
WITH FREE-FLOW RAMPS**



**NOT  
TO  
SCALE**



**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Existing Lane Geometry
- = Proposed Lane Geometry
- = Proposed Lane Geometry for I-4400/I-4700 5-lane
- = Roadway to be Added
- = Roadway to be Removed
- = Proposed Storage Length

**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Movement
- XXX (XXX) = AM (PM) Peak Hour Volumes
- = Roadway to be Added
- = Roadway to be Removed
- AM/PM Peak Hour Level of Service**
  - LOS A - D
  - LOS E
  - LOS F

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
RECOMMENDED LANEAGE  
AND STORAGE LENGTHS**

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
DEMAND VOLUMES AND LOS**

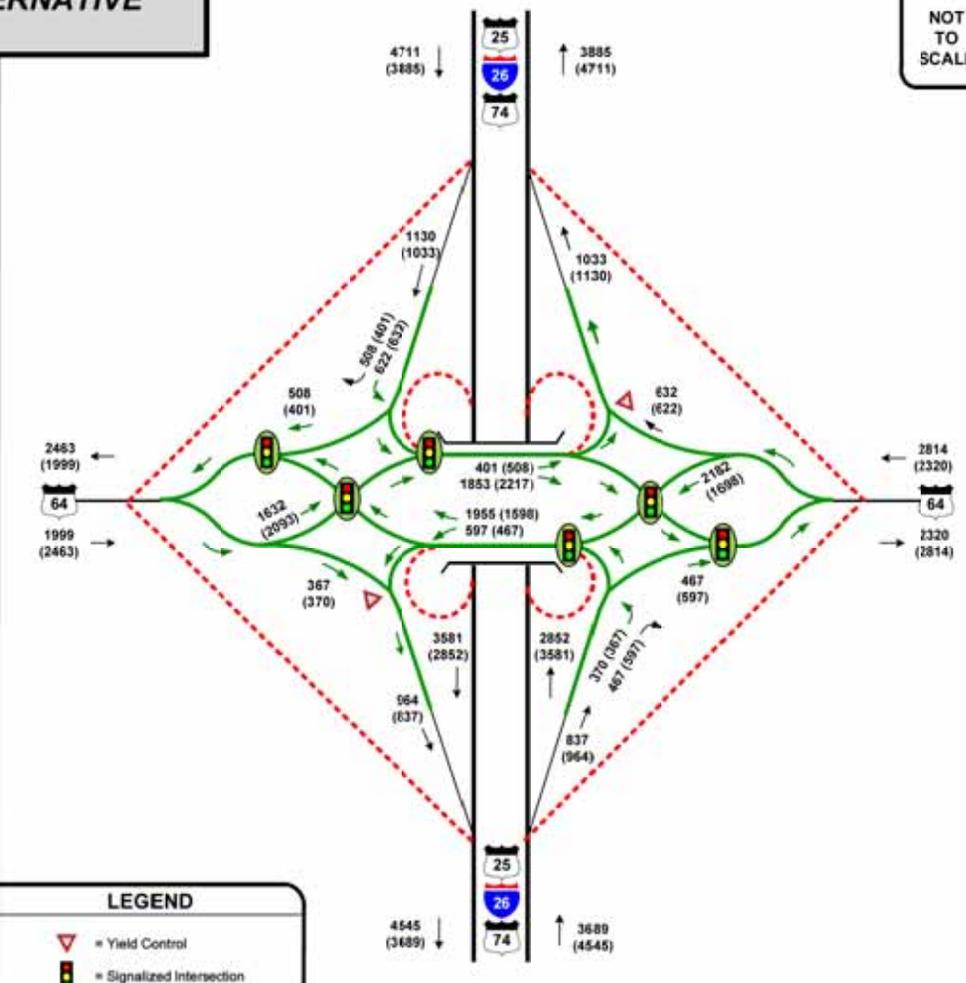
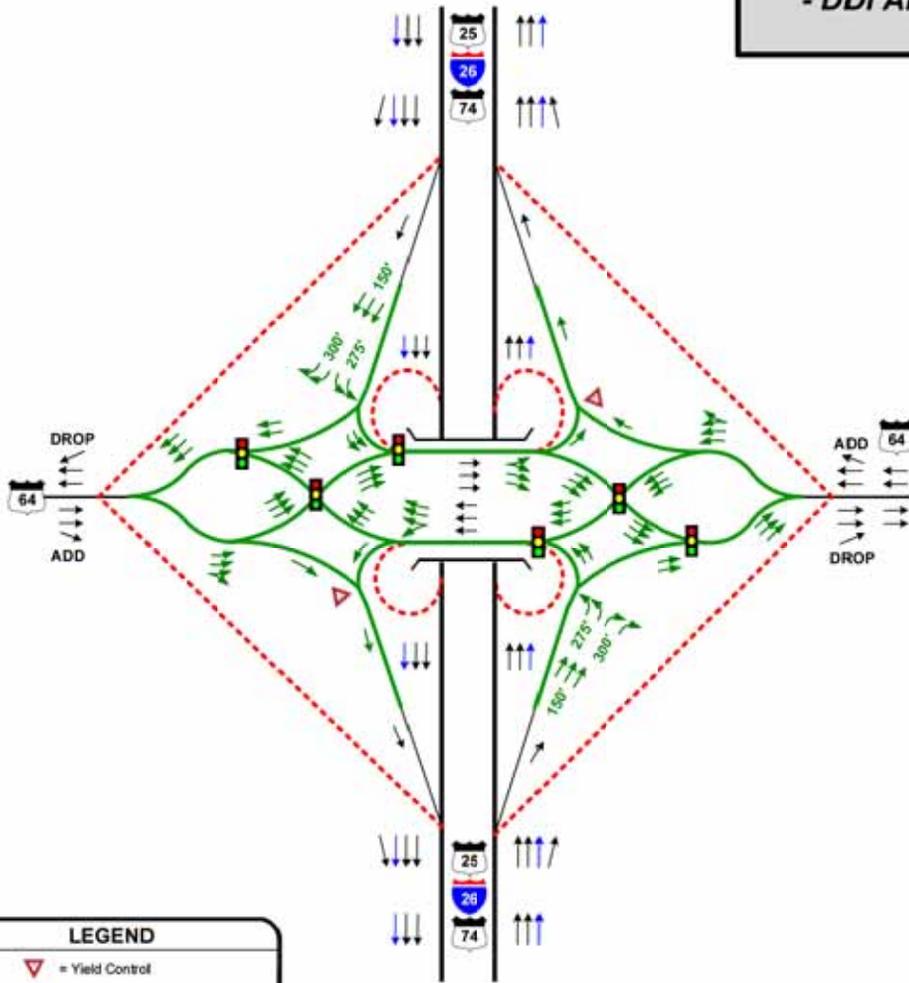
DATE: December 2017 **FIGURE 2**

