

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER  
160D



**CITY OF HENDERSONVILLE**

**SUBDIVISION ORDINANCE**

Effective: March 5, 2020

# ACKNOWLEDGEMENTS



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# TABLE OF AMENDMENTS

TABLE OF AMENDMENTS				
ORD#.	TITLE	DESCRIPTION	AFFECTED SECTIONS	DATE ADOPTED
		<a href="#">Amendments to Conform with Chapter 160D of the North Carolina General Statutes</a>	<a href="#">Multiple</a>	<a href="#">July 1, 2021</a>

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# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.01. TITLE

This Ordinance shall be officially known as the "Subdivision Ordinance of the City of Hendersonville, North Carolina" and may be referred to herein as "the Subdivision Ordinance," or "this Ordinance."

## SECTION 1.02. EFFECTIVE DATE

This Ordinance shall be in full force and effect on March 5, 2020, and repeals and replaces the Subdivision Ordinance for the City of Hendersonville, as originally adopted on May 5, 1977, and subsequently amended. [An amendments shall be effective as of the date of their adoption unless a different effective date is specified in the ordinance adopting the amendment.](#)

## SECTION 1.03. AUTHORITY

### A. GENERAL AUTHORITY

This Ordinance controls the subdivision and re-subdivision of land within the City's planning jurisdiction, in accordance with the following:

1. The North Carolina General Statutes, including, but not limited to:
  - a. Chapter 160A, Article 8 (Police Powers);
  - b. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
  - c. Chapter ~~160A~~ 160D, ~~Article 19 (Planning and Regulation of Development)~~ (including but not limited to Article 8 Subdivision Regulation);
  - d. Chapter 143, Article 21 (Water and Air Resources);
  - e. Chapter 113A, Article 4 (Sedimentation and Pollution Control);
2. The Hendersonville City Charter;
3. Other relevant laws, including but not limited to:
  - a. All other relevant laws of the State of North Carolina; and
  - b. Any special legislation applicable to the City of Hendersonville, as enacted by the North Carolina General Assembly.

### B. REFERENCES TO STATE LAW

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes, the North Carolina Administrative Code, the State Building Code, or any other adopted State law, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

## SECTION 1.04. PURPOSE AND INTENT

The purpose of this Ordinance is to promote the public health, safety, and general welfare of the landowners and residents of Hendersonville, and to ensure that all subdivision or re-subdivision of land within the City's planning jurisdiction is generally consistent with the following goals and objectives:

- A. Foster convenient, compatible, and efficient relationships among land uses;
- B. Support orderly growth and development within the City's planning jurisdiction;
- C. Better manage and lessen congestion in the streets;
- D. Coordinate the development of streets with other public infrastructure;
- E. Ensure the provision of adequate open space between uses for light, air, and fire safety;
- F. Secure the safety of landowners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible;
- G. Facilitate the adequate and economic provision of transportation, potable water, sanitary sewage, stormwater management, schools, parks, and other public services;
- H. Protect open space, wildlife habitat, natural resources, cultural resources, and historic and rural character, where appropriate;

- I.** Improve city-wide and regional connectivity through greenways, trails, bicycle lanes and paths, and sidewalks;
- J.** Address the dedication and reservation of areas for recreation;
- K.** Ensure the dedication and reservation of sufficient land for public rights-of-way and utilities; and
- L.** Implement the City's adopted policy guidance.

## **SECTION 1.05. APPLICABILITY**

### **A. GENERAL APPLICABILITY**

1. The provisions of this Ordinance shall apply to the subdivision or re-subdivision of all land within the City's planning jurisdiction, unless expressly exempted by a specific section of this Ordinance.
2. The City's planning jurisdiction includes all land within the corporate limits of the City of Hendersonville along with the City's extra-territorial jurisdiction (ETJ) identified on the map entitled "Official Zoning Map, City of Hendersonville," which is incorporated by reference herein and made available for inspection in the offices of the ~~Development-Assistance~~ Community Development Department.

### **B. APPLICATION TO GOVERNMENTAL UNITS**

Unless expressly exempted, this Ordinance shall apply to:

1. **THE CITY OF HENDERSONVILLE**  
Subdivision of land by the City or its agencies or departments.
2. **COUNTY AND STATE GOVERNMENT**  
Subdivision of land by a State or county agency or department, public college or university, or other political subdivision of the State to the full extent permitted by State law, in accordance with the standards in Section 160A-392 160D-913 of the North Carolina General Statutes.
3. **THE FEDERAL GOVERNMENT**  
Subdivision of land owned by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the Federal government exempted from these regulations, compliance is strongly encouraged.

### **C. APPLICATION TO BONA FIDE FARMS**

Unless exempted in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes, the standards and requirements in this Ordinance shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

### **D. NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAW**

1. **NO USE OR OCCUPANCY**  
No person shall use, occupy, or divide any land or authorize or permit the use, occupancy, or division of land under their control, except in accordance with this Ordinance and all other applicable City, State, and federal regulations.
2. **NO SALE OR TRANSFER**  
No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met and the plat has been recorded in the Henderson County Register of Deeds Office, except as authorized by Section ~~160A-375~~ 160D-807 of the North Carolina General Statutes. Building permits may be denied for lots that have been illegally subdivided.
3. **NO RECORDING WITHOUT PRIOR APPROVAL**  
No subdivision plat subject to this Ordinance shall be filed or recorded by the Register of Deeds of Henderson County until it has been approved in accordance with this Ordinance, and evidence of such approval is entered on the plat by the City.
4. **NO BUILDING PERMIT OR UTILITIES WITHOUT PRIOR APPROVAL**  
No building permits shall be issued for development, nor shall public utilities or services be extended to serve land in a subdivision that is subject to these standards until a plat has been approved in accordance with this Ordinance.

## ARTICLE 1: GENERAL PROVISIONS

### Section 1.06 Exemption from this Ordinance

#### 5. NO DOUBLE COUNTING OF REQUIRED AREAS

No land area or other required space counted as part of a required yard, setback, lot area, or similar feature of one lot may be counted towards the requirements of another lot.

#### E. MINIMUM REQUIREMENTS

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

#### F. NO ABROGATION OF EXISTING SUBDIVISIONS

This Ordinance shall not repeal, abrogate, annul, impair, or interfere with any lawfully established subdivisions plats recorded in the Office of the Register of Deeds of Henderson County prior to March 5, 2020.

### SECTION 1.06. EXEMPTION FROM THIS ORDINANCE

~~The division of land into parcels as part of a probated will or in accordance with the intestate succession provisions of Chapter 29 of the North Carolina General Statutes shall be exempted from this Ordinance. Subdivisions of land excluded from subdivision authority pursuant to N.C.G.S. Section 60D-802()(1)-(5) are exempt from the requirements of this Ordinance. (Ref Section 2.04E Exempt Subdivision)~~

### SECTION 1.07. RELATIONSHIP TO OTHER LAWS AND POLICIES

#### A. ADOPTED POLICY GUIDANCE

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the City's adopted policy guidance. The City's adopted policy guidance includes, but is not limited to:

1. The 2030 Comprehensive Plan;
2. The Parks and Greenspace Plan;
3. The Pedestrian Plan;
4. The Bicycle Plan; and
5. Any other applicable City-adopted policy language.

#### B. ADOPTED ORDINANCES

These regulations shall be administered in accordance with the City's adopted Code of Ordinances, including the Zoning Ordinance.

#### C. COVENANTS AND DEED RESTRICTIONS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements; however such private agreements shall not be effective to abrogate or lessen any standards or requirements of this Ordinance.

D. Vested Rights. This Ordinance, and any amendments to this Ordinance, are not intended to repeal, supersede, annul, impair, or interfere with any or vested rights established by operation of common law, the North Carolina General Statutes, or Chapter 40 of the Hendersonville City Code of Ordinances, provided such agreements or vested rights were lawfully established and remain in effect.

### SECTION 1.08. CONFLICT

#### A. CONFLICTS WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

#### B. CONFLICTS WITH OTHER CITY CODES OR LAWS

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the City, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise.

**C. CONFLICTS BETWEEN THE STANDARDS IN THIS ORDINANCE OR OTHER CODES OR ORDINANCES**

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**1. GENERALLY**

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control. Where the terms of this Ordinance conflict with the terms of a provision in any other Code, ordinance, regulation or policy adopted by the City, the more restrictive standard shall control. ~~Section 1.09 Transitional Provisions~~

**2. AUTHORIZED DEVIATIONS OR INCENTIVES**

Development configured in accordance with an allowable deviation or incentive authorized by this Ordinance or by the City Code of Ordinances shall not be considered to conflict with the standards in this Ordinance.

**D. DETERMINATION OF THE MORE RESTRICTIVE STANDARD**

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The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

**SECTION 1.09. TRANSITIONAL PROVISIONS**

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The standards in this section address existing violations, nonconformities, and applications in process at the time this Ordinance is adopted.

**A. PRIOR VIOLATIONS**

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Violations of the previous subdivision ordinance shall continue to be violations under this Ordinance, unless the development complies with this Ordinance and is no longer considered to be in violation, or the ability to address the violation has lapsed.

**B. EXISTING NONCONFORMING LOTS**

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If any lot legally existed on March 5, 2020, but does not fully comply with the standards of this Ordinance, the lot is considered nonconforming under this Ordinance and shall comply with the applicable requirements for nonconforming lots in the Zoning Ordinance.

**C. PRIOR DEVELOPMENT APPROVALS**

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1. Any development approvals granted before March 5, 2020 shall remain valid until their expiration date.
2. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the standards in effect at the time of approval, provided the approval is valid and has not expired.
3. If an approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent subdivision of the site shall be applied for in accordance with the procedures and standards of this Ordinance.
4. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required City, State, or federal permits or approvals.
5. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.
6. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the applicable provisions for nonconformities in the Zoning Ordinance.

**D. PENDING APPLICATIONS AND PERMIT CHOICE**

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**1. COMPLETE APPLICATIONS**

a. Applications accepted as complete prior to March 5, 2020 may be decided in accordance with either the regulations in effect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant.

b. Applications accepted as complete prior to an amendment to this Ordinance may be decided in accordance with either the regulations in effect at the time the application was determined

complete or this Ordinance as amended, as requested by the Applicant.

- c. For purposes of this Ordinance, if an Applicant has submitted any other complete application for a development permit under any land development regulation (State or local) within the eighteen (18) months prior to the submission of a complete application for approval under this Ordinance, the Applicant may choose to proceed under the terms of this Ordinance in effect as of the date of the submission of the completed application for such other land development regulation or this Ordinance as amended, at the request of the Applicant.
- d. For the avoidance of doubt, the terms of N.C.G.S. Section 143-755 and Section 160D Section 108 shall govern permit choice for all pending applications, whether completed or not. To the extent that anything herein conflicts with either of the North Carolina General Statutes, the North Carolina General Statutes shall control.

## **2. SUBMITTED, BUT NOT COMPLETE APPLICATIONS**

- a. Applications that have been submitted prior to March 5, 2020 but not determined to be complete by the ~~Development Assistance~~Community Development Department as of that date shall be reviewed and decided in accordance with this Ordinance.
- b. Applications that have been submitted prior to the effective date of an amendment to this Ordinance but which have not been determined to be complete by the Community Development Department as of the effective date of the amendment shall be reviewed and decided in accordance with this Ordinance as amended.

## **SECTION 1.10. VESTED RIGHTS**

Vested rights under this Ordinance shall be established only in accordance with Chapter 40 of the City Code of Ordinances Section 1.11 Severability

### A. BUILDING PERMIT

The issuance of a building permit establishes a vested right to development in accordance with Sections 160A-385.1 160D-102; 108; 108.1 of the North Carolina General Statutes, as long as the building permit complies with the terms and conditions of approval of that building permit.

### B. COMMON LAW VESTING

A common law vested right is established only when the following can be demonstrated by the landowner:

- 1. There is an affirmative governmental act by the City in the form of an approval of a permit or development approval under this Ordinance; and
- 2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and
- 3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.

### C. STATUTORY VESTING

A statutory vested right is the right to complete a development project in accordance with the rules in place at the time the application was approved. Development approvals, other than building permits, site-specific development plans, and multi-phase development plans are statutorily vested for a period of one year after their approval.

### D. SITE SPECIFIC DEVELOPMENT PLAN

- 1. A site-specific development plan is automatically vested for a period of two years after its approval, but may be subject to a maximum vesting period of up to five years. When deciding an application for a site-specific development plan, the review authority may make a determination on the vesting period. In the event the approval does not specifically grant a vesting period for longer than two years, the default vesting period shall be a two years from the date of the approval.
- 2. For the purposes of this Ordinance, a major subdivision Major Subdivision shall be considered a

~~site-specific development plan.~~

- ~~3. Only those development approvals subject to an approved master plan as part of the initial approval may take advantage of the seven-year vesting period associated with a multi-phase development plan.~~

#### E. PRIOR VESTING

~~Amendments, supplements, repeals, or other changes in subdivision regulations shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits, multi-phased development approvals, or vested rights certificates have been issued (pursuant to State law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, or approval remain valid and unexpired.~~

#### **SECTION 1.11. SEVERABILITY**

- A.** The legislative intent of the City Council in adopting this Ordinance is that all provisions shall regulate development in accordance with the existing and future needs of the City as established in this Ordinance, and promote the public health, safety, and general welfare of the landowners and residents of Hendersonville. If any section, subsection, sentence, boundary, or clause of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.
- B.** The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, boundary, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, boundaries, clauses, or phrases are declared invalid.

#### **SECTION 1.12. ADMINISTRATIVE DECISIONS**

It is the intent of the City Council that all determinations and development approvals made pursuant to this Ordinance by City Staff and by the Planning Board be Administrative Decisions. Where the application of standards or requirements in this Ordinance as part of a development approval (excluding variances or decisions made pursuant to an appeal) require a level of discretion that requires their consideration in a quasi-judicial proceeding, governed by N.C.G.S. Section 160D-406, as required by N.C.G.S. Section 160D-1403 or Section 160D-102(28), then the application shall be forwarded to the City Council to hold an Evidentiary Hearing. The Evidentiary Hearing before City Council shall be limited to a determination of whether the application meets the discretionary standards and requirements only. The Evidentiary Hearing by City Council shall be held in the manner and in accordance with the requirements of a Subdivision Variance found in Section 2.04 J. Following the Evidentiary Hearing by City Council, the application shall proceed in accordance with the procedure specified herein for the determination of compliance with the remainder of the standards and requirements by City staff or the Planning Board, as appropriate.

# ARTICLE 2: PROCEDURES

## SECTION 2.01. HOW TO USE THIS SECTION

### A. ARTICLE ORGANIZATION

1. This article includes all the subdivision application review provisions, and is comprised of the following sections:
  - a. A section setting out the summary table of subdivision review procedures;
  - b. A section explaining how subdivision applications are processed under this Ordinance;
  - c. A section that describes the specific review procedures and the criteria used in evaluating applications submitted under this Ordinance;
  - d. A section that addresses performance guarantees in cases where an applicant seeks to transfer land or obtain a building permit before completing all required steps in the subdivision process; and
  - e. A section addressing payment of a fee in-lieu of providing required development features.
2. The summary table in Section 2.02, Summary Table, describes all the specific development application review procedures in this Ordinance and the review authorities who decide them.
3. Section 2.03, Application Processing, describes the common procedures, or the set of common development review procedures that apply to every type of development application. For example, the pre-application conference, application submittal, application completeness determination, staff review and report, public notification, public meeting or hearing procedures, and notification of decision steps are essentially identical for each type of development application, and as such, are listed only once in this Ordinance. In some cases, there are minor deviations from the common procedures for some types of development review applications. These deviations are noted in the specific review procedures section.
4. Section 2.04, Review Procedures, describes the steps in each type of application review process, the review criteria specific to that type of procedure, and any other provisions that apply in addition to or instead of the common procedures.

### B. STEPS IN THE REVIEW PROCESS

An applicant seeking development approval under this Ordinance should first consult the summary table of subdivision review procedures to determine which review authorities are involved with the application. Then, an applicant should review the application processing section to understand the steps in the application process. Finally, an applicant should review the individual specific procedure related to their application type.



**SECTION 2.02. SUMMARY TABLE**

Table 2.02, Summary Table, lists each of the review procedures under this Ordinance and the review authority (ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in rows down the side. Cells in the middle show actions taken by a particular review authority as part of the review process. Blank cells ("") indicate that a particular review authority has no role in the particular procedure.

**TABLE 2.02: SUMMARY TABLE**

Type of Action: A=Appeal; D=Decision; R= Recommendation

Pre-Application Conference: M=Mandatory; O=Optional; N/A=Not Applicable

Type of Hearing: / /= Public Meeting; { }=Quasi-judicial Public Hearing

PROCEDURE	SECTION #	PRE-APP. CONFERENCE	REVIEW AUTHORITIES				
			CITY MANAGER [1]	DRC [2]	PLANNING BOARD	CITY COUNCIL	BOA[3 Or SC[5]
Administrative Adjustment	<a href="#">Section 2.04.B</a>	O	D	.	.	.	{A} [3]
Appeal	<a href="#">Section 2.04.C</a>	O	.	.	.	.	{A D } [3] [5]
Conservation Subdivision	<a href="#">Section 2.04.D</a>	M	D [4]	.	.	.	{A} [3] [5]
Exempt Subdivision	<a href="#">Section 2.04.E</a>	N/A	D	.	.	.	{A} [3]
Expedited Subdivision	<a href="#">Section 2.04.F</a>	N/A	D	.	.	.	{A} [3]
Final Plat	<a href="#">Section 2.04.G</a>	N/A	D	.	.	.	{A} [3]
Major Subdivision	<a href="#">Section 2.04.H</a>	M	.	R	/D/	.	[53]
Minor Subdivision	<a href="#">Section 2.04.I</a>	O	D	.	.	.	{A} [3]
Subdivision Variance	<a href="#">Section 2.04.J</a>	M	.	.	.	.	{D} [5]

**NOTES:**

[1] The City Manager may delegate any task or duty to a professional-level City staff member in accordance with [Section 8.01.I, Delegation of Authority](#).

[2] DRC = Development Review Committee.

[3] BOA = [Appeals from staff determinations shall be decided by the Board of Adjustment, or alternatively may be decided by the Henderson County Superior Court for Henderson County pursuant to legal action if allowed by N.C.G.S. Section 160D-1403.1.](#)

[4] Follows the procedure for a ~~major-subdivision~~ [Major Subdivision](#) following approval of a conservation and development plan by the City Manager.

[5] ~~Appeals of a Administrative decision-Decision by a City review authority the Planning Board shall be subject to review by the made to the Superior Court for Henderson County in accordance with all applicable state laws-N.C.G.S. Sections 160D-808 and 160D-1403. Appeals from decisions made by the BOA shall be decided by the Superior Court for Henderson County pursuant to N.C.G.S. Section 160D-1402, or a legal action may be filed pursuant to N.C.G.S. Section 160D-1403.1, as applicable.~~

**SECTION 2.03. APPLICATION PROCESSING****A. PURPOSE AND INTENT**

This section establishes the rules used by the City for processing subdivision applications. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, City residents, City staff, and elected and appointed officials during the review of subdivision applications.

**B. CONFLICT WITH SPECIFIC PROCEDURES**

In instances where there are conflicts between the standards in this section and the standards in Section 2.04, Review Procedures, the standards in Section 2.04, Review Procedures, shall control.

**C. PRE-APPLICATION CONFERENCE****1. PURPOSE**

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular application prior to undertaking its preparation. A pre-application conference is also an opportunity for City staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

**2. APPLICABILITY****a. PRE-APPLICATION CONFERENCE REQUIRED**

A pre-application conference between the applicant and City staff is required before submittal of applications subject to a mandatory pre-application conference as identified in Table 2.02, Summary Table.

**b. PRE-APPLICATION CONFERENCE OPTIONAL**

A pre-application conference is recommended but not required before submittal of applications subject to an optional pre-application conference as identified in Table 2.02, Summary Table.

**c. DISCUSSIONS NON-BINDING**

Discussions at a pre-application conference are not binding on the City and do not constitute submittal or review of an application.

**3. SCHEDULING**

Applicants shall contact the ~~Development Assistance~~ Community Development Department to schedule a pre-application conference.

**4. FEES**

- a. The initial pre-application conference is free of charge.
- b. Any subsequent pre-application conferences associated with the same application require payment of a pre-application fee in accordance with the City's fee schedule.

**D. APPLICATION FILING AND ACCEPTANCE****1. AUTHORITY TO FILE APPLICATIONS**

Unless expressly stated otherwise in this Ordinance, applications for development approvals reviewed under this Ordinance shall may be filed by the landowner(s), a lessee, or person holding an option or contract to purchase or lease land, or other person having a recognized property interest in the land proposed for subdivision an authorized agent of the landowner(s). An easement holder may also apply for development approval if authorized by easement. Applications by any person other than the landowner(s) shall require the written consent of the landowner(s). The form of such written consent shall be approved by the City Attorney.

**2. APPLICATION FORMS**

Application forms are maintained by the ~~Development Assistance~~ Community Development Department.

**3. APPLICATION FEES**

The City Council shall establish application fees, which shall be identified in the City's adopted fee schedule.

#### 1.4. FILING AND REVIEW SCHEDULE

Applications shall be filed in accordance with the City's application review schedule.

#### 2.5. COMPLETENESS DETERMINATION

- a. On receiving a development application, the City Manager shall determine, within seven days from the date of filing, whether the application is complete or incomplete. The City Manager shall send a written notice to the applicant(s), and to the landowner(s) if the applicant is not the landowner(s), confirming the date that the application is complete. Such notice may be delivered by electronic mail, regular US Mail, or by personal delivery.
- b. A complete application is one that:
  - i. Contains all information and materials required for submittal of the particular type of application;
  - ii. Is in the form and number of copies required by the City;
  - iii. Is legible and printed to scale (where appropriate);
  - iv. Is signed by the person(s) with the authority to file the application;
  - v. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
  - vi. Is accompanied by the fee established for the particular type of application; and
  - vii. Does not precede a pre-application conference, if one is required.
- c. Only applications determined to be complete shall be considered submitted.

#### 3.6. APPLICATION INCOMPLETE

If the application is incomplete, the City Manager shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Section 2.03.D.5, Completeness Determination.

#### 4.7. APPLICATION SUBMITTED

On determining that the application is submitted, the City shall commence review in accordance with the procedures and standards of this Ordinance.

### F.E. STAFF REVIEW AND ACTION

#### 1. STAFF REVIEW

- a. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
- b. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, in accordance with City policy.
- c. In considering the application, the designated review authority shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- d. If deficiencies in complying with applicable standards of this Ordinance are identified, the designated review authority shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

#### 2. APPLICATIONS SUBJECT TO DECISION BY CITY STAFF

- a. In cases where an application is decided by the City Manager, the City Manager shall approve or disapprove the application based on the review standards set forth in this Ordinance.
- b. Decisions on applications made by City staff shall be provided within a reasonable timeframe.

#### 3. CONFLICTS OF INTEREST FOR CITY STAFF

- a. No staff member shall make a final decision on an aAdministrative dDecision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a

## ARTICLE 2: PROCEDURES

- staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.
- b. No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.
- c. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.
- d. For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

### G.F. PUBLIC NOTIFICATION

#### 1. PUBLIC MEETINGS

All public meetings of the Planning Board or the Zoning Board of Adjustment shall comply with the notice requirements of the North Carolina Open Meetings Law, in addition to the notice requirements imposed by Chapter 160D of the North Carolina General Statutes or this Ordinance for an administrative or eEvidentiary hHearing contained in Section 2.03.F.3, below, Public Notification..

#### 1.2. PUBLIC HEARING SCHEDULING AND NOTIFICATION (PRE-HEARING)

When an application is subject to an administrative public hearing by the planning board, or an eEvidentiary hHearing by the Zoning Board of Adjustment, the designated review authority shall ensure that the public hearing shall be held at a scheduled for a regular public meeting or a public meeting specially called for that purpose by the appropriate review authority.

#### 2.3. PUBLIC NOTIFICATION

Public notification of aAll applications subject to public notification requirements by State law shall comply with thell Administrative hHearings of the Planning Board shall comply with the standards in Section ~~160A-364~~ 160D-601 for published notice, ~~160A-384(a)~~ 160D-602 for mailed notice, and ~~160A-~~

- a. ~~384(e)~~ for posted notice in the North Carolina General Statutes. ~~In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.~~
- b. Public notification of all eEvidentiary hHearings by the Zoning Board of Adjustment shall comply with N.C.G.S. Section 160D-406.
- c. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.
- d. The person(s) mailing, advertising, and/or posting the notices shall provide a certification to the reviewing authority that the requirements of this Section 2.03.F.3, Public Notification, were complied with.

### 3.4. NOTICE CONTENT

Unless expressly indicated otherwise, all notices by mail or publication shall:

- a. Identify the date, time, and place of the public hearing;
- b. Describe the land involved by county parcel identification number (PIN), street address, or by its relationship to a fronting street and the nearest cross street (if applicable);
- c. Describe the nature and scope of the proposed development or action; and
- d. Identify the means to contact a City official for further information.

### 4.5. CONSTRUCTIVE NOTICE

- a. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
  - i. Errors such as landowner name, title, or address existing in the county tax listing; or
  - ii. Typographical or grammatical errors that do not impede communication of the notice to affected parties.
- b. Failure of a party to receive mailed written notice shall not invalidate subsequent action provided the notice was duly deposited in the United States Mail. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.

### H.G. PUBLIC MEETING AND HEARING

The standards in this section set out the procedures for public meetings to conduct an ~~a~~ Administrative hHearing or a ~~and~~ quasi-judicial public ~~evidentiary~~ Evidentiary hearingsHearings.

#### 1. PUBLIC MEETINGS FOR ADMINISRATIVE HEARINGS

Table 2.02, Summary Table, identifies the kinds of applications decided following a public meeting, which shall be conducted in accordance with the following requirements:

##### a. PROCEDURE

- i. Public meetings ~~do not require public notification in accordance with Section 2.03.F, Public Notification. The City may provide some form of public notification, but is not legally bound to do so. Failure of the City to provide public notification for a public meeting shall not invalidate the proceedings or decision.~~ shall comply with the notice requirements of Section 2.03.F., above.
- ii. A public meeting shall be open to the public and shall be conducted in accordance with the Planning Board's adopted rules of procedure for ~~public meetings~~ Administrative hHearings.
- iii. There is no requirement to allow general public comments ~~or testimony during during~~ a public meeting, though it may be allowed by the Chair or other presiding officer. However public input and comment shall be allowed as required by applicable laws, the standards of this Ordinance, and the Planning Board's adopted rules of procedure. ~~though it may be allowed by the Chair or other presiding officer.~~

##### b. VOTING

- i. A decision of the Planning Board on an application shall be decided by a simple majority of the Planning Board, excluding any members who are recused from voting due to a

conflict of interest.

- ii. A Planning Board member shall recuse themselves from voting on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on them or ~~a member of their immediate family~~the applicant or other person subject to the decision is a person with whom the Planning Board member has a close familial, business, or other associational relationship, in accordance with Section ~~160A-381(d)~~ 160D-109(c) of the North Carolina General Statutes.

~~iii.~~

c. APPLICATION REVISION

- i. An applicant may revise an application during a public meeting in response to recommendations or suggestions of the Planning Board.

The Planning Board may approve an application modified during a public hearing provided that all changes are properly identified in the motion of approval.

ii.

~~Section 2.03 Application Processing~~

- ~~ii.~~ In cases where an application has been modified during a public meeting, the applicant shall submit any necessary plats or other documents depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

## d. RECORD

- i. A recording may be made of all public meetings and the recordings shall be maintained in accordance with City policy.
- ii. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

2. PUBLIC MEETINGS FOR QUASI-JUDICIAL ~~PUBLIC EVIDENTIARY~~ HEARINGS

Table 2.02, Summary Table, identifies the kinds of applications decided following a quasi-judicial ~~public evidentiary~~ Evidentiary hearingHearing, which shall be conducted in accordance with State law, the Board of Adjustment's rules of procedure, and the following requirements:

a. ~~PROCEDURE~~ NOTICE REQUIRED

- i. Public meetings shall comply with the notice requirements of Section 2.03.F., above.
- ii. A public meeting shall be open to the public and shall be conducted in accordance with the Zoning Board of Adjustment's adopted rules of procedure for eEvidentiary hHearings.
- iii. Public participation in the eEvidentiary hHearings shall be governed by the requirements of N.C.G.S. Section 160D-406.

~~Quasi-judicial public evidentiary hearings shall not be conducted until after provision of required public notification in accordance with Section 2.03.F, Public Notification.~~

## b. VOTING

## I. GENERALLY

The Board of Adjustment shall consider the application, relevant support materials, staff report, evidence, any recommendations, and ~~public comments~~ testimony received. After the conclusion of the ~~public evidentiary~~ Evidentiary hearingHearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section 2.04, Review Procedures.

## II. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision. A written decision shall be prepared and approved by the Zoning Board of Adjustment in accordance with the requirements of N.C.G.S. Section 160D-406.

## III. CONFLICTS OF INTEREST

A Board of Adjustment member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

## c. APPLICATION REVISION

- i. An applicant may revise an application during an ~~public evidentiary~~ Evidentiary hearingHearing in response to recommendations or suggestions of the Board of Adjustment.
- ii. The Board of Adjustment may approve an application modified prior to or during a ~~public evidentiary~~ Evidentiary hearingHearing provided all changes are properly identified in the motion of approval by the review authority.
- iii. In cases where an application has been modified during a ~~public evidentiary~~ Evidentiary hearingHearing, the applicant shall submit any necessary plats or other documents

## ARTICLE 2: PROCEDURES

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depicting the modification to the appropriate City staff prior to issuance of any development permit approvals.

### d. RECORD

- i. A recording ~~may~~ shall be made of all ~~public evidentiary~~ ~~Evidentiary hearings~~ ~~Hearings~~ and the recordings shall be maintained in accordance with City policy.  
~~Section 2.03 Application Processing~~
- ii. Accurate minutes summarizing the testimony and evidence received shall also be kept of all proceedings, but a transcript need not be made.