DRAFT

### I-26/US 64 INTERCHANGE - DDI ALTERNATIVE



NOT TO SCALE



**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Existing Lane Geometry
- = Proposed Lane Geometry
- = Proposed Lane Geometry for I-4400/I-4700 5-lane
- = Roadway to be Added
- = Roadway to be Removed
- = Proposed Storage Length

S.T.I.P. I-4400/I-4700  
 US 64 AT I-26 INTERCHANGE  
 HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
 RECOMMENDED LANEAGE  
 AND STORAGE LENGTHS**

**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Movement
- XXX (XXX) = AM (PM) Peak Hour Volumes
- = Roadway to be Added
- = Roadway to be Removed
- AM/PM Peak Hour Level of Service**
  - = LOS A - D
  - = LOS E
  - = LOS F

S.T.I.P. I-4400/I-4700  
 US 64 AT I-26 INTERCHANGE  
 HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
 DEMAND VOLUMES AND LOS**

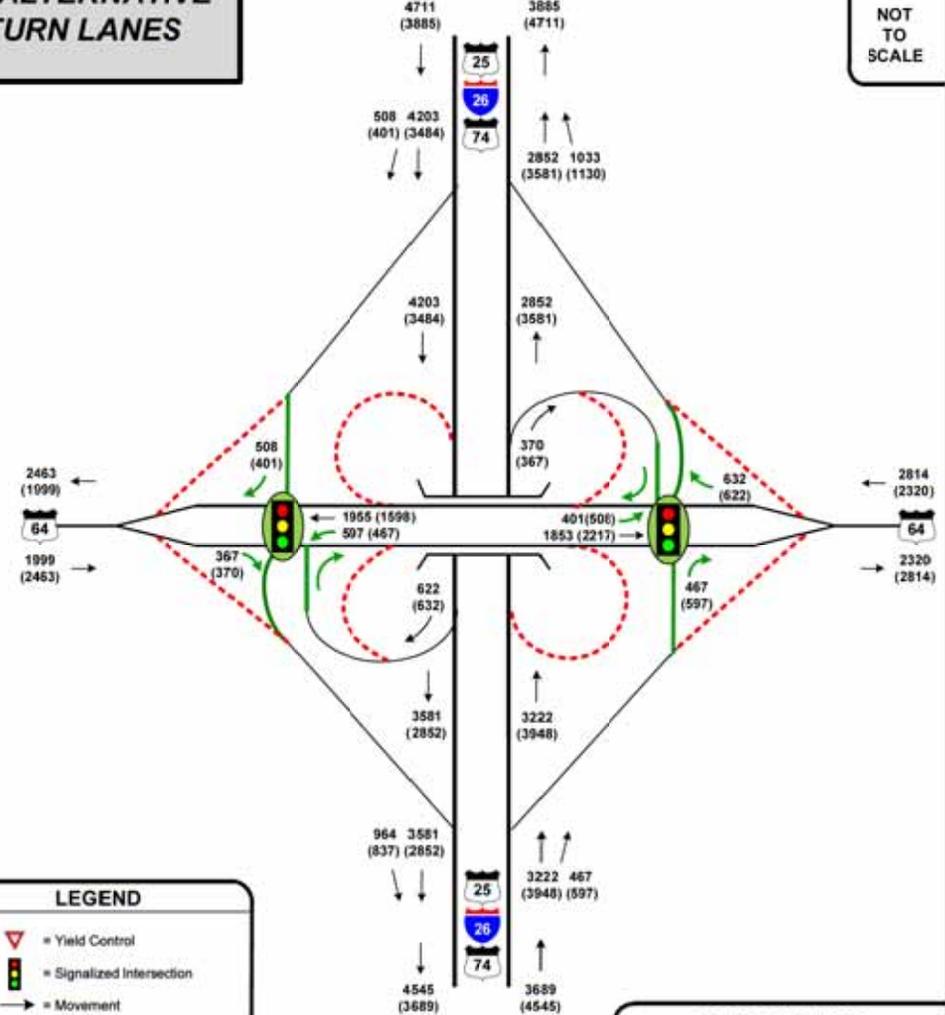
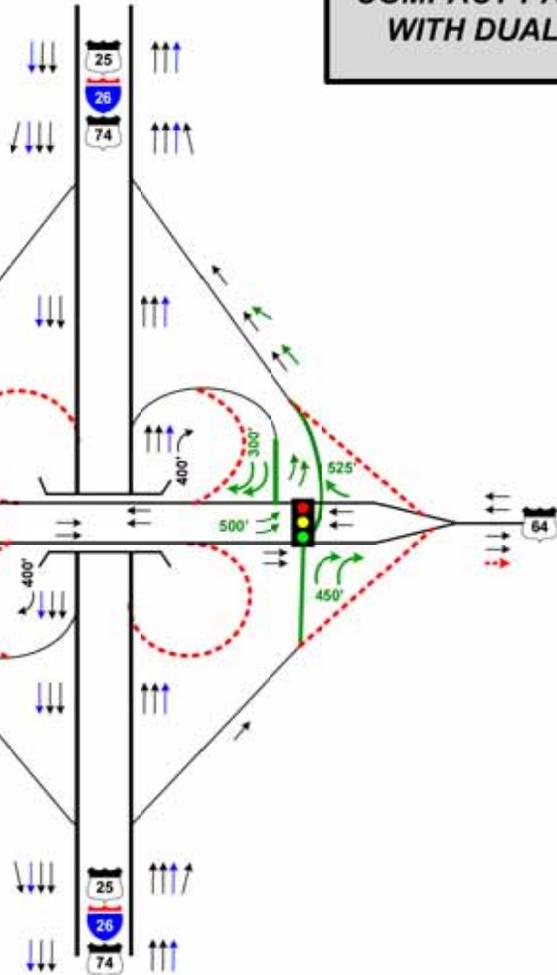
DATE: December 2017      **FIGURE 3**

**DRAFT**

**I-26/US 64 INTERCHANGE  
COMPACT PAR-CLO ALTERNATIVE  
WITH DUAL LEFT-TURN LANES**



**NOT  
TO  
SCALE**



**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Existing Lane Geometry
- = Proposed Lane Geometry
- = Proposed Lane Geometry for I-4400/I-4700 5-lane
- = Roadway to be Added
- = Roadway to be Removed
- = Proposed Storage Length

**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Movement
- XXX (XXX) = AM (PM) Peak Hour Volumes
- = Roadway to be Added
- = Roadway to be Removed
- AM/PM Peak Hour Level of Service**
  - LOS A - D
  - LOS E
  - LOS F

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
RECOMMENDED LANEAGE  
AND STORAGE LENGTHS**

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
DEMAND VOLUMES AND LOS**

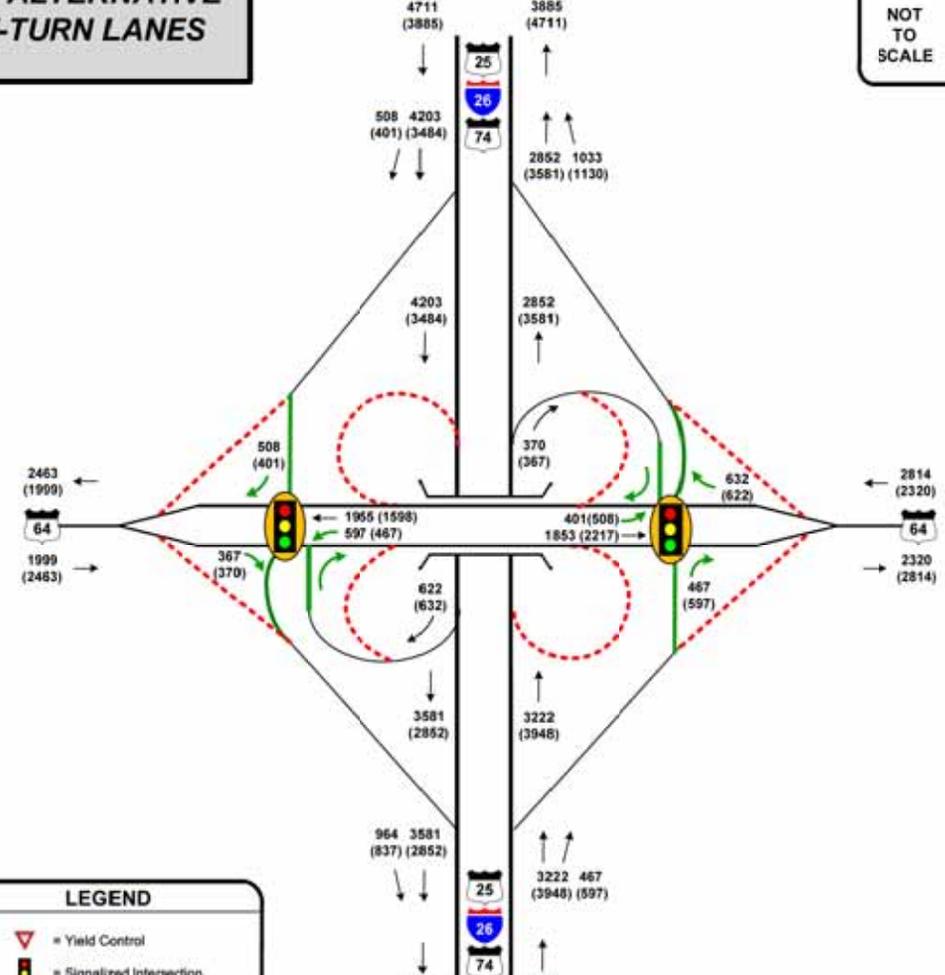
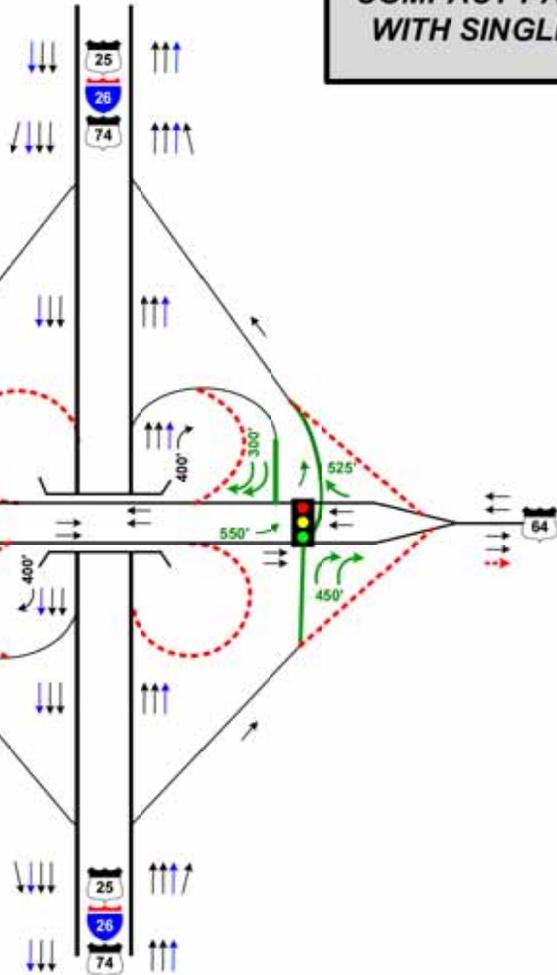
DATE: December 2017 **FIGURE 4**

DRAFT

### I-26/US 64 INTERCHANGE COMPACT PAR-CLO ALTERNATIVE WITH SINGLE LEFT-TURN LANES



NOT TO SCALE



**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Existing Lane Geometry
- = Proposed Lane Geometry
- = Proposed Lane Geometry for I-4400/I-4700 5-lane
- = Roadway to be Added
- = Roadway to be Removed
- = Proposed Storage Length