I.H. EFFECT

## 1. APPROVAL LIMITED

Approval of an application in accordance with this Ordinance authorizes only the specific activity approved.

## 2. PERMIT PREREQUISITE

In the event an approval is a prerequisite to another permit or approval (e.g., ~~administrative adjustment~~ Administrative Adjustment or ~~variance~~ Variance approval prior to a ~~major-subdivision~~ Major Subdivision approval), development may not take place until all prerequisite approvals are obtained. Approval of one application does not guarantee approval of any subsequent applications.

I.I. CONTINUANCE OR WITHDRAWAL

An applicant may request that a review authority's consideration of an application be continued, postponed, or withdrawn by submitting a written request to the appropriate review authority.

1. PROCEDURE FOR APPLICATIONS SUBJECT TO A PUBLIC MEETING OR EVIDENTIARY HEARING

- a. In cases where an applicant seeks a continuance of an application subject to a public meeting or ~~evidentiary~~ Evidentiary hearing~~Hearing~~, but public notification of the meeting or ~~evidentiary~~ Evidentiary hearing~~Hearing~~ has not yet been provided, the designated review authority processing the application shall consider and decide the request.
- b. If public notification of the pending public meeting or ~~evidentiary~~ Evidentiary hearing~~Hearing~~ has been provided in accordance with this Ordinance prior to the request for the continuance of an application. The request for continuance shall be placed on the agenda and be considered by the review authority. Additional public notification shall not be required.
- c. A request for continuance may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the City's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

## 2. WITHDRAWAL

An applicant may withdraw an application at any time.

J. NOTIFICATION OF DECISIONS, APPROVALS, AND DETERMINATIONS

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

1. ADMINISTRATIVE DECISIONS, DEVELOPMENT APPROVALS AND DETERMINATIONS BY STAFF

Written notice of aAdministrative dDecisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the Aadministrative Ddecision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the aAdministrative dDecision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.

2. ADMINISTRATIVE DECISIONS, DEVELOPMENT APPROVALS AND DETERMINATIONS BY THE PLANNING BOARD

Written notice of aAdministrative dDecisions, development approvals and determinations made by the Planning Board shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b) as required by N.C.G.S. Section 160D-1403(b). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the aAdministrative dDecision, development approvals and determinations made by the Planning Board shall not be required, but is recommended in order to provide constructive notice to the public of the aAdministrative dDecision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing

that the required notices were given.

**3. DECISIONS REGARDING EVIDENTIARY HEARINGS BY THE ZONING BOARD OF ADJUSTMENT**

A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment following an evidentiary hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

**SECTION 2.04. REVIEW PROCEDURES****A. HOW TO USE THIS SECTION**

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**1. GENERALLY**

This section sets out the standards and related procedural information for each of the specific development application types listed in Table 2.02, Summary Table. Section 2.03, Application Processing, establishes the generic steps in the application process used for all application types. Applicants should review both sections - application processing in its entirety, and the relevant review procedure in this section in order to understand all the applicable requirements.

**2. STRUCTURE OF REVIEW PROCEDURES**

- a. The review procedures in this section are listed in alphabetical order.
- b. Each review procedure follows a standardized format, comprised of the following subsections:
  - i. Purpose for the procedure;
  - ii. Applicability and any types of development exempted from the procedure;
  - iii. The steps in the review process;
  - iv. The review standards;
  - v. How the approved application may be amended (if applicable);
  - vi. How the approval may expire; and
  - vii. How decisions on an application are appealed.
- c. In addition to the standard subsections described above, a review procedure may also include additional standards or requirements unique to the particular application type.

**3. PROCEDURAL FLOWCHART**

- a. The steps in the process for each review procedure are set out in the procedural flowchart associated with the procedure. The procedural flowchart uses a numbered block for each step in the process with text inside the block describing the step in greater detail. Some blocks may include cross references to other parts of the Ordinance.
- b. The procedural flowchart is color coded to depict differing responsibilities. For example, white blocks indicate actions or responsibilities of the applicant. Blocks surrounded by dashed lines show optional steps an applicant may choose to undertake. Light grey blocks indicate actions of City staff. Dark grey blocks show the portion of the process where the decision is made.
- c. Applicants seeking greater detail on the steps in the review process should conduct a pre-application conference or consult with the ~~Development Assistance~~ Community Development Department.

## B. ADMINISTRATIVE ADJUSTMENT

## 1. PURPOSE

The purpose for the ~~administrative—adjustment~~ Administrative Adjustment procedure is to establish a clear procedure and measurable review criteria for the consideration of requests for minor deviations to numeric standards in this Ordinance. The intent of the procedure is to provide minor relief without a ~~variance~~ Variance where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance. It is the intent of this procedure that an ~~administrative—adjustment~~ Administrative Adjustment request only be granted in cases where the adjustment allows the proposed development to maintain compatibility with its surroundings or where the approval does not result in development that substantially deviates the City's adopted policy guidance.

## 2. APPLICABILITY

- a. Except where otherwise prohibited, an ~~administrative—adjustment~~ Administrative Adjustment may be requested for a modification or deviation to any numeric requirement in this Ordinance.
- b. In no instance shall an ~~administrative—adjustment~~ Administrative Adjustment application seek to reduce any of the following:
  - i. The required minimum lot area in a zoning district;
  - ii. The maximum allowable residential density on a lot;
  - iii. Riparian buffer requirements;
  - iv. Standards associated with flood damage prevention;
  - v. Requirements associated with stormwater control; or
  - vi. Standards associated with erosion control.
- c. ~~Administrative adjustments~~ Administrative Adjustments are not required for conservation subdivisions, provided that the conservation subdivision complies with all applicable requirements in this Ordinance.

## 3. ADMINISTRATIVE ADJUSTMENT AMOUNT

An ~~administrative—adjustment~~ Administrative Adjustment may allow a deviation from a numeric standard by up to 10 percent unless a different amount is explicitly stated elsewhere in this Ordinance.

## 4. ADMINISTRATIVE ADJUSTMENT PROCEDURE

## a. APPLICATION TIMING

- i. An administrative adjustment may be requested either as a stand-alone application, or in combination with another review procedure except for a subdivision ~~variance~~ Variance.
- ii. In cases when submitted with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

Figure 2.04.B: Administrative Adjustment Procedure

STEP	ACTION
<b>1</b>	<b>PRE-APPLICATION CONFERENCE</b> Optional
<b>2</b>	<b>FILE APPLICATION</b> Filed with Development Assistance Department - May be a standalone application or submitted along with another application
<b>3</b>	<b>COMPLETENESS DETERMINATION</b> See Section 2.03.D.5, Completeness Determination
<b>4</b>	<b>CITY MANAGER REVIEW AND DECISION</b> Decision shall be made in writing
<b>5</b>	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
<b>6</b>	<b>PROCESS RELATED APPLICATIONS</b> As appropriate

b. PRE-APPLICATION CONFERENCE

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Optional (see Section 2.03.C, Pre-application Conference).

c. APPLICATION SUBMITTAL

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- i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
  - ii. In cases where a pre-application conference is conducted, the application shall include the date it was conducted.
- d. STAFF REVIEW AND ACTION
  - i. Applicable (see Section 2.03.E, Staff Review and Action).
  - ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
  - iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and decide the application in accordance with Section 2.04.B.5, Administrative Adjustment Review Standards.

#### 5. ADMINISTRATIVE ADJUSTMENT REVIEW STANDARDS

An administrative adjustment may be approved if the applicant demonstrates all of the following:

- a. The ~~administrative adjustment~~ Administrative Adjustment is consistent with the type and thresholds for an ~~administrative adjustment~~ Administrative Adjustment established in this section;
- b. The development, following application of an ~~administrative adjustment~~ Administrative Adjustment, is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;
- c. The ~~administrative adjustment~~ Administrative Adjustment:
  - i. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
  - ii. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
  - iii. Is necessary to allow for proper functioning of infrastructure; or
  - iv. Saves healthy existing trees; or
  - v. Preserves environmentally sensitive lands; or
  - vi. Will not result in development that is contrary to the City's adopted policy guidance, in the sole discretion of the City Manager;
- d. The ~~administrative adjustment~~ Administrative Adjustment will not pose a danger to the public health or safety;
- e. Adverse impacts resulting from the ~~administrative adjustment~~ Administrative Adjustment will be fully mitigated; and
- f. The development standard being adjusted is not the subject of a previously approved ~~administrative adjustment~~ Administrative Adjustment or condition of approval on the same site.

#### 6. EFFECT

Approval of an ~~administrative adjustment~~ Administrative Adjustment application allows consideration of any concurrent and related applications.

#### 7. AMENDMENT

Amendment of an ~~administrative adjustment~~ Administrative Adjustment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### 8. EXPIRATION

If an ~~administrative adjustment~~ Administrative Adjustment is associated with another permit or development approval, the expiration of the administrative adjustment shall be the same as the permit or development approval with which it is associated.

#### 9. APPEAL

Appeal of a decision on an ~~administrative adjustment~~ Administrative Adjustment shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section 2.04.C, Appeal.

## C. APPEAL

## 1. PURPOSE

This appeal procedure is proposed to establish a clear and predictable procedure for persons with standing to appeal a decision or interpretation of this Ordinance by a review authority.

## 2. APPLICABILITY

- a. This section sets out the procedure and standards for appealing certain decisions or interpretations by the City Manager and City staff as identified in Table 2.02, Summary Table in accordance with N.C.G.S. Section 160D-405 and Section 160D-406. To the extent that this section conflicts with or omits requirements of Section 160D-405 or 160D-406, Section 160D-405 and Section 160D-406 shall control.
- b. Appeals of decisions made by the City Council~~Planning Board~~, or BOA, and some decisions by City officials shall be to the Superior Court for Henderson County, in accordance with Table 2.02, Summary Table, and applicable State law, including but not limited to N.C.G.S. Sections 160D-808, 160D-1402, 160D-1403, and 160D-1403.1.

## 3. INITIATION

- a. An appeal of a an aAdministrative dDecision, development approval or determination rendered by the City Manager or other City staff by the applicant or landowner(s) (if different from the applicant) shall be initiated by filing a written notice of appeal with the City ManagerCommunity Development Director within 30 days of thedate the decision being appealed is filed in the office of thereceipt of the written notice of determination from the Development—Assistance Community Development Department, required pursuant to .Section 2.03.K.1.
- b. An appeal of a an aAdministrative dDecision, development approval or determination rendered by the City Manager or other City staff by someone with standing, other than the applicant or landowner(s) (if different from the applicant) shall be initiated by filing a written notice of appeal with the Community Development Director within 30 days of receipt of any sort of actual of constructive notice of determination from theDevelopment—Assistance Community Development Department.
- c. Notice given by first class mail shall be

Figure 2.04.C: Appeal Procedure

STEP	ACTION
<b>1</b>	<b>PRE-APPLICATION CONFERENCE</b> Optional
<b>2</b>	<b>FILE NOTICE OF APPEAL</b> Filed with <del>Development Assistance</del> <u>Community Development</u> Department
<b>3</b>	<b>COMPLETENESS DETERMINATION</b> See Section 2.03.D.5, Completeness Determination Application shall include - Error/decision being appealed - Date of error/decision - Grounds for appeal - All related support material
<b>4</b>	<b>STAFF REVIEW</b>
<b>5</b>	<b>PUBLIC NOTICE</b> See Section 2.03.F, Public Notification
<b>6</b>	<b>BOA REVIEW AND DECISION</b> Quasi-judicial <del>public evidentiary</del> <u>Evidentiary hearingHearing</u> - Decision shall be made in writing
	<b>NOTIFICATION OF DECISION</b>

deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

#### **4. APPEAL PROCEDURE**

##### **a. PRE-APPLICATION CONFERENCE**

Optional (see Section 2.03.C, Pre-application Conference).

##### **b. APPLICATION SUBMITTAL**

- i.** Applicable (see Section 2.03.D, Application Filing and Acceptance).
- ii.** The written notice of appeal shall include a statement of the error or improper decision, the date of the decision or interpretation, the grounds for the appeal, and all related support materials.

##### **c. STAFF REVIEW**

- i.** Applicable (see Section 2.03.E, Staff Review and Action).
- ii.** On accepting a notice of appeal, the ~~City Manager~~Community Development Director shall transmit to the BOA the record of material considered by the decision-maker in making the decision or interpretation as well as the application for the appeal.

##### **d. PUBLIC NOTICE**

Applicable (see Section 2.03.F, Public Notification).

##### **e. REVIEW AND DECISION BY BOARD OF ADJUSTMENT**

- i.** The BOA, at the conclusion of a quasi-judicial ~~public evidentiary~~Evidentiary hearing Hearing conducted in accordance with N.C.G.S. Section 160D-406 (see Section 2.03.G, Public Meeting and Hearing), shall decide the application for the appeal.
- ii.** The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the ~~quasi-judicial evidentiary~~Evidentiary hearingHearing, and the standards in Section 2.04.C.5, Appeal Review Standards and N.C.G.S. Section 160D-406.



~~Section 2.04 Review Procedures~~

- iii. The decision shall be either affirmation of the decision or interpretation (in whole or in part), modification of the decision or interpretation (in whole or in part), or reversal of the decision or interpretation (in whole or in part).
- iv. A ~~vote to reverse or modify a~~ decision or determination of an appeal by the BOA shall require approval of a majority of a quorum present at the hearing excluding any members who have been recused from voting due to a conflict of interest.
- v. Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance. The decision shall comply with and be approved in accordance with the requirements of N.C.G.S. Section 160D-1402<sup>1</sup>
- vi. The approved written decision shall be signed by the Chair or other duly authorized member of the BOA.
- vii. The decision of the BOA shall be effective upon the filing of the written decision with the Clerk to the BOA, in the office of the appropriate review authority. The written decision shall be delivered as required by Section 2.03.K.3, and certification of such delivery shall be made as required by Section 2.03.K.3.

## 5. APPEAL REVIEW STANDARDS

- a. ~~The BOA is limited to the following determinations in considering the appeal, which shall be based on:~~
  - ~~i. Whether the decision maker erred in the interpretation of this Ordinance; or~~
  - ~~ii. i. Whether the decision maker erred in determining whether a standard of this Ordinance was met. Issues to be decided by the BOA shall be as set out in the Notice of Appeal, or as otherwise raised at the eEvidentiary hHearing by the appellant as allowed by N.C.G.S. Section 160D-406.~~
- b. The BOA shall not hear any evidence or make any decision based on hardships or special conditions except as part of an application for a ~~variance~~ Variance.

## 6. EFFECT

- a. An appeal stays all ~~proceedings enforcement of in furtherance of~~ the action appealed, unless the City Manager certifies to the BOA, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the City Manager's opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance.
- b. If certification by the City Manager is filed, administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.
- c. If the appeal is not stayed, the appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the request is filed.
- d. ~~The filing of an appeal prevents the filing of an application for a rezoning or special use permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.~~

## 7. AMENDMENT

A decision on an appeal shall not be amended.

## 8. EXPIRATION

A decision on an appeal shall not expire; however such decision shall not operate to extend any development approval granted beyond the stay pending the appeal (if there is a stay) together with validity period provided by this Ordinance and applicable law.

## 9. APPEAL

- a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ 160D-1-2; 1402 of the North Carolina General Statutes or may be challenged as otherwise allowed by applicable law.
- b. Petitions for review or other actions challenging a decision of the BOA must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first class mail to the

## ARTICLE 2: PROCEDURES

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~~applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective, brought in the manner and within the time frames specified by N.C.G.S. Sections 160D-1402 and 160D-1405 and other applicable law.~~

## D. CONSERVATION SUBDIVISION

## 1. PURPOSE AND INTENT

The purpose and intent of this section is to provide landowners in certain portions of the City's planning jurisdiction a development option that provides additional development flexibility to build on smaller lots when additional open space set-asides are provided, and the development is designed and located in a way that protects rural character, as well as agricultural activities, or sensitive environmental features on the site. This is done in order to:

- a. Conserve open land, including those areas containing prime agricultural soils, ridgelines, areas of steep slopes, unique and sensitive natural features such as floodplains, wetlands, river and stream corridors, areas with mature hardwood trees, and watersheds;
- b. Promote existing historic and rural character particularly in areas visible from major roadways in the City;
- c. Retain and protect existing wildlife habitat and environmental, natural, and cultural resources;
- d. Create a linked network of open lands; and
- e. Provide reasonable economic use of the land.

## 2. APPLICABILITY

## a. TYPE OF DEVELOPMENT

This conservation subdivision option shall be limited to development of single-family detached residential dwellings on individual lots in subdivisions of more than three lots. The conservation subdivision option shall not be available for any other form of development or use type.

## b. WHERE PERMITTED

Single-family detached residential subdivisions of more than three lots in the R-15, R-20, and R-40 zoning districts may be developed as a conservation subdivision, in accordance with the standards in this section.

## c. WHERE PROHIBITED

The conservation subdivision option is not available for use on land in any of the zoning districts other than R-15, R-20, and R-40 districts.

## 3. CONSERVATION SUBDIVISION PROCEDURE

Development utilizing the conservation subdivision option shall be subject to the requirements for a ~~major-subdivision~~ **Major Subdivision** in accordance with the procedures and standards in Section 2.04.H, Major Subdivision, after approval of a conservation and development plan in accordance with this section.

## 4. CONSERVATION AND DEVELOPMENT PLAN

Prior to review of a ~~major-subdivision~~ **Major Subdivision**, an applicant shall have a conservation and development plan for the land reviewed and approved, or approved with conditions by the City Manager in

Figure 2.04.D: Conservation Subdivision Procedure

STEP	ACTION
<b>1</b>	<b>FILE SITE ANALYSIS MAP</b> Filed with Development Assistance Department - Existing conditions on the site and within 500 feet of the site
<b>2</b>	<b>SITE INSPECTION</b> Conducted with City staff
<b>3</b>	<b>CONSERVATION AND DEVELOPMENT PLAN</b> Includes site analysis map, conservation and development areas map, and preliminary site improvements plan
<b>4</b>	<b>TECHNICAL REVIEW BY CITY STAFF</b>
<b>5</b>	<b>REVIEW AND DECISION BY CITY MANAGER</b> Decision only approves the proposed conservation and development plan
<b>6</b>	<b>FILE APPLICATION FOR MAJOR SUBDIVISION</b> Application shall include the conservation and development Plan

accordance with this the following steps, the standards in Section 2.04.D.5, Conservation Subdivision Review Standards.

**a. STEP 1—SITE ANALYSIS MAP**

The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development and land within 500 feet of the site, and submit the site analysis map ~~to the City Manager~~ to the Community Development Director. It is the intent of this section that the information required to be presented in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

**b. STEP 2—SITE INSPECTION**

After receipt of the site analysis map, the ~~City Manager~~ Community Development Director shall schedule a site inspection of the land with the applicant. The applicant or the applicant's representative shall attend the site inspection with a City staff member. The purpose of this site visit is to:

- i. Familiarize the staff with the existing site conditions and features of the site;
- ii. Identify potential site development issues, including the best location for the development to minimize its visibility from surrounding areas and adjacent major roadways; and
- iii. Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by the staff during the site inspection shall be interpreted as being only suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

**c. STEP 3—CONSERVATION AND DEVELOPMENT PLAN**

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

- i. A site analysis map;
- ii. A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and
- iii. A preliminary site improvements plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area.

**d. STEP 4—REVIEW BY THE DEVELOPMENT REVIEW COMMITTEE**

The Development Review Committee shall review the conservation and development plan and prepare a written recommendation on any suggested revisions for consideration based on the standards in Section 2.04.D.5, Conservation Subdivision Review Standards.

**e. STEP 5—REVIEW AND DECISION BY THE COUNTYCITY MANAGER.**

The City Manager shall review and make an aAdministrative dDecision/determination regarding the conservation and development plan based upon the requirements of this Ordinance. Notice of the aAdministrative dDecision/determination shall be given in accordance with Section 2.03.K.1. If approved, such approval shall only be for the purposes of approving the conservation and development plan. If a conservation and development plan is approved by the City Manager, the applicant shall file an application for a Major Subdivision approval. The processing of and decision regarding the Major Subdivision shall be in accordance with Section 2.4.H. Major Subdivision.

**5. CONSERVATION SUBDIVISION REVIEW STANDARDS**

A conservation subdivision shall comply with the following standards:

**a. LOCATION**

Conservation subdivisions shall be configured to minimize their visibility from adjacent developed lands and major roadways.

b. MINIMUM PROJECT SIZE

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Conservation subdivisions shall be at least two acres in land area.

c. REQUIRED CONSERVATION AREA

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The required conservation area shall occupy at least 50 percent of the total acreage of the conservation subdivision site, but nothing shall limit it from occupying more than 50 percent of a conservation subdivision site.

d. MAXIMUM RESIDENTIAL DENSITY

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A conservation subdivision may establish a maximum residential density that is twice the maximum residential density for lots in the zoning district where located, but in no instance

shall the density of a conservation subdivision exceed the maximum allowable within a designated water supply watershed.

**e. DIMENSIONAL REQUIREMENTS**

Lots in a conservation subdivision may deviate from the minimum dimensional requirements for lots in the zoning district where located, provided:

- i.** No lot frontage is less than 20 feet wide;
- ii.** Building separation between structures on different lots meets or exceeds the minimum applicable Fire Code provisions; and
- iii.** All structures shall comply with required setbacks from streets, wetlands/surface waters, or other protected natural areas.

**f. LAND USED FOR AGRICULTURE**

Nothing shall limit the ability of an owners' association to lease conservation area for the purposes of agriculture.

**6. OWNERSHIP OF CONSERVATION AREAS**

**a. LANDOWNER OR ASSOCIATION**

A conservation area shall be owned jointly or in common by the owners of the development or through a recognized homeowners or property owners association, which shall be established in accordance with Article 6, Owner Associations.

**b. NONPROFIT ORGANIZATION**

The landowners may decide to convey a conservation area to a nonprofit organization such as a land trust or land conservancy for management and maintenance if the City is provided adequate assurance the area will be properly managed and maintained.

**c. DEDICATED TO CITY OR OTHER PUBLIC AGENCY**

In some cases, certain lands designated as conservation areas, such as greenways, may be dedicated to the City, a nonprofit organization, or other public agency during the development review process, at the landowner's discretion. If offered by the landowner, the City Council shall determine whether that land is appropriate for dedication to the City or other public agency.

**7. APPEAL**

Appeal of an aAdministrative dDecision or determination by City staff under this Section 2.04.D., Conservation Subdivision shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal.

## E. EXEMPT SUBDIVISION

## 1. PURPOSE AND INTENT

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes. This review is voluntary on the part of the applicant and is provided by the City as a courtesy.

## 2. APPLICABILITY

- a. Requests for determination of an exempt subdivision by the City in accordance with this section are at the discretion of the landowner proposing the subdivision and shall not be mandated by the City.
- b. The following forms of land division are identified in Section ~~160A-376~~ 160D-802 of the North Carolina Statutes as exempt subdivisions:

~~i. A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance; The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.~~

ii. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

~~iii. Public acquisition involving the purchase of strips of land for the widening or opening of streets; The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.~~

~~iv. Division of a tract of land in single ownership, where the total area of all land in the land division is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance; or The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.~~

~~v. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with Chapter 29 of the North Carolina General Statutes. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.~~

- c. Divisions of land that are not consistent with these criteria shall not be considered exempt subdivisions, and shall be subject to the applicable review procedure and requirements of this

Figure 2.04.E: Exempt Subdivision Procedure

STEP	ACTION
<del>1</del>	<del>Filed with Development Assistance Community Development Department</del> -Application is voluntary
<del>2</del>	<del>COMPLETENESS- DETERMINATION</del> <del>See Section 2.03.D.5, Completeness Determination</del> -Application shall indicate why subdivision should be considered as an exempt subdivision
<del>3</del>	<del>STAFF REVIEW</del>
<del>4</del>	<del>CITY-MANAGER DECISION AND CERTIFICATION</del> Decision shall be made in writing
<del>5</del>	<del>NOTIFICATION OF DECISION</del> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
<del>6</del>	<del>RECORDATION</del> Optional

Ordinance.

**3. EXEMPT SUBDIVISION REVIEW PROCEDURE**

**a. PRE-APPLICATION CONFERENCE**

Not applicable.

**b. APPLICATION SUBMITTAL**

**i.** Applicable (see Section 2.03.D, Application Filing and Acceptance).

**ii.** An application for exempt subdivision determination may be filed by a landowner or a contract purchaser.

**c. STAFF REVIEW AND ACTION**

**i.** Applicable (see Section 2.03.E, Staff Review and Action).



- ii. The City Manager shall review the application in accordance with Section 2.04.E.3, Exempt Subdivision Review Procedure, and make an aAdministrative dDecision/determination as to whether or not certify that the land division qualifies as an exempt subdivision. Notice of the aAdministrative dDecision/determination shall be given in accordance with Section 2.03.K.1.

d. RECORDATION

If an exempt subdivision plat is prepared by the applicant and approved by the City Manager in accordance with this section, it shall be certified by the City Manager, and may be recorded in the office of the Henderson County Register of Deeds.

4. EXEMPT SUBDIVISION REVIEW STANDARDS

A division of land shall be certified as an exempt subdivision only if it:

- a. Is excluded from the definition of a subdivision in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes; and
- b. Complies with or exceeds all applicable lot dimensional provisions for the zoning district where it is located in accordance with the Zoning Ordinance; and
- c. Complies with all standards or conditions of any applicable permits or development approvals; and
- d. Complies with all other applicable requirements in the City Code of Ordinances.

5. EFFECT

- a. A division of land determined to be an exempt subdivision shall be exempted from the subdivision standards of this Ordinance, but development of land within an exempt subdivision shall remain subject to any applicable requirements for potable water or wastewater from Henderson County Environmental Health, as well as all applicable standards in the City Code of Ordinances.
- b. In the event a division of land does not qualify as an exempt subdivision, it shall be reviewed in accordance with the applicable subdivision procedure and shall be subject to all applicable subdivision standards in this Ordinance.

6. APPEAL

~~a.~~ Appeal of an aAdministrative decision-Decision or determination by staff under this Section 2.04.E., Exemption Subdivision on an exempt subdivision shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section 2.04.C, Appeal.

~~b.~~ Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

## F. EXPEDITED SUBDIVISION

## 1. PURPOSE AND INTENT

The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their small size and limited likelihood to create significant impacts on surrounding lands.

## 2. APPLICABILITY

- a. The standards in this section shall apply to divisions of land meeting all the following criteria:
  - i. The proposed division of land is not exempted from the subdivision standards of this Ordinance in accordance with Section ~~160A-376(a)~~ 160D-802 of the North Carolina General Statutes; and
  - ii. The proposed division will not result in more than three lots (including any residual or "parent" parcel); and
  - iii. The area of land subject to the division shall be comprised of at least five acres under common ownership; and
  - iv. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years; and
  - v. The use of all lots is in conformity with the zoning district where located; and
  - vi. No extension of public streets is proposed.
- b. Divisions of land not meeting all these standards shall be reviewed as a ~~minor-subdivision~~ Minor Subdivision or ~~major-subdivision~~ Major Subdivision, as appropriate.
- c. Lots within an expedited subdivision are not exempted from any applicable zoning district dimensional requirements.

## 3. EXPEDITED SUBDIVISION REVIEW PROCEDURE

## a. APPLICATION SUBMITTAL

- i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
- ii. Expedited subdivision plats shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. Applications for an expedited subdivision shall include an evaluation from Henderson County Environmental Health indicating that an on-site wastewater system and on-site potable water system may be used on each lot not connected to the public potable water or sanitary sewer systems.

## b. STAFF REVIEW AND ACTION

- i. Applicable (see Section 2.03.E, Staff Review and Action).
- ii. The City Manager shall review and make an aAdministrative dDecision/determination regarding decide the application in accordance with Section 2.04.F.4, Expedited Subdivision Review Standards. Notice of the aAdministrative dDecision/determination shall be given in accordance with Section 2.03.K.1.
- iii. If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied. Alternatively, the applicant may appeal the City Manager's aAdministrative dDecision or determination to the Zoning Board of

Figure 2.04.F: Expedited Subdivision Procedure

STEP	ACTION
<b>1</b>	<b>FILE APPLICATION</b> Filed with Development Assistance Department - Required prior to conveyance of lots
<b>2</b>	<b>COMPLETENESS DETERMINATION</b> See <u>Section 2.03.D.5, Completeness Determination</u> - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
<b>3</b>	<b>STAFF REVIEW</b>
<b>4</b>	<b>CITY MANAGER DECISION</b> Decision shall be made in writing
<b>5</b>	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
<b>6</b>	<b>RECORDATION</b> With the Henderson County Register of Deeds within 10 days of approval

[Adjustment in accordance with Section 2.04 F.9. Appeal.](#)

**4. EXPEDITED SUBDIVISION REVIEW STANDARDS**

- a. An expedited subdivision shall be approved if the application complies with the following:
  - i. The expedited subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in Henderson County;
  - ii. The expedited subdivision plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
  - iii. The expedited subdivision plat complies with all applicable standards in this Ordinance and Section 47-30 of the North Carolina General Statutes;
  - iv. The expedited subdivision plat includes all required certifications;
  - v. The applicant has secured all required State and federal permit approvals;
  - vi. All lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use, in cases when the lots are not served by a centralized wastewater system;
  - vii. All lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water in cases when the lots are not served by a centralized potable water system;
  - viii. All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located;
  - ix. The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with City standards; and
  - x. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years.
- b. Subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

#### 5. RECORDATION

- a. Once an expedited subdivision plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The expedited subdivision plat may not be recorded without this and all other required certifications.
- ~~b. Failure to record the final plat in accordance with [Section 2.04.F.8, Expiration](#), shall render the plat null and void.~~
- ~~c. b.~~ Land may not be conveyed or construction started until the expedited subdivision plat is recorded.

#### 6. EFFECT

- a. Approval of the expedited subdivision plat allows the sale or conveyance of lots within the subdivision.
- b. Building permits may be issued following recordation of the expedited subdivision plat.
- c. Land subject to an expedited subdivision approval shall not be further subdivided as an expedited subdivision within ten years of the date of the prior expedited subdivision approval.