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
RECOMMENDED LANEAGE  
AND STORAGE LENGTHS**

**LEGEND**

- = Yield Control
- = Signalized Intersection
- = Movement
- XXX (XXX) = AM (PM) Peak Hour Volumes
- = Roadway to be Added
- = Roadway to be Removed
- AM/PM Peak Hour Level of Service**
  - LOS A - D
  - LOS E
  - LOS F

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
DEMAND VOLUMES AND LOS**

DATE: December 2017

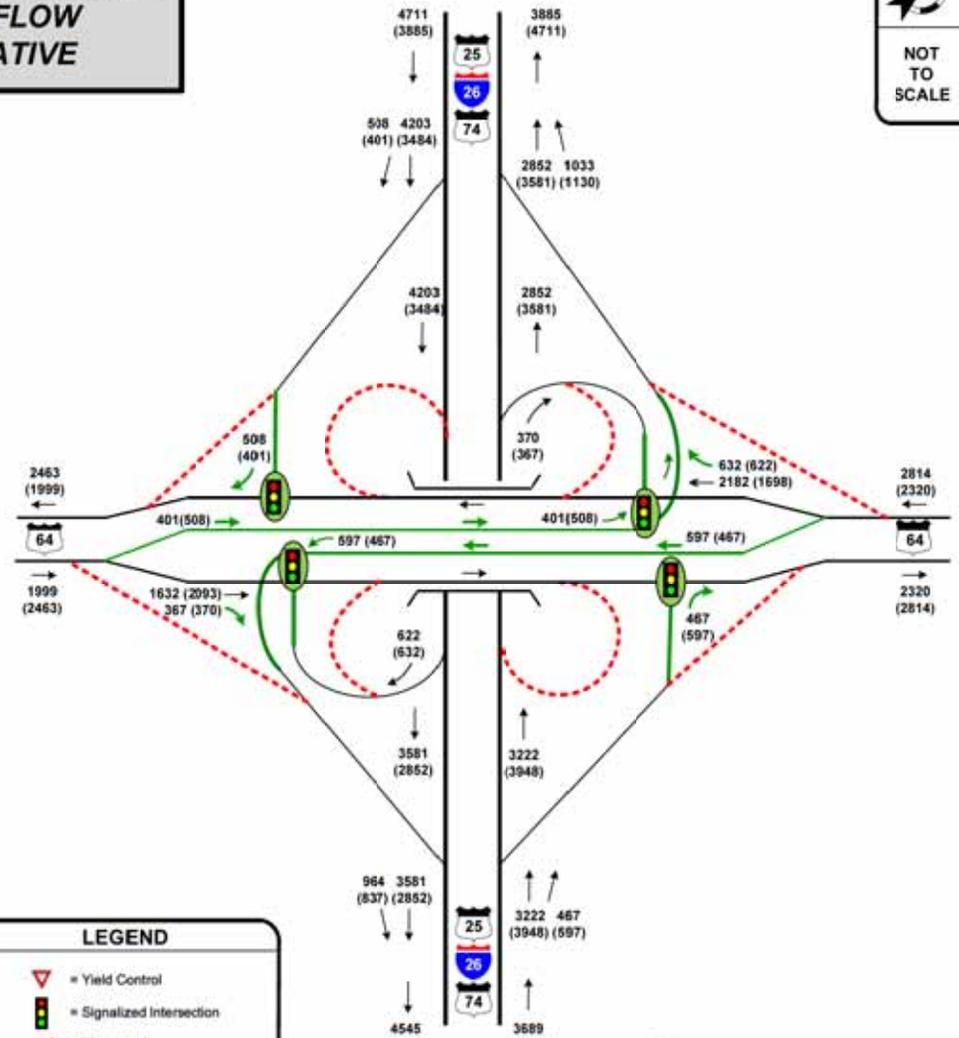
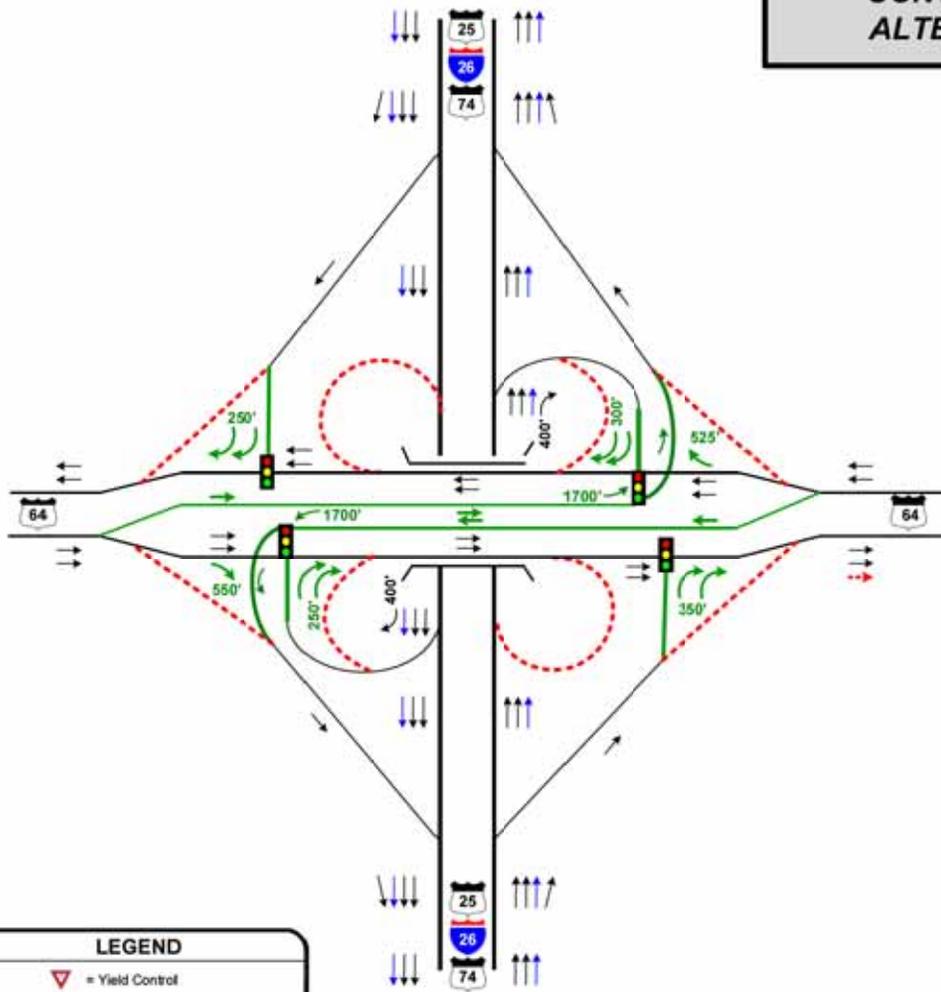
**FIGURE 5**

DRAFT

### I-26/US 64 INTERCHANGE CONTRAFLOW ALTERNATIVE



NOT  
TO  
SCALE



#### LEGEND

- = Yield Control
- = Signalized Intersection
- = Existing Lane Geometry
- = Proposed Lane Geometry
- = Proposed Lane Geometry for I-4400/I-4700 5-lane
- = Roadway to be Added
- = Roadway to be Removed
- XXX' = Proposed Storage Length

#### LEGEND

- = Yield Control
- = Signalized Intersection
- = Movement
- XXX (XXX) = AM (PM) Peak Hour Volumes
- = Roadway to be Added
- = Roadway to be Removed
- AM/PM Peak Hour Level of Service
  - LOS A - D
  - LOS E
  - LOS F

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
RECOMMENDED LANEAGE  
AND STORAGE LENGTHS**

S.T.I.P. I-4400/I-4700  
US 64 AT I-26 INTERCHANGE  
HENDERSON COUNTY

**2040 DESIGN YEAR BUILD  
DEMAND VOLUMES AND LOS**

DATE: December 2017      **FIGURE 6**

**DESIGN PUBLIC MEETING MAP**

PROJECT 44710.1.1 (U-5886)

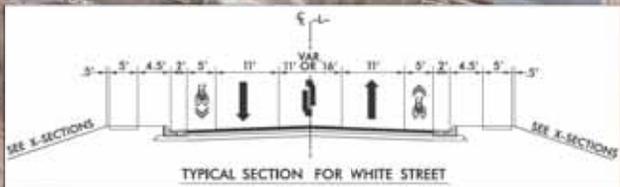
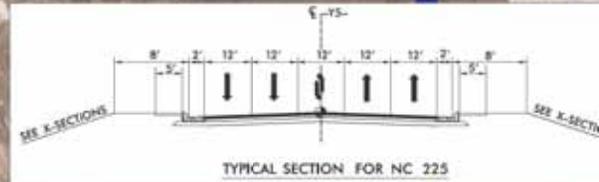
PROJECT 46995.1.1 (U-6049)

**HENDERSON COUNTY**

WHITE ST FROM WILLOW RD TO US 176 @  
NC 225 FROM SOUTH KING ST TO US 176

**ALTERNATE 1**

SHEET 1 OF 1



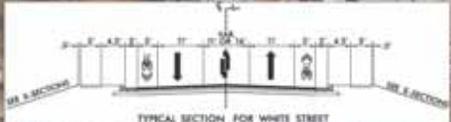
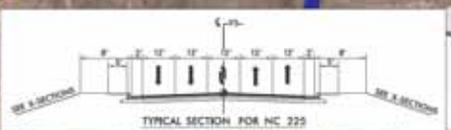
**LEGEND**

- BUILDINGS
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY
- PROPOSED BASEMENTS (DRAINAGE, CONSTRUCTION AND UTILITIES)
- PROPOSED GRASS MEDIAN
- EXISTING ROADWAY
- EXISTING ROADWAY TO BE RESURFACED
- PROPOSED ROADWAY
- PROPOSED STRUCTURES, ISLAND, CURB AND GUTTER
- EXISTING ROADWAY TO BE REMOVED
- LANE, RIVER, STREAMS AND PONDS
- PROPERTY LINES
- EXISTING RIGHT OF WAY LINE
- EXISTING/PROPOSED TRAFFIC SIGNAL

**INCOMPLETE PLANS**  
DO NOT USE FOR ACQUISITION

**PRELIMINARY PLANS**  
DO NOT USE FOR CONSTRUCTION

**DESIGN PUBLIC MEETING MAP**  
 PROJECT 401011 (11-0000)  
 PROJECT 401011 (11-0000)  
 HENDERSON COUNTY  
 WHITE ST FROM WILLOW RD TO US-27 &  
 NC-225 FROM SOUTH KING ST TO US-27  
 ALTERNATE 2  
 SHEET 1 OF 1



**LEGEND**

[Red line]	BOUNDARY
[Green line]	EXISTING RIGHT OF WAY
[Blue line]	PROPOSED RIGHT OF WAY
[Yellow line]	PROPOSED EXISTING DRAINAGE CONSTRUCTION AND SPECIAL
[Orange line]	PROPOSED DRAINAGE CHANNEL
[Light green line]	EXISTING ROADWAY
[Dark green line]	EXISTING ROADWAY TO BE RECONSTRUCTED
[Yellow line]	EXISTING ROADWAY TO BE RECONSTRUCTED
[Orange line]	PROPOSED ROADWAY
[Light blue line]	PROPOSED EXISTING DRAINAGE CANALS AND DITCHES
[Blue line]	RAIL, POWER, TELECOM AND FIBER
[Red line]	PROPERTY LINES
[Green line]	EXISTING RIGHT OF WAY (200)
[Green line]	PROPOSED/PROCESSED TRAFFIC SIGNAL

**INCOMPLETE PLANS**  
 do not use for construction  
**PRELIMINARY PLANS**  
 do not use for construction

**DESIGN PUBLIC MEETING MAP**  
 PROJECT 401011 (11-0000)  
 PROJECT 401011 (11-0000)  
 HENDERSON COUNTY  
 WHITE ST FROM WILLOW RD TO US-27 &  
 NC-225 FROM SOUTH KING ST TO US-27  
 ALTERNATE 2  
 SHEET 1 OF 1