#### 7. AMENDMENT

Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### 8. EXPIRATION

~~An expedited subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 10 days of approval. The period of validity for an expedited subdivision plat shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.~~

#### 9. APPEAL

- ~~a. Appeal of an aAdministrative dDecision or determination by staff under this [Section 2.04.F, Expedited Subdivisions](#), shall be reviewed and decided by the BOA in accordance with [Section 2.04.C, Appeal](#)Decisions by the City Manager on an expedited subdivision plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with [Section 160A-393 160D-1 2; 1402](#) of the North Carolina General Statutes.~~

## ARTICLE 2: PROCEDURES

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~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal~~

## ARTICLE 2: PROCEDURES

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### ~~Section 2.04 Review Procedures~~

~~delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

## G. FINAL PLAT

## 1. PURPOSE

The purpose for this final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a ~~major subdivision~~ Major Subdivision (as applicable) and all applicable regulations of this Ordinance prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a plat document of sufficient detail and data so as to enable the City or another landowner to readily determine and accurately reproduce the location, bearing, radius (as applicable), and length of the elements of a subdivision. The elements include, but shall not be limited to the following:

- a. Every street or private accessway;
- b. Aspects of public infrastructure such as potable water supply lines, or sanitary sewer lines;
- c. Lot lines;
- d. Easement boundaries;
- e. Lands or resources dedicated or reserved for use by the general public;
- f. Land or resources owned in common by residents of the subdivision; and
- g. Unbuildable resource or conservation lands.

## 2. APPLICABILITY

- a. The standards in this section shall apply to subdivisions subject to a major subdivision.
- b. A landowner shall not submit an application for final plat review until a major subdivision (see Section 2.04.H, Major Subdivision) is approved and all required improvements serving the subdivision are installed and inspected by the City, or the developer provides a performance guarantee for those required improvements in accordance with Section 2.05, Performance Guarantees.

## 3. FINAL PLAT REVIEW PROCEDURE

## a. PRE-APPLICATION CONFERENCE

Not applicable.

## b. APPLICATION SUBMITTAL

- i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
- ii. A final plat shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. In cases where a final plat includes only a portion of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

Figure 2.04.G: Final Plat Procedure

STEP	ACTION
1	<b>FILE APPLICATION</b> Filed with <del>Development Assistance</del> <u>Community Development</u> Department - Required prior to conveyance of lots - May not be submitted prior to approval of a major subdivision for subdivisions that include public streets, water, or sewer infrastructure
2	<b>COMPLETENESS DETERMINATION</b> See <u>Section 2.03.D.5, Completeness Determination</u> - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
3	<b>STAFF REVIEW AND DECISION</b> Decision shall be made in writing - Application shall not be decided until all required dedications and easements are complete - Application shall not be decided until all proposed public infrastructure (including storm drains) is installed or subject to a financial guarantee (see <u>Section 2.05, Performance Guarantees</u> )
4	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
5	<b>RECORDATION</b> With the Henderson County Register of Deeds within 30 days of approval

**c. STAFF REVIEW AND ACTION**

- i. Applicable (see [Section 2.03.E, Staff Review and Action](#)).
- ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
- iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and [make an aAdministrative dDecision/determination regarding the decide the](#) application in accordance with [Section 2.04.G.4, Final Plat Review Standards](#).
- iv. If a final plat application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a final plat that has been denied.
- ~~iv-v.~~ [Notice of the aAdministrative dDecision/determination shall be given in accordance with Section 2.03.K.1.](#)

**4. FINAL PLAT REVIEW STANDARDS**

A final plat shall be approved if it complies with the following:

- a. The final plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
- b. The final plat is prepared by a licensed professional authorized by the State to prepare such documents;
- c. The final plat complies with the standards in Section 47-30 of the North Carolina General Statutes;
- d. The final plat includes all required certifications;
- e. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the ~~major-subdivision~~ [Major Subdivision](#) are installed, inspected, and accepted by the City, or are subject to a performance guarantee (see [Section 2.05, Performance Guarantees](#));
- f. All required easements and rights-of-way are properly depicted on the final plat;
- g. If no public wastewater service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use;
- h. If no public potable water service is associated with the subdivision, all lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water;
- i. The final plat is in substantial conformance with the ~~major-subdivision~~ [Major Subdivision](#);
- j. The applicant has secured all required State, federal, and other applicable City permit approvals;
- k. The final plat complies with all standards and conditions of any applicable permits and development approvals; and
- l. The final plat complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.

**5. RECORDATION**

- a. Once a final plat is approved, a signed statement by the City Manager shall be entered on the face of the plat. The final plat may not be recorded without this and all other required certifications.
- b. Following certification, the applicant shall record the final plat and all associated protective covenants and deed restrictions in the office of the Henderson County Register of Deeds.
- c. ~~Failure to record the final plat in accordance with Section 2.04.G.9, Expiration, shall render the plat null and void. The period of validity of the final plat shall be determined in accordance with Chapter 40 of the Hendersonville City Code of Ordinances.~~

**6. ACCEPTANCE OF PUBLIC INFRASTRUCTURE**

- a. The approval of a plat shall not be deemed to constitute the acceptance by the City of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.



- b. The City Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within the ETJ.
- c. Acceptance of dedication of lands or facilities located within the ETJ but outside the corporate limits of the City shall not place on the City any duty to open, operate, repair or maintain any street, utility line, or other land or facility, and the City shall not be held responsible in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

#### **7. EFFECT**

- a. Approval of a final plat allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the final plat.
- b. Development located outside the Hendersonville corporate limits shall comply with all City ordinances and policies related to annexation and the extension of utilities.

#### **8. AMENDMENT**

Amendment of a final plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **9. EXPIRATION**

- ~~a. A final plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval.~~
- ~~b.a. If a final plat is not recorded within two years of the associated major subdivision Major Subdivision approval, or if there is a lapse of more than two years between the recording of different sections or phases, then the major subdivision Major Subdivision shall expire. In such cases, the City may record a notice of expiration in the office of the Henderson County Register of Deeds. The time period for validity of a final plat shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.~~
- ~~e.b. An expired preliminary plat may be resubmitted in accordance with Section 2.04.H, Major Subdivision, and shall be reviewed in accordance with the standards of this Ordinance in effect at the time of resubmission unless a vested right or other right to continue under the standards in effect at the time of the prior approval is established pursuant to Chapter 40 of the Hendersonville City Code of Ordinances.~~

#### **10. APPEAL**

- ~~a. Appeal of an aAdministrative dDecision or determination by staff under this Section 2.04.G. Final Plat, shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal. Decisions by the City Manager on a final plat shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 160D-1-2; 1402 of the North Carolina General Statutes.~~
- ~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

## H. MAJOR SUBDIVISION

## 1. PURPOSE

The purpose for this ~~major-subdivision~~ Major Subdivision procedure is to establish a fair, consistent, and predictable procedure for the review of requests to divide land into a series of lots for development or sale in ways that promote the health, safety, and welfare of the City of Hendersonville. The intent of these standards is to ensure:

- a. Orderly growth and development;
- b. Coordination of transportation and utility networks;
- c. Preservation of open space for purposes of recreation or natural resource protection;
- d. Protection from flooding, damaging sedimentation, and decreased surface water quality; and
- e. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

## 2. APPLICABILITY

Unless exempted by Section ~~160A-376~~ 1.06 of this Ordinance or by Section 160D-802 of the North Carolina General Statutes, all divisions of land involving ~~two-eight (8)~~ or more lots; or involve the dedication of a new street or change in existing streets along with the provision of or changes to streets or other public infrastructure (e.g., sewer lines, storm sewer, etc.) shall be considered ~~major subdivision~~ Major Subdivision subject to the standards of this section. Conservation Subdivisions must also be approved under this Section 2.04 H. Major Subdivision.

## 3. MAJOR SUBDIVISION REVIEW PROCEDURE

## a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

## b. APPLICATION SUBMITTAL

- i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
- ii. A ~~major-subdivision~~ Major Subdivision shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. The application shall include a transportation impact analysis for review when the new development meets the requirements for transportation impact analysis in Article 6 of the Zoning Ordinance.

~~c. STAFF REVIEW~~

Figure 2.04.J: Minor Subdivision Procedure

STEP	ACTION
<b>1</b>	<b>PRE-APPLICATION CONFERENCE</b> See <u>Section 2.03.C, Pre-application Conference</u>
<b>2</b>	<b>FILE APPLICATION</b> Filed with <del>Development Assistance-</del> <u>Community Development</u> Department - Must be professionally prepared - May require a TIA
<b>3</b>	<b>COMPLETENESS DETERMINATION</b> See <u>Section 2.03.D.5, Completeness Determination</u> - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification statements
<b>4</b>	<b>STAFF REVIEW AND RECOMMENDATION BY THE DEVELOPMENT REVIEW COMMITTEE</b>
<b>5</b>	<b>PLANNING BOARD REVIEW AND DECISION</b> Decided after public meeting - Decision shall be made in writing
<b>6</b>	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
<b>7</b>	<b>APPLY FOR OTHER REQUIRED PERMITS</b> As appropriate

c. STAFF REVIEW

The City Manager shall submit the ~~major subdivision~~ Major Subdivision application to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.

a-d. ADMINISTRATIVE DECISION BY PLANNING BOARD

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- i. Following staff review, the Planning Board, after the conclusion of a public meeting (see Section 2.03.G, Public Meeting and Hearing), shall review and ~~decide~~ make an Administrative Decision regarding the application in accordance with Section 2.04.H.4, Major Subdivision Review Standards. Notice of the Administrative Decision shall be delivered in accordance with Section 2.03.K.2.
- ii. The decision shall be either: approval of the ~~major-subdivision~~ Major Subdivision as proposed; approval of a revised major subdivision; or denial of the ~~major-subdivision~~ Major Subdivision.
- iii. The Planning Board shall render a decision on an application for a ~~major-subdivision~~ Major Subdivision within 32 days of the date of the first public meeting to consider the application unless a different review schedule is agreed to by the Planning Board, the City, and the applicant.
- iv. If a ~~major-subdivision~~ Major Subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a ~~major-subdivision~~ Major Subdivision that has been denied. Alternatively, an applicant may file an action to challenge the denial in the Henderson County Superior Court for Henderson County seeking appropriate declaratory or equitable relief in the manner of and within the time periods specified by applicable laws.

#### b.e. APPROVAL TO PROCEED

Following approval of a ~~major-subdivision~~ Major Subdivision by the Planning Board, the applicant may proceed with an application to undertake land disturbing activities, or installation of public infrastructure, as appropriate.

#### 4. MAJOR SUBDIVISION REVIEW STANDARDS

- a. An application for a ~~major-subdivision~~ Major Subdivision shall be approved, if it complies with the following:
  - i. The ~~major-subdivision~~ Major Subdivision is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
  - ii. The ~~major-subdivision~~ Major Subdivision complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;
  - iii. The ~~major-subdivision~~ Major Subdivision includes all required certifications and other pertinent information as required by the City;
  - iv. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;
  - v. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Hendersonville or Henderson County;
  - vi. Street names used in the subdivision shall not duplicate or be similar to the names of streets in an existing subdivision in Hendersonville or Henderson County;
  - vii. All standards or conditions of any prior applicable permits and development approvals; and
  - viii. The ~~major-subdivision~~ Major Subdivision complies with all other applicable requirements in this Ordinance and the City Code of Ordinances.
- b. Land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention.

#### 5. EFFECT

##### a. GENERALLY

- i. Approval of a required ~~major-subdivision~~ Major Subdivision shall not constitute the approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots.
- ii. Approval of a required ~~major-subdivision~~ Major Subdivision authorizes the submittal of street and utility construction plans, and soil erosion and sedimentation control plans.

##### b. LANDS OUTSIDE THE CORPORATE LIMITS

~~Major-subdivisions~~ Major Subdivisions for development located outside the corporate limits shall comply with any ordinances and City policies related annexation and the extension of utilities.

**c. CONSTRUCTION PLANS**

- i. Construction plans for all public infrastructure associated with the ~~major-subdivision~~ Major Subdivision shall be approved prior to street and utility construction and prior to the approval of a final plat in accordance with the applicable standards this Ordinance.
- ii. In the case of a multi-phase subdivision, street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

**6. PERFORMANCE GUARANTEES**

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All public infrastructure that have not been installed by the developer, and inspected and accepted by the City shall comply with the requirements in Section 2.05, Performance Guarantees, prior to the recordation of a final plat.

**7. AS-BUILT PLANS**

As-built plans for all public infrastructure shall be submitted in accordance with Section 2.05.J, As-Built Plans Required.

**8. AMENDMENT**

Amendment of a ~~major-subdivision~~ Major Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

**9. EXPIRATION**

~~An approved major-subdivision~~ Major Subdivision shall be valid for two years from the date of approval. Failure to record a final plat for land subject to an approved major-subdivision Major Subdivision within four years of the date the major-subdivision Major Subdivision is approved shall render the major-subdivision Major Subdivision approval null and void. The period of validity for a Major Subdivision approval shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

**10. APPEAL**

~~a.—An applicant, the Landowner(s) if different from the applicant, or any person who can demonstrate standing, may challenge the aAdministrative dDecision made by the Planning Board by filing an action in sSuperior eCourt for Henderson County seeking appropriate declaratory or equitable relief in the manner of and within the time periods specified by applicable laws. Decisions by the Planning Board on a major-subdivision~~ Major Subdivision shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393 160D-1-2; 1402 of the North Carolina General Statutes.

~~b.—Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

## I. MINOR SUBDIVISION

## 1. PURPOSE AND INTENT

The purpose for this ~~minor-subdivision~~ Minor Subdivision review procedure is to allow certain land divisions to be reviewed via an administrative review procedure based on the limited number of new lots and no extension of or changes to existing public streets is required.

## 2. APPLICABILITY

- a. Subdivisions of land that include up to eight lots (including the parent parcel) with no extension of or changes to public streets are ~~minor subdivisions~~ Minor Subdivisions and shall be reviewed in accordance with the standards in this section.
- b. All lots shall connect to the public potable water and sanitary sewer systems as part of the establishment of the ~~minor-subdivision~~ Minor Subdivision. However, connection to the public water or sewer system shall not require the subdivision to be reviewed as a ~~major-subdivision~~ Major Subdivision.
- c. No lot within a ~~minor-subdivision~~ Minor Subdivision (including the parent parcel) shall be the subject of another ~~minor-subdivision~~ Minor Subdivision application for a period of three years from the date the ~~minor-subdivision~~ Minor Subdivision is approved.

## 3. MINOR SUBDIVISION REVIEW PROCEDURE

## a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

## b. APPLICATION SUBMITTAL

- i. Applicable (see Section 2.03.D, Application Filing and Acceptance).
- ii. Applications shall be prepared by a licensed professional authorized by the State to prepare such documents.
- iii. In cases where a ~~minor-subdivision~~ Minor Subdivision is part of a larger phased development, the application materials shall illustrate all various stages and phases of the development as well as the schedule for completion of public and private improvements associated with the development.

## c. STAFF REVIEW AND ACTION

- i. Applicable (see Section 2.03.E, Staff Review and Action).
- ii. The City Manager shall review the application and may submit it to technical staff or to other outside agencies, as appropriate, for further technical review, as appropriate.
- iii. Following receipt of comments from technical review, if conducted, the City Manager shall review and ~~decide-make an aAdministrative dDecision/determination regarding~~ the application in accordance with Section 2.04.I.4, Minor Subdivision Review Standards. Notice of the aAdministrative dDecision or determination shall be given as required by

Figure 2.04.I: Minor Subdivision Procedure

STEP	ACTION
<b>1</b>	<b>PRE-APPLICATION CONFERENCE</b> Optional
<b>2</b>	<b>FILE APPLICATION</b> Filed with Development Assistance Department - Required prior to conveyance of lots
<b>3</b>	<b>COMPLETENESS DETERMINATION</b> See <u>Section 2.03.D.5, Completeness Determination</u> - Application shall include copies of any protective covenants or deed restrictions - Plat shall include all required certification language
<b>4</b>	<b>STAFF REVIEW</b>
<b>5</b>	<b>CITY MANAGER DECISION</b> Decision shall be made in writing
<b>6</b>	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
<b>7</b>	<b>RECORDATION</b> With the Henderson County Register of Deeds within 30 days of approval

[Section 2.03.K.1.](#)

- iv. If a ~~minor-subdivision~~ [Minor Subdivision](#) application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit a minor plat that has been denied. [Alternatively, the applicant may appeal the denial in accordance with Section 2.04.I.9 Appeal, below.](#)

4. MINOR SUBDIVISION REVIEW STANDARDS



- a. A ~~minor-subdivision~~ Minor Subdivision shall be approved if the application complies with the following:
  - i. The ~~minor-subdivision~~ Minor Subdivision plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
  - ii. The ~~minor-subdivision~~ Minor Subdivision plat is prepared and sealed by a licensed professional authorized by the State to prepare such documents;
  - iii. The ~~minor-subdivision~~ Minor Subdivision plat complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;
  - iv. The ~~minor-subdivision~~ Minor Subdivision plat includes all required certifications;
  - v. All lots shall be served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with NCDOT or City standards, as appropriate;
  - vi. The applicant has secured all required State, federal, and other applicable permit approvals;
  - vii. The ~~minor-subdivision~~ Minor Subdivision is in substantial conformance with all applicable requirements in this Ordinance;
  - viii. All lots in the ~~minor-subdivision~~ Minor Subdivision shall maintain minimum lot widths in accordance with the requirements for the zoning district where located;
  - ix. All required improvements depicted on the ~~minor-subdivision~~ Minor Subdivision plat are installed and inspected by the City, or are subject to a performance guarantee (see Section 2.05, Performance Guarantees); and
  - x. The ~~minor-subdivision~~ Minor Subdivision complies with all standards and conditions of any applicable permits and development approvals.
- b. ~~Minor-subdivisions~~ Minor Subdivisions of land located within a special flood hazard area shall comply with all applicable City standards for flood damage prevention, and include the following statement:
 

"Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

## 5. RECORDATION

- a. Once a ~~minor-subdivision~~ Minor Subdivision is approved, a signed statement of approval by the City Manager shall be entered on the face of the plat. The ~~minor-subdivision~~ Minor Subdivision plat may not be recorded without this certification.
- b. A ~~minor-subdivision~~ Minor Subdivision plat shall not be recorded until after the City Manager receives confirmation that the proposed subdivision has been approved by the appropriate United States Postmaster, or evidence that the applicant has addressed comments submitted by the Postmaster.
- ~~c. Failure to record the minor-subdivision Minor Subdivision plat in accordance with Section 2.04.I.8, Expiration, shall render the minor-subdivision Minor Subdivision plat null and void.~~

## 6. EFFECT

Approval of a ~~minor-subdivision~~ Minor Subdivision allows the sale or conveyance of lots within the subdivision. Building permits may be issued following recordation of the minor subdivision plat.

## 7. AMENDMENT

Amendment of a ~~minor-subdivision~~ Minor Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

## 8. EXPIRATION

~~A minor-subdivision Minor Subdivision plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 30 days of approval. The period of validity of a Minor Subdivision approval shall be determined in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.~~

## 9. APPEAL

~~a. Appeal of an aAdministrative dDecision or determination by staff under this Section 2.04.I. Minor Subdivision, shall be reviewed and decided by the BOA in accordance with Section 2.04.C, Appeal. Appeal of a decision on a minor-subdivision Minor Subdivision shall be reviewed~~

## ARTICLE 2: PROCEDURES

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~~and decided by the BOA in the nature of certiorari and in accordance with [Section 2.04.C, Appeal](#).~~  
~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person~~

~~who has submitted a written request for a copy, prior to the date the decision becomes effective.~~

## J. SUBDIVISION VARIANCE

## 1. PURPOSE

The purpose of this section is to allow deviations from the standards of this Ordinance when the landowner demonstrates that, due to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and that allowing the requested deviation would not be contrary to the public interest.

## 2. APPLICABILITY

Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.

## 3. SUBDIVISION VARIANCE PROCEDURE

## a. PRE-APPLICATION CONFERENCE

Applicable (see Section 2.03.C, Pre-application Conference).

## b. APPLICATION SUBMITTAL

Applicable (see Section 2.03.D, Application Filing and Acceptance).

## c. STAFF REVIEW

- i. Applicable (see Section 2.03.E, Staff Review and Action).
- ii. In cases where a staff report is prepared, the staff report shall not include a recommendation.

## d. PUBLIC NOTICE

Applicable (see Section 2.03.F, Public Notification).

## e. DECISION BY BOARD OF ADJUSTMENT

- i. The BOA, after the conclusion of a ~~quasi-judicial public~~ evidentiary-Evidentiary hearingHearing conducted in accordance with the requirements of N.C.G.S. Section 160D-406 and (see Section 2.03.G, Public Meeting and Hearing), shall decide the application for a ~~variance~~ Variance.
- ii. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by

the arguments presented at the ~~quasi-judicial~~ evidentiary-Evidentiary hearingHearing, and the appropriate standards in Section 2.04.J.4, Subdivision Variance Review Standards.

- iii. The concurring vote of seven members of the BOA shall be necessary to grant a subdivision ~~variance~~ Variance.
- iv. The decision shall be either approval of the ~~variance~~ Variance as proposed, approval of the ~~variance~~ Variance with revisions or conditions, or denial of the ~~variance~~ Variance.

Figure 2.04.J: Variance Procedure

STEP	ACTION
1	<b>PRE-APPLICATION CONFERENCE</b> See <u>Section 2.03.C, Pre-application Conference</u>
2	<b>FILE APPLICATION</b> Filed with <del>Development Assistance</del> <u>Community Development</u> Department
3	<b>COMPLETENESS DETERMINATION</b> See <u>Section 2.03.D.5, Completeness Determination</u>
4	<b>STAFF REVIEW</b> Staff report shall not include a recommendation
5	<b>PUBLIC NOTICE</b> See <u>Section 2.03.F, Public Notification</u>
6	<b>BOA REVIEW AND DECISION</b> <del>Quasi-judicial public</del> <u>evidentiary-Evidentiary hearingHearing</u> - Decision shall be made in writing
7	<b>NOTIFICATION OF DECISION</b> Delivered via personal service, electronic mail, or 1 <sup>st</sup> class mail
8	<b>RECORDATION</b> With the Henderson County Register of Deeds within 30 days of approval

- v. Each decision shall be made in writing and reflect the BOA's determination of any contested facts and their application to the standards in this Ordinance. Written decisions shall be made and approved in accordance with the requirements of N.C.G.S. Section 10D-406. A copy(ies) of the written decision shall be delivered in accordance with Section 2.03.K.3.

- vi. The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- vii. The decision of the BOA shall be effective upon the filing of the written decision by the City Manager.

f. RECORDATION

If a ~~variance~~ Variance application is approved, the notice of decision shall be recorded by the City in the office of the Henderson County Register of Deeds.

4. SUBDIVISION VARIANCE REVIEW STANDARDS

a. REQUIRED FINDINGS

A subdivision ~~variance~~ Variance application shall be approved provided on a finding the applicant demonstrates all of the following:

- ~~i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~ Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the ~~variance~~ Variance, no reasonable use can be made of the property.
- ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a ~~variance~~ Variance. A ~~variance~~ Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- ~~iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a ~~variance~~ Variance is not a self-created hardship.
- iv. The requested ~~variance~~ Variance is consistent with the spirit, purpose, and intent of this Ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The ~~variance~~ Variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

b. NOT USED AS A BASIS FOR APPROVAL

None of the following may be used as the basis for approving a ~~variance~~ Variance:

- i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- ii. The fact that land or a structure may be utilized more profitably or be more marketable with a ~~variance~~ Variance; or
- iii. Financial hardship.

c. CONDITIONS OF APPROVAL

- i. The Board of Adjustment may apply conditions of approval that are reasonably related to the ~~variance~~ Variance.
- ii. All conditions shall be identified in the approval, the notice of decision, and on any associated plats.

5. EFFECT

Approval of a subdivision ~~variance~~ Variance authorizes only the particular regulatory relief approved by the BOA. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the subdivision ~~variance~~ Variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

6. AMENDMENT

Amendment of a subdivision ~~variance~~ Variance may only be reviewed and

considered in Section 2.04 Review Procedures accordance with the procedures and standards established for its original approval. Amendments may only be considered if the amendment is based upon a change in the proposed subdivision, changed conditions, or changes in this Ordinance.

#### **7. EXPIRATION**

A subdivision ~~variance~~ Variance shall not expire. However approval of a variance shall not operate to modify the time period of validity of the underlying subdivision approval beyond the period of the stay (if a stay is in effect) plus the time period of validity established in accordance with Chapter 40 of the City of Hendersonville Code of Ordinances.

#### **8. APPEAL**

- a. Any decision by the BOA shall be subject to review by the Superior Court for Henderson County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ 160D-1-2; 1402 of the North Carolina General Statutes or may be challenged as otherwise allowed by applicable law.
- b. Petitions for review or other actions challenging a decision of the BOA must be brought in the manner and within the time frames specified by N.C.G.S. Section 160D-1402 and Section 160D-1405 and other applicable law.

## ARTICLE 2: PROCEDURES

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### ~~Section 2.04 Review Procedures~~

~~a. Any decision by the BOA shall be subject to review by the Superior Court of Henderson County by proceedings in the nature of certiorari and in accordance with Section 160A-393, 160D-1-2; 1402 of the North Carolina General Statutes.~~

~~b. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.~~



**SECTION 2.05. PERFORMANCE GUARANTEES****A. PURPOSE AND INTENT**

These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a building permit to commence with development prior to completion of all required infrastructure or site improvements, provided funds have been reserved for completion of these features. These provisions ensure that funds are available for the City's use to complete required public infrastructure or private site features in the event an applicant or developer is unable to do so.

**B. APPLICABILITY**

1. Performance guarantees shall be configured and managed in accordance with the standards in this section and N.C.G.S. Section 160D-804.1 Performance Guarantees. The City is under no obligation to grant a performance guarantee for any feature or under any circumstance. To the extent this Section 2.05 conflicts with or omits terms provided in N.C.G.S. Section 160D-804.1, Section 804.1 shall control.
2. The following facilities and site features may be eligible for performance guarantees at the discretion of the City:
  - a. Sidewalks, multi-use paths, and greenways;
  - b. The final lift of asphalt on a street;
  - c. Private stormwater management facilities;
  - d. Street lights; and
  - e. Placement of vegetation, except when required as part of erosion control measures.
3. All other public infrastructure or required site features shall be completed prior to issuance of a certificate of occupancy for the development.

**C. INELIGIBLE FACILITIES**

The following infrastructure facilities are not eligible for performance guarantees, and shall be completed and dedicated to the City where appropriate, prior to approval of a final plat, conveyance, or issuance of a building permit:

1. Potable water;
2. Sanitary sewer;
3. Functional fire protection infrastructure;
4. The base and initial courses of asphalt on a street;
5. Stormwater drainage facilities associated with a street right-of-way;
6. Curb and gutter; and
7. Street signs and traffic control signals.

**D. ~~MAXIMUM TERM~~ TERM OF GUARANTEE**

1. Performance guarantees associated with the placement of vegetation ~~shall~~ shall have an initial term -maximum term of one year unless the Applicant determines that the scope of work for the required facilities necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the Applicant determines that the scope of work for the required facilities necessitates a longer duration..
- ~~2. The applicant may request a term of more than one in year in cases where they believe one year is insufficient.~~

**E. FORM OF GUARANTEE**

1. The applicant shall determine the form(s) of the performance guarantee, which shall be provided in one or more of the following forms. The guaranty shall use the City's standard form if the City has a standard form that the particular type of guarantee:
  - a. CASH OR IRREVOCABLE (EVERGREEN) LETTER OF CREDIT

The developer shall deposit cash or an irrevocable (or "evergreen") letter of credit, either with the City or in escrow with a North Carolina financial institution. If cash or other instrument is deposited in escrow with a financial institution, an escrow agreement between

## ARTICLE 2: PROCEDURES

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the financial institution, ~~and the developer~~ Applicant and the City, in form acceptable to the City, shall be filed with the City guaranteeing the following:

- i. That the escrow account shall be held in trust until released by the City and may not be used or pledged by the developer for any other matter during the term of the escrow; and
    - ii. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.
    - iii. The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.
  - b. SURETY BOND
    - i. The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
    - ii. The bond shall be payable to the City and shall be in an amount as required by this subsection.
  - c. OTHER GUARANTEE
    - The developer may provide another form of guarantee that provides equivalent security to cash, a surety bond, or letter of credit, as determined by the City Attorney.
2. An applicant may request a consolidated performance guarantee to address required infrastructure and private site improvements, but it shall distinguish between the portion of the guarantee provided for public infrastructure improvements as well as the portion of the guarantee provided for private site improvements, if applicable.
3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the guarantee.

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**F. AMOUNT OF GUARANTEES**

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1. **GENERALLY**

Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.
2. **ESTIMATED COSTS**

Estimated costs of completing installation of required public improvements, vegetation, or stormwater measures shall be itemized by improvement type and certified by the developer's licensed professional, and is subject to approval by the City Manager.
3. **RENEWAL/EXTENSION OF TERM FOR GUARANTEES**
  - a. An applicant shall demonstrate reasonable, good-faith progress toward completion of the required facilities secured by the performance guarantee or any extension thereof. If the required facilities are not completed in accordance with the specifications required by this Ordinance and all other applicable City, state or federal laws, ordinances, regulations, policies and development standards, then the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension shall only be for a duration necessary to complete the required facilities.
  - b. If a new performance guarantee is ~~renewed~~ issued, the City Manager may require the amount of the performance guarantee be updated to reflect changes in cost over time, but shall only be in an amount equal to 125% of the cost to complete the facilities at that time.

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**G. RELEASE OR REDUCTION OF GUARANTEE**

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1. **RELEASE REQUESTED**

The City Manager shall release or reduce a performance guarantee only after:

  - a. The owner or developer has submitted to the City a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications,

and as-builts (if applicable);

- b. City staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and
- c. No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.