**DESIGN PUBLIC MEETING MAP**  
 PROJECT 401011 (11-0000)  
 PROJECT 401011 (11-0000)  
 HENDERSON COUNTY  
 WHITE ST FROM WILLOW RD TO US-27 &  
 NC-225 FROM SOUTH KING ST TO US-27  
 ALTERNATE 2  
 SHEET 1 OF 1



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Michael Huffman

**Department:** Engineering

**Date Submitted:** 12/20/17

**Presenter:** Michael Huffman

**Date of Council Meeting to consider this item:** 1/4/18

**Nature of Item:** Presentation Only

**Summary of Information/Request:**

**Item #** 13

Stormwater Utility Structure and Impervious Surface Area Study Presentation:

Currently the city charges a \$2.00 flat rate to all residential and commercial water/sewer customers within the City and ETJ. Issues raised over the last year have highlighted the need for additional revenue beyond what is currently generated, so that we have the ability to fund stormwater management capital projects. Michael Huffman, Stormwater Quality Specialist, recently completed a review of stormwater utilities throughout North Carolina and examined local impervious surface data in order to present options to Council for the development of a utility. The presentation that follows will describe the available options.

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:**

N/A

**Attachments:**

None



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Jennifer Harrell

**Department:** Admin

**Date Submitted:** 12/22/17

**Presenter:** Jennifer Harrell

**Date of Council Meeting to consider this item:** 01/04/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 14

The City's health insurance premiums have steadily increased over the last few years and this past year the increase was twenty-five percent. Staff wants to ensure the City has the best premium possible and is spending money wisely by allowing an insurance brokerage firm to oversee the renewal process. A broker provides expert, unbiased advice on insurance needs and are free to make impartial recommendations. Brokers are often able to get better rates on insurance policies for their clients than the client alone. That is because insurance companies know that brokers have the experience to guide their clients to the right policies with the proper level of coverage. A broker can offer a range of quotes from different insurers to give clients options that fit their needs and their budgets. This ability to shop for the best prices from a number of carriers typically saves clients money.

We've looked at several firms, one being One-Digital based in Atlanta with a main office in Charlotte. They are a solid company with a good background mainly in the private sector. They are branching out to local governments and non-profits. Their final quote for services is \$44,000.00 annually.

We have chosen to go with Mark III, a second generation company that does business in Tennessee, Virginia and North Carolina. They have extensive experience with local governments. All references checked are pleased with their services and some have been doing business with them for years. Their fee is \$25,500 annually with an optional data analytics for \$12,000.00. We are proposing to forgo the data analytics this coming year, but if we determine the City could benefit from such service we will explore that option in the future. They provide services that we believe will assist the City in renewals and with employee education and dedicated customer service. See the attached contract for services rendered.

**Budget Impact:** \$ 12,750 FY17-18 \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

The administration department professional services account has available budget.

### Suggested Motion:

I move to accept staff's recommendation to hire Mark III as the City's Health Insurance Broker beginning January 2018.

### Attachments:

See below.

# Contract for Broker Services

## Between the City of Hendersonville and Mark III Brokerage, Inc.

THIS AGREEMENT made the 8<sup>th</sup> of December, 2017 between the City of Hendersonville whose business is at 145 5th Ave E, Hendersonville, NC 28792 and Mark III Brokerage, Inc., a North Carolina Corporation whose business address is 211 Greenwich Road, Charlotte, North Carolina 28211.

The City of Hendersonville has agreed to contract with Mark III Brokerage as the employee benefits broker effective January 1, 2018 to June 30, 2019. Thereafter, the Contract is renewable on an annual basis.

### Responsibilities of Mark III Brokerage:

1. Mark III Brokerage will act as the broker for all of the employee benefits insurance programs implemented for the City of Hendersonville.
2. Mark III's responsibilities include:
  - a. Prepare and market the request for proposals. Once the responses have been received, evaluate the responses. The specifications will be developed with the input from the customer.
  - b. The criteria for the requests for proposal will be based on, but not limited to the following:
    1. Outstanding service, including but not limited to, strong client service support, home office underwriting, contracts and legal service departments, claims processing, and related customer service.
    2. Competitive plan designs.
    3. Competitive rates or fee structure.
    4. Future stability of rates.

5. Providing comprehensive experience reports to the client so that an evaluation can be made as to the plan performance.
  6. Carrier flexibility when plan design changes are necessary to meet the needs of the employees and the employer.
  7. Provides ongoing quality service and a service team that is dedicated to solving problems that arise during the plan year.
- c. Mark III Brokerage will provide an employee benefits web site. The web site will include the following:
1. Medical Insurance Program.
  2. Supporting Wellness Strategies.
  3. Dental Insurance Program
  4. Description of the Section 125 benefits.
  5. Forms available online for the employees to download.
  6. Product information online.
- d. If the enrollment data is available from the customer in an electronic file format, Mark III Brokerage will provide an electronic enrollment for the appropriate benefits for included in the plan. The elections collected will be:
- Medical Coverage
  - Dental Coverage
  - Group Life Coverage
  - Disability Coverage
  - Medical and Dependent Care Spending Account Elections
  - Various Payroll Deduction Elections
- e. If an electronic enrollment is conducted, Mark III Brokerage will return the enrollment results back to the employer in Excel, which can be downloaded in to your payroll system. This is not a requirement, but it is available if you wish to take advantage of the system.
- f. The communication will be handled in two phases;

1. Group Meetings - At the group meetings, the employees are given information concerning all of the benefits. To review all of the benefits, the meeting will last approximately thirty minutes. The amount of content communicated during the group presentation is up to the employer.
  2. Individual Meetings - The employees are given time to meet with an enroller on a one-on-one basis. These meetings will be held at specific times and at the work locations. At this time, questions may be asked and forms completed. A copy of the election form is given to the employee as a confirmation.
- g. Mark III Brokerage will coordinate the Section 125 program. This includes premium conversion and flexible spending accounts.
  - h. Non-commissioned Enrollment Team - All of the Mark III enrollment team are non-commissioned benefits counselors.
  - i. Mark III will produce Section 125 booklets for all of your employees. The information is in a concise and informative format. The brochure will give your employees all of their benefits information in one document.
  - j. Mark III will provide full time service personnel to answer questions that your employees and staff might have. Our service staff's core responsibility is only to address the needs of our customer. They are not responsible for marketing. We are advocates for the employer and its employees, not the insurance company.
  - k. If Mark III is the voluntary benefits broker, Mark III will pay for the Worxtime services.

**Medical Plan Marketing and Evaluation Services** - Mark III has the expertise to market and evaluate the medical plan. We will perform the following functions:

a. Specification Preparation

With the guidance and assistance from the City, Mark III will prepare specifications that give the carriers/vendors an accurate assessment of your existing health insurance; including census, claims activity, current plan design, and requested plan designs. The specifications outline your concerns and goals.

b. Marketing the Specifications

Mark III will contact the qualified carriers and vendors to determine their interest in evaluating your medical plan. Carriers/vendors that express an interest are sent the specifications to obtain a response. Mark III is responsible for gathering the responses from the qualified carriers/vendors.

c. Evaluate the Responses

Once all proposals are received, the City and Mark III will narrow down the most competitive carriers/vendors based on, but not limited to, the following criteria:

1. Quality of Care provided to the employees and their dependents.
2. Sound financial status of the firm.
3. Outstanding service, including but not limited to, strong client service support, home office underwriting, contracts and legal service departments, claims processing, and related customer service.
4. Networks, which provide excellent access to hospitals and physicians in the locations where employees reside. Carriers/vendors will complete a Provider Access Report (Geo-Access Report) using a criteria designated which will provide complete coverage for your employees.
5. Managed care expertise.
6. Competitive rates or fee structure.
7. Future stability of rates/fees.
8. Providing comprehensive experience reports to the client so that an evaluation can be made relative the plan performance.
9. Carrier flexibility when plan design changes are necessary to meet the needs of the employees and the employer.
10. Provides quality ongoing service and a service team that is dedicated to solving problems that arise during the plan year.
11. An ongoing employee education program to assist the employees' understanding of the plan's operation.

12. The flexibility to expand the network to cover new employees.

Mark III will provide a comprehensive evaluation, giving a side-by-side comparison of each vendor's offer.

The finalists are given the opportunity to make presentations to the City. This gives the staff the chance to ask questions and evaluate the carriers based on their responses. We have taken a long-term approach when creating a relationship with the employer and your satisfaction with the programs that are implemented will always be imperative.

During the plan year we track the claims to look for trends and monitor the service level of the vendor. Prior to the client receiving the renewal from the carrier/vendor, Mark III will evaluate the initial the experience and develop our renewal, separate of the carrier/vendor. Once Mark III has completed our initial evaluation, we will meet with the client to discuss our initial assessment.

At the renewal meeting, we will compare our estimates against the carrier/vendor's using the following criteria:

- a. Claims activity.
- b. Competitiveness of the carrier's reserving philosophy. This will be determined by comparing their assumptions to industry norms.
- c. Competitiveness of the carrier's retention. This will be determined by comparing their costs to industry norms.
- d. Changes in the demographic composition of the client and how that has changed over time. How these demographics (manual rate) impact the renewal.
- e. How competitive/aggressive the carrier is when weighing the manual rate vs. the experience rate or visa versa.
- f. Industry trending factors.

Based on the initial results of our meeting and how satisfied the City/Mark III is with the renewal, will determine the next step. If the renewal is competitive and there is not a significant financial or benefit change that is required, no action would be taken. If the response from the carrier/vendor were uncompetitive, then further negotiation would take place. If a satisfactory response from the

carrier/vendor does not occur, then Mark III would market the plan in question to see if a more competitive offer can be attained from other qualified vendors.

At the City's request, Mark III will provide budget projections throughout the plan year, to help the City plan for financial considerations.

**COBRA Administrative Services** - Mark III will assist in identifying a COBRA administrator for the City.

**Market and Evaluate Section 125 Services** – As directed, Mark III will market and evaluate the Section 125 program.

**Market and Evaluate Section Voluntary Benefits** – As directed, Mark III will market and evaluate the Voluntary Benefits.

#### **Wellness Planning and Implementation:**

Mark III will bring its experience and knowledge of the market place with respect to assisting the City in implementing a Wellness Program.

The goals are to:

- To positively impact the health of the population.
- Design and implement an integrated health and wellness program.
- Drive member engagement and responsibility for their health.
- Provide tools and incentives that result in healthy behaviors.
- Positively influence change in the health care utilization based on demonstrated results.
- Strategies can include:
  - Premium differentials and other financial incentives.
  - Employee clinics and pharmacies.
  - Screenings and Biometrics.
  - Health risk assessments.

- Accountability Standards.

The cost for these strategies will vary based on resources and situational implementation costs.

### **Worxtime – ACA Tracking and Reporting tool:**

Mark III will make available to the City the Worxtime ACA Tracking and Reporting tool Program for Compliance.

Mark III acknowledges and accepts Worxtime's rights with respect to the Worxtime Program and Reports and any copies under all applicable national and international laws and treaties for the protection of Intellectual Property Rights, including, but not limited to, trade secrets, copyrights, trademarks and patents.

By signing this contract, the City of Hendersonville accepts Worxtime's rights noted above as well.

The City agrees to not cause or permit unauthorized copying, reproduction or disclosure of any portion of the Program or Reporting, or the delivery or distribution of any part thereof to any third party other than the Federal Government, for any purpose, without the prior written consent of Mark III and Worxtime.

This restriction shall continue beyond the termination of this contract. In the event you become aware of any unauthorized use, copying, reproduction or disclosure of the Worxtime Program or Reports , you agree to notify Mark III and Worxtime, in writing, as soon as commercially reasonable.

You may not transfer any of your rights under this Contract to any party, whatsoever, without the written consent of Mark III and Worxtime.

By accepting the rights granted by Mark III through Worxtime, you agree that you will not, without the prior written consent of Mark III and Worxtime

(a) sell, license, sublicense, grant rights to, distribute, lease or otherwise transfer or allow the transfer of the Program, or any backup copy, to third parties;

(b) use the Program or Reports in any manner inconsistent with the rights granted herein;

(c) use the Program or Reports in any manner for the purpose of monitoring or evaluating a greater number of employees than such number of employees anticipated;

(d) modify or create derivative works of the Worxtime Program or Reports provided or separate the Program's component parts; or

(e) unless specifically permitted under applicable law without the possibility of contractual waiver, attempt to decompile, disassemble or reverse engineer the Worxtime Program, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organization from the Program or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Worxtime Program, including without limitation any such mechanism used to restrict or control the functionality of the Worxtime Program.