**2. ACCEPTANCE SHALL BE DOCUMENTED**

The City Manager shall provide written notice of the City's final acceptance of the improvements subject to performance guarantees.

**H. IMPROPER RELEASE OF FINANCIAL GUARANTEES**

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If the City releases a performance guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements in accordance with this Ordinance.

**I. FORFEITURE OF GUARANTEE**

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**1. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS**

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the performance guarantee (as may be extended), the City Manager shall give the owner or developer 30 day's written notice of the scope and degree of the default, by certified mail.

**2. CITY COMPLETION OF IMPROVEMENTS**

After the 30-day notice period expires, the City may draw on the guarantee and use the funds to perform the work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the performance guarantee, the City shall return any of the unused deposited cash funds or other security.

**J. AS-BUILT PLANS REQUIRED**

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**1. PUBLIC IMPROVEMENTS**

Upon completion of a public infrastructure project, the developer shall certify to the City Manager that the completed project has been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed.

**2. STORMWATER MANAGEMENT FACILITIES**

Upon completion of a private stormwater management facility, the developer shall certify to the Stormwater Administrator that the completed project is in accordance with the requirements in Sections 24-131 through 24-163 in the City's Code of Ordinances.

**3. INSPECTION REQUIRED**

A final inspection and approval by the City Manager shall occur before the release of the performance guarantee.

**SECTION 2.06. FEE-IN-LIEU****A. PURPOSE**

The purpose for this section is to establish a procedure and standards for instances where an applicant and the City agree that a payment-in-lieu of dedication or construction of infrastructure by the applicant is appropriate and in closer alignment with the City's adopted policy guidance of capital improvement program.

**B. PROCEDURE****1. REQUIRED BY CITY**

- a. In cases where the City Manager determines that installation of a required sidewalk, greenway, bikeway, or other roadway improvement could conflict with another City, State, or federal infrastructure project that is planned or programmed to begin construction within five years, the applicant or developer shall be required to submit a fee-in-lieu of the required infrastructure element(s).
- b. Notification of the requirement for provision of a fee-in-lieu shall be in writing, and shall be delivered to the applicant or developer prior to the notice of decision on the associated application.
- c. Upon receipt of notification, and applicant shall provide the required fee-in-lieu in accordance with Section 2.06.B.2.d, Acceptance of Fee-in-Lieu.
- d. In the event the conflict necessitating the fee-in-lieu is eliminated prior to final approval, the fee-in-lieu shall be refunded and the applicant or developer shall be required to dedicate the required land or perform the required installation. The developer or applicant may request the City retain the funds in accordance with Section 2.06.B.2, Requested by Applicant.

**2. REQUESTED BY APPLICANT**

In cases where an applicant or developer desires to receive final approval of development under this Ordinance without providing land or infrastructure as required, the process for requesting such approval shall be in accordance with this section.

**a. FILE REQUEST**

- i. An applicant seeking the ability to provide a fee-in-lieu of making a required dedication or constructing required infrastructure shall file a written request with the [City ManagerCommunity Development Director](#) prior to the rendering of a decision on the associated application by the appropriate review authority (see Section 2.02, Summary Table).
- ii. The request shall include the reasons for the request, the rationale why a fee-in-lieu is in closer alignment with the City's adopted policy guidance, and the estimated value of the land that would otherwise be dedicated or the estimated cost of completion of the infrastructure in question, based on current unit prices.

**b. STAFF REVIEW**

Upon receipt of the request, the [City ManagerCommunity Development Director](#) shall review the information and notify the applicant if the information provided is sufficient.

**c. DECISION BY CITY MANAGER**

- i. The City Manager shall consider the request, and shall decide the request in accordance with the City's adopted policy guidance and Section 2.06.D, Review Standards for Fee-in-Lieu.
- ii. The decision shall be to either accept the request for provision of fee-in-lieu as offered, accept a modified request for provision of fee-in-lieu, or deny the request for provision of fee-in-lieu.

**d. ACCEPTANCE OF FEE-IN-LIEU**

- i. In cases where a fee-in-lieu is required by the City or a request for provision of a fee-in-lieu is accepted by the City Manager, payment of a fee-in-lieu shall take place prior to the approval of a final plat or issuance of the final approval associated with the subdivision.

- i. All fees collected by the City pursuant to this section shall be deposited in City's revolving fund for purchase of recreation land, installation of vegetation, or installation of required infrastructure (whether streets, sidewalks, bikeways, or other infrastructure, as appropriate).
- ii. Use of funds collected in accordance with this section shall only take place in the general vicinity of where funds are collected and may only be used for the purchase of in-kind lands or the same type of infrastructure in accordance with all applicable State and federal law.
- iii. The City ManagerCommunity Development Director shall maintain records of the amounts collected, the timing, and the location, which shall be used by the City as part of its capital facilities program.

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**C. AMOUNT**

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**1. LAND**

- a. The fee-in-lieu shall be calculated based upon the total acreage of land required for dedication.
- b. The land's assessed value (as determined by the Henderson County Tax Assessor) following subdivision shall be used to arrive at the required payment-in-lieu amount.

**2. INFRASTRUCTURE**

- a. The amount of fee-in-lieu shall be based on an estimate by a licensed professional authorized by the State to prepare such documents.
- b. The estimate shall include the cost of all materials and labor based on current unit prices.
- c. Nothing shall prevent the City Manager from acquiring an additional estimate for the same infrastructure from another licensed professional.
- d. The City Manager, in his or her sole discretion, may select the estimate that will form the basis for the fee-in-lieu payment.

**3. VEGETATION**

In cases where a fee-in-lieu is proposed for the installation of vegetation, the fee amount shall be based upon the unit price of the vegetation along with all associated labor, transportation, and incidental costs such as ground cover, staking, and fertilizer, but not irrigation.

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**D. REVIEW STANDARDS FOR FEE-IN-LIEU**

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Decisions regarding requests for provision of fee-in-lieu shall be made in accordance with the following standards, as applicable:

**1. PARK LAND**

- a. There is sufficient public park land in proximity to the proposed development based on a review of the City's adopted policy guidance and information from City staff;
- b. Private common open space resources provided on the subject site will be available for public use and will mitigate park land needs created by the proposed development;
- c. Collected funds could be utilized to further improve an existing park facility in a proximate location;
- d. The topography or other natural conditions of the site do not provide adequate opportunities for on-site recreation and park areas;
- e. The amount of park land to be dedicated is too small to provide adequate recreation and park opportunities or to be efficiently maintained;
- f. The intended location of the park land is too far from existing recreation and park areas to be efficiently maintained; or
- g. Adequate access is not available to the proposed park land.

**2. GREENWAY LAND**

- a. The conditions on the land make installation or operation of a greenway segment impossible or cost prohibitive for the City;

- b. The potential for the connection of a proposed greenway segment to the City's greenway network is unlikely within the foreseeable future, in the opinion of City staff; or
- c. There are suitable alternatives to a greenway segment, such as a multi-purpose trail, in close proximity to the proposed site.

**3. STREETS**

- a. The proposed street alignment creates an unacceptable environmental impact; or
- b. The proposed street is impossible or impractical to build based on topography, slope, soil conditions, or development patterns on adjacent lands.

**4. SIDEWALKS**

- a. The potential for the connection of a proposed sidewalk segment to the City's sidewalk network is unlikely within the foreseeable future, in the opinion of City staff; or
- b. There are suitable alternatives to a sidewalk, such as a greenway, in close proximity to the proposed site.

**5. VEGETATION**

- a. The proposed location of vegetation will not support healthy vegetation due to shading or topographic conditions; or
- b. The site where vegetation is proposed is incapable of supporting additional vegetation due to the presence of existing vegetation, buildings, or impervious surfaces.

**6. OTHER CRITERIA**

- ~~a. When, in the sole opinion of the City Manager, the decision on a fee-in-lieu requires consideration of additional or different criteria, the City Manager shall identify those criteria and describe how the proposal does or not address them.~~
- ~~b. The applicant has sufficient opportunity to describe how the proposal meets those criteria prior to a decision by the City Manager.~~



# ARTICLE 3: CONFIGURATION

## SECTION 3.01. PURPOSE AND INTENT

This section sets out the basic configuration standards for subdivisions, including lot shapes, monuments, access to lots, easements for infrastructure, and related provisions.

## SECTION 3.02. LAND SUITABILITY

- A.** Where land to be subdivided is found by the City to be subject to the conditions of flooding, improper drainage, severe erosion, landslides, or to have other characteristics which pose an ascertainable danger to public health, safety, or property sufficiently identified by any source of information listed in Section 3.02.B below, the subdivider shall take measures necessary to correct these conditions in order to eliminate or mitigate any danger.
- B.** In making a determination about ~~the potential an ascertainable~~ danger to public health, safety, or property, the City or a review authority may take any of the following into consideration:
1. The official FEMA Flood Hazard Boundary Maps;
  2. The Henderson County Soil Survey;
  3. Recommendations of the Tennessee Valley Authority;
  4. Information from the Soil Conservation Service;
  5. Information from the USDA; and
  6. The Henderson County Board of Health.
- C.** Nothing herein shall be deemed to grant to the City staff or the Planning Board the authority to make any findings pursuant to this section which would involve a level of discretion requiring a quasi-judicial proceeding. In the event such a level of discretion is required to make a finding under this section, the application shall be referred to the City Council to hold an eEvidentiary hHearing with regards to the proposed findings in this section 3.02 Land Suitability only in accordance with Section 1.10 Administrative Decision. Such eEvidentiary hHearing by City Council shall be held in the manner and in accordance with the requirements of a Subdivision Variance found in Section 2.04 J.
- G.D.** In cases where a review authority makes findings pursuant to this section, the basis for such findings shall be in writing and recorded in a staff report, meeting minutes, or the written decision, as appropriate.

## SECTION 3.03. LOTS

### A. DIMENSIONAL REQUIREMENTS

#### 1. GENERALLY

- a. The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated to allow the lots to meet the standards contained in this Ordinance.
- b. A lot shall have sufficient area, dimensions, and street access to allow a principal building to be erected on it in compliance with the requirements of this Ordinance and the Zoning Ordinance.
- c. Lot sizes, shapes, and locations shall be made with due regard to topographic conditions, contemplated use, and the surrounding area in accordance with the standards of this Ordinance.
- d. The area of standing bodies of water shall not be included in determining minimum lot area requirements.

#### 2. SINGLE-FAMILY RESIDENTIAL LOTS

##### a. WITHIN THE CORPORATE LIMITS

Lots intended for single-family residential development within the City's corporate limits shall comply with the minimum dimensional standards for the zoning district where located.

##### b. OUTSIDE THE CORPORATE LIMITS

- i. Lots intended for single-family residential development outside the City's corporate limit that are served by both public water and sewage systems shall comply with the minimum dimensional standards for the zoning district where located.
  - ii. Lots intended for single-family development outside the City's corporate limits that are not served by public water or by public sewer shall comply with the applicable dimensional standards in the Zoning Ordinance.
- 3. MULTI-FAMILY RESIDENTIAL LOTS

- a. Lots intended for multi-family residential development shall comply with the minimum dimensional standards for the zoning district where located.
- b. Prior approval from Henderson County Environmental Health must be obtained for lots containing multi-family development that are not served by both public water and sewer.

#### 4. NONRESIDENTIAL AND MIXED-USE LOTS

Lots intended for non-residential and mixed-use development shall comply with the minimum dimensional standards for the zoning district where located.

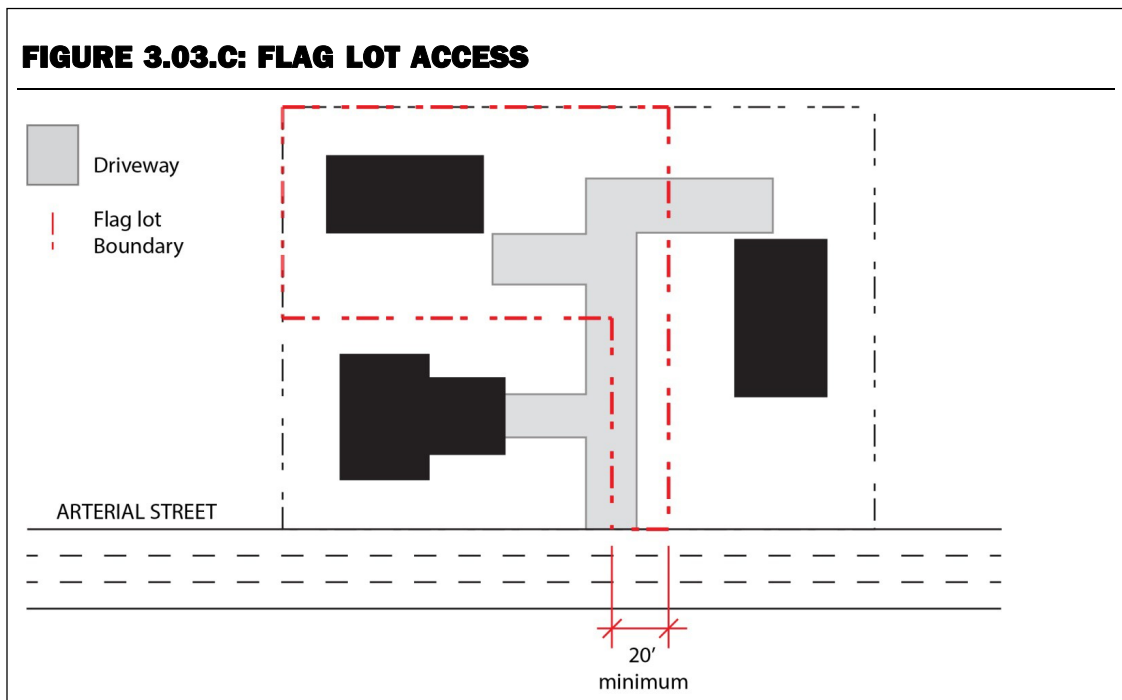
### B. SIDE LOT LINES

1. Side lines of lots should be at or near right angles or radial to street lines.
2. Where side lot lines intersect at the rear of the lot, the angle of intersection shall not be less than 60 degrees.

### C. FLAG LOTS

New flag lots may be established, subject to the following requirements:

1. Except where topographic conditions or environmental constraints make lot access impractical, no more than five percent of the lots within a subdivision (or individual phase of a subdivision) may be configured as flag lots.
2. New flag lots may be established along an expressway or boulevard street only in cases where access to the street is shared with an adjacent lot (see Figure 3.03.C, Flag Lot Access).
3. The "pole," arm," or "pan handle" portion of a flag lot shall maintain a minimum width of at least 20 feet.
4. Use of a single driveway to serve an adjoining flag lot or to serve a flag lot and an adjoining conventional lot is encouraged. In the case of a driveway shared with a conventional lot, the preferred location for the driveway is on the flagpole portion of the flag lot, with the conventional lot granted an access easement over the flagpole.



### D. DOUBLE OR REVERSE FRONTAGE LOTS

1. Double frontage or reverse frontage lots shall be avoided, except when used in conjunction with the provisions for marginal access streets in Section 3.04.C, Marginal Access Streets.

2. Double frontage or reverse frontage lots shall require a non-access buffer of 25 feet on one side of the lot bounded by a street, in addition to other dimensional requirements.

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**E. CORNER LOTS**

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Corner lots shall be of sufficient size to ensure development may be configured to avoid required sight distance triangles.

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**F. DRAINAGE AND FLOOD PREVENTION**

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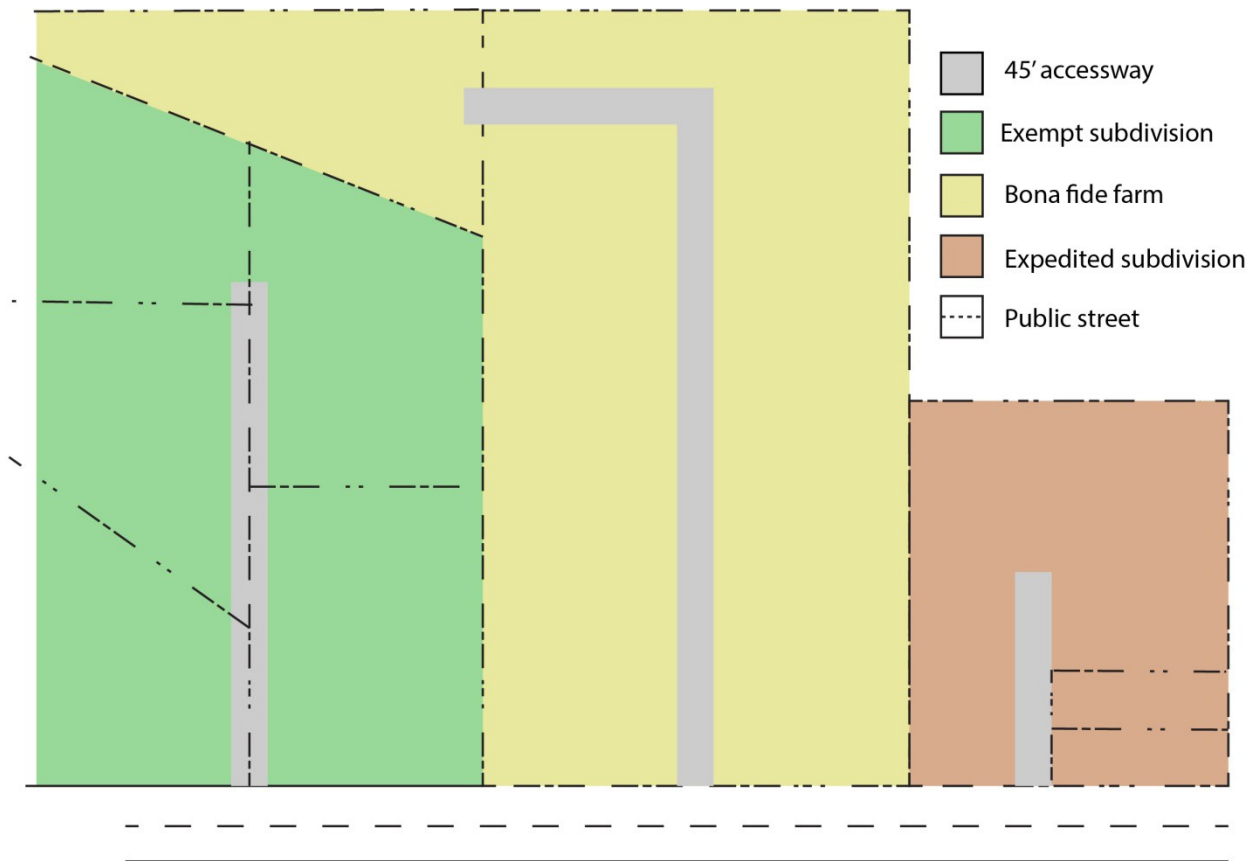
New subdivisions shall comply with all applicable requirements for stormwater management (see Section 5.01, Stormwater Management), drainage (see Section 5.02, Sedimentation and Erosion Control), and all applicable standards for flood damage prevention from Sections 24-31 through 24-117 of the City's Code of Ordinances, when located within a special flood hazard area.

**SECTION 3.04. ACCESS TO LOTS****A. EVERY LOT MUST MAINTAIN ACCESS****1. GENERALLY**

Except for lots within bona fide farms, exempt subdivisions, or in accordance with Section 3.04.A.2, Street Access Exemptions, all lots intended to contain a building or structure shall abut a street designed, built, and maintained to City or State standards, as applicable.

**2. STREET ACCESS EXEMPTIONS**

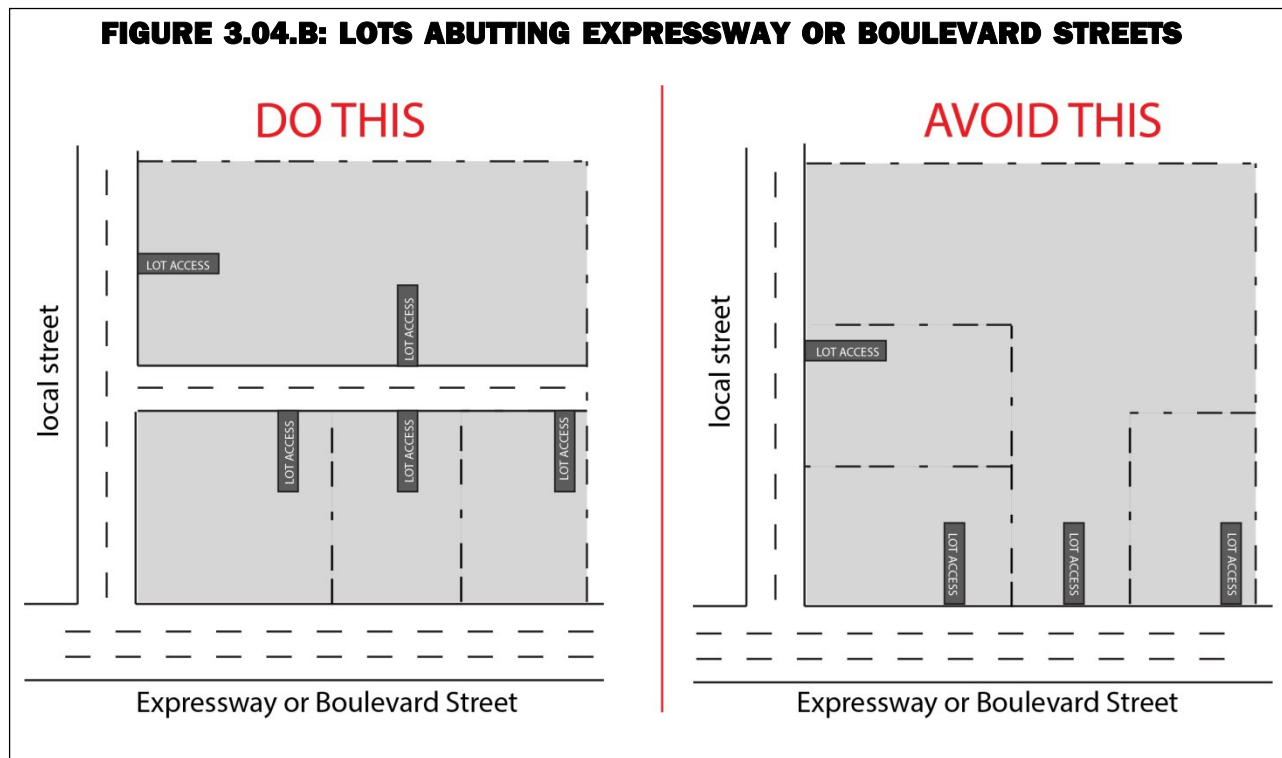
- a. Lots in any of the following forms of development are not required to be served by a street meeting City or State standards:
  - i. Up to three lots in an expedited subdivision; or
  - ii. Up to three lots without roadway frontage that are served by a single, shared accessway.
- b. Any lots not required to abut a street designed, built, and maintained to City or State standards shall maintain an access with a minimum width of 45 feet that is adequately maintained to afford a reasonable means of ingress and egress for emergency vehicles (see Figure 3.04.A.2, Street Access Exemptions).

**FIGURE 3.04.A.2: STREET ACCESS EXEMPTIONS****3. ACCESS SERVING MORE THAN THREE LOTS**

Accessways serving more than three lots outside a bona fide farm or exempt subdivision shall be designed, built, and maintained to public street standards.

**B. ACCESS ON LOTS ABUTTING EXPRESSWAY OR BOULEVARD STREETS**

1. In cases where a tract or site abutting an expressway or boulevard street is proposed for subdivision (whether residential or otherwise), then all lots created shall maintain sufficient frontage on a different street, either pre-existing or created as part of the subdivision, so that direct access to lots need not be provided by an expressway or boulevard street (see Figure 3.04.B, Lots Abutting Expressway or Boulevard Streets).
2. The final plat creating the subdivision shall indicate a notation that driveway access to an expressway or boulevard is limited and shall be provided by a different street.
3. In the event a site or tract is unable to comply with the access limitations in this subsection, an applicant may seek a ~~variance~~ **Variance** in accordance with Section 2.04.J, Subdivision Variance.



#### C. MARGINAL ACCESS STREETS

1. Where a tract of land to be subdivided adjoins an expressway or boulevard street, the subdivider may be required to provide a marginal access street parallel to the expressway or boulevard street or reverse frontage where access is obtained solely by a different street for the lots to be developed adjacent to the expressway or boulevard street.
2. Where reverse frontage is established, private driveways shall not have direct access to the expressway or boulevard street, and a 25-foot-wide non-access buffer zone on the side of the lot abutting the expressway or boulevard street shall be provided.

#### D. DRIVEWAY CONSOLIDATION ALONG EXPRESSWAY, BOULEVARD, AND THOROUGHFARE STREETS

While a lawfully-established access to an individual lot from an expressway, boulevard, or thoroughfare street created prior to March 5, 2020 may remain, it is the intent of this Ordinance to consolidate or eliminate these driveways to help ensure public safety and to preserve the traffic-carrying capacity of the street. In order to encourage the beneficial removal of existing driveways or shared driveways serving two or more lots, the required side setbacks and any perimeter landscaping buffers required between lots may be reduced ~~or waived~~ **by up to 10%** by the City Manager, **subject to if all of** the following requirements **are met**:

1. NCDOT confirms the shared access can still achieve a satisfactory level of access control;

2. A cross-access easement between all parties sharing access is approved by the City Manager and recorded with the Henderson County Register of Deeds;
3. All Fire Code regulations are met;
4. Adequate utility and drainage easements are provided, if necessary; and
5. Minimum side setbacks or perimeter landscaping buffer requirements are reduced by the smallest amount necessary to accommodate the shared access.

**SECTION 3.05. MONUMENTS**

Monuments shall be included as part of any subdivision, and shall be configured in accordance with *The Standards of Practice for Land Surveying in North Carolina*, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, and the following:

- A. Prior to the approval of the final plat, permanent reference points shall have been established in accordance with the standards in this section.
- B. At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.
- C. If a corner is within 2,000 feet of a U.S. Geodetic Survey or NC Grid System coordinated monument, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this monument to an accuracy of at least one to 10,000.
- D. When a monument is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object, or structure. However, if in the opinion of City Manager, a subdivision is of a small size, or if there is an existing tie within a reasonable distance of the subdivision, this shall not be required.
- E. Within each subdivision, at least two monuments designed and designated as control corners shall be installed. The surveyor shall employ additional monuments, if required.
- F. The location and type of all monuments used shall be indicated on the final plat.
- G. All monuments shall be constructed of #4 rebar surrounded by three-inch PVC pipe and filled with concrete.
- H. Each monument shall be set 24 inches in the ground unless this requirement is impractical because of unusual conditions.
- I. The allowable angular error of closure and the linear error of closure for surveys shall be in accordance with *Standards of Practice for Land Surveying* published by the State Board of Registration for Land Surveyors.

**SECTION 3.06. EASEMENTS**

Easements for drainage or utilities may be required where necessary, and shall be provided in accordance with the following:

**A. LOCATIONS**

1. Easements shall center along or be adjacent to a common property line where practicable.
2. Redesign of the lot arrangements may be required to meet extreme conditions.
3. Easements for water and sewer service within a subdivision shall be extended to any lot line shared with vacant land unless the vacant land cannot be served by public water or sewer service due to topographic constraints, public ownership, or other limiting factors as determined under the sole discretion of the City Manager.

**B. UTILITIES****1. POWER OR COMMUNICATIONS**

Where alleys are not provided, easements (of not less than ten feet in width) shall be provided adjacent to public rights-of-way or in such other locations as ~~may be directed by the City Manager~~ for required for the installation of poles, wires, or conduits for electrical utilities, natural gas service, or telephone services in accordance with the standards of those utility providers.

**2. POTABLE WATER**

Easements shall be provided for public potable water supply systems in locations ~~as may be directed by the City Manager~~ for required by the providers of public water for water distribution lines, water meters, and access points.

**3. SANITARY SEWER**

Easements shall be provided for public sanitary sewer systems in locations ~~as may be directed by the City Manager~~ for required by the provider of public sewer for sewer collection lines and access points.

**4. DRAINAGE**

Stormwater or drainage easements, if provided, shall be in accordance with the City-approved stormwater operation and maintenance agreement or as required by the Stormwater Ordinance found in Chapter 24 Article III of the City of Hendersonville Code of Ordinances.

**C. WIDTH**

Easement widths for potable water and sanitary sewer lines shall be provided in accordance with Table 3.06.C, Minimum Easement Width.

<b>TABLE 3.06.C: MINIMUM EASEMENT WIDTH</b>			
PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
<b>Sanitary Sewer Mains</b>			
8 - 10	10 or less	20	30
8 - 10	10 - 12.5	25	35
8 - 10	12.5 - 15	30	40
8 - 10	15 - 17.5	34	45
8 - 10	17.5 - 20	40	50
12 - 24	15 or less	30	40
12 - 24	15 - 17.5	35	45
12 - 24	17.5 - 20	40	50
> 24	Any depth	[3]	[3]
Any size not listed here	> 20	[3]	[3]
<b>Potable Water Mains</b>			



**ARTICLE 3: CONFIGURATION**

8 - 10	10 or less	Easements 20	30
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**TABLE 3.06.C: MINIMUM EASEMENT WIDTH**

PIPE SIZE (INCHES) [1]	PIPE DEPTH (FEET)	PERMANENT EASEMENT WIDTH (FEET)	CONSTRUCTION EASEMENT WIDTH (FEET) [2]
8 – 10	> 10	25	35
12 – 24	10 or less	30	35
12 – 24	> 10	35	40

**NOTES:**

[1] Nominal diameter.

[2] Temporary easement for construction only.

[3] As specified by City Manager.

**D. EASEMENT UPSIZING**

The City Manager may increase the minimum required easement widths for potable water sanitary sewer, drainage, or other utility services based on topographic conditions, environmental considerations, the size of the line, the required depth of the line, or the need to remain clear of other utilities as determined by the utility provider.

**E. MAINTENANCE**

1. All easements for drainage or utilities shall be cleared of undergrowth, trees, and other obstructions prior to approval of the final plat unless the City Manager~~utility