**If Mark III is the voluntary benefits broker, Mark III will pay for the Worxtime services.**

3. Responsibilities of the third-party administrator:

- a. The Third Party Administrator with whom Mark III coordinates for the Section 125 program shall design the Plan Document and keep updated as necessary.
- b. The Third Party Administrator with whom Mark III coordinates will adjudicate the claims incurred by the employees and dependents of the customer.

Health Plan Consulting Cost:

Mark III will perform the Health Plan Consulting for \$25,500 per year. Mark III will begin billing our fees effective January 1, 2018 for 12 months.

Responsibilities of the City of Hendersonville (known as the employer):

1. The City of Hendersonville agrees to support Mark III Brokerage's efforts to collect information necessary to bid the various employee benefits programs. This information would include census and payroll information.

2. The City of Hendersonville agrees to support Mark III Brokerage's efforts to communicate the employee benefits and Section 125 program by making the employees available during working hours.
3. The City of Hendersonville agrees to take and remit the payroll deductions for the various firms involved in the employee benefits programs.

The City of Hendersonville

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mark III Brokerage, Inc.

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 12/28/17

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 01.04.18

**Nature of Item:** Presentation Only

**Summary of Information/Request:**

**Item #** 16c

Staff Report:

In accordance with the City of Hendersonville Surplus Property Policy it is required that all items approved by the City Manager must be reported to the governing at their next City Council meeting.

Please see the attached sheet for a list of the items declared surplus by the City Manager in December.

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  Yes  No If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

NA

Attachments:

**Drake, Tammie**

---

**Subject:** FW: Govdeals Auction Request

**From:** Connet, John  
**Sent:** Thursday, December 28, 2017 10:13 AM  
**To:** Wooten, Tom <twooten@hvlnc.gov>  
**Cc:** Buchanan, John <jbuchanan@hvlnc.gov>; Drake, Tammie <TDrake@hvlnc.gov>  
**Subject:** RE: Govdeals Auction Request

Approved.

John F. Connet  
City Manager  
City of Hendersonville, NC  
145 Fifth Avenue East  
Hendersonville, NC 28792  
(828) 233-3201 (O)  
(828) 606-1410 (M)  
[jconnet@hvlnc.gov](mailto:jconnet@hvlnc.gov)  
[www.hvlnc.gov](http://www.hvlnc.gov)

---

**From:** Wooten, Tom  
**Sent:** Thursday, December 28, 2017 8:41 AM  
**To:** Connet, John <[jconnet@hvlnc.gov](mailto:jconnet@hvlnc.gov)>  
**Subject:** Govdeals Auction Request

John,  
I am requesting permission to sell the following items by electronic auction on Govdeals.com.

01-40	Parked	2007	DODGE	CHARGER	SEDAN / 4 DOOR	POL	10-4310	55351T	2B3KA43H87H770324	\$6000
01-41	Parked	2007	DODGE	CHARGER	SEDAN / 4 DOOR	POL	10-4310	55844T	2B3KA43HX7H770325	\$6000
01-44	Parked	2007	DODGE	CHARGER	SEDAN / 4 DOOR	POL	10-4310	55322T	2B3KA43H77H770329	\$6000
86-23	Parked	1950	SOUTHBEND	NO INFO	MILLING MACHINE	MP	10-4250	NOT REQ.	MIL4212	\$100
22-09	Parked	1991	FORD	F700	DUMP TRUCK (2 TON)	STR	10-4510	55361T	1FDWF70J7MVA28537	\$9500

22-10	Parked	1993	FORD	F700	DUMP TRUCK (2 TON)	STR	10-4510	55373T	1FDWF70JXPVA28780	\$9800
Drill Press	Storage				old drill press from the garage					\$200
Office Furniture	storage				Various desk, filing cabinets, office and desk chairs, credenzas - one big pile. No longer use these.					\$100
Christmas Decorations	storage				15 deer, 5 snowmen, 3 dogs, 4 sleighs, 6 angels, 1 wreath...different sizes and materials. Most of these are wire frame with lights attached to frame. No longer use these.					\$20
Halophane Lights	storage				Seven halophane light fixtures. Removed when we added LED fixtures. No longer use these.					\$50
GE Flood Lights	storage				Ten GE flood lights. Removed from Boyd Park tennis courts when we remodeled the courts. No longer use these.					\$40
Mezanine Bay Lights	storage				Nine florescent bay lights. Removed when we added LED fixtures. No longer use these.					\$100
PD Scooter	storage				One old PD scooter that PD no longer uses. Previously used as a drug purchasing vehicle.					\$100
Audio Visual Equipment	Storage				Two sets of AV Equipment (speakers, sound boards, projectors...) From Assembly Room and City Council Room. Removed when the AV equipment was upgraded. We no longer use this equipment.					\$600
Computers and printers	Storage				One lot of used computers, monitors, keyboards, printers left over from the computer upgrade when we switched to VC3 or other left over equipment.					\$300
Jacks	Storage				old used car/vehicle jacks from the garage - retired.					\$20

Thanks,  
Tom Wooten  
Director of Public Works  
City of Hendersonville  
[twooten@hvlnc.gov](mailto:twooten@hvlnc.gov)  
(828) 697-3084



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Tammie Drake

**Department:** Admin

**Date Submitted:** 12.18.17

**Presenter:** Tammie Drake

**Date of Council Meeting to consider this item:** 01.04.18

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item # 17**

- a. Consideration of Appointments:
  - 1. Tree Board: Mr. Richard Baxter resigned from the Tree Board. Ms. Kristy Lapidus, currently serving on the Environmental Sustainability Board would like to be considered for that position.
- b. Announcement/Reminder of Vacancies and Up-Coming Vacancies: Hendersonville Sister Cities (2 positions), Board of Adjustment - vacant alternate position and the Historic Preservation Commission 2 vacancies (Payton, Ray).

Budget Impact: \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  N/A If no, describe how it will be funded.

**Suggested Motion:**

Attachments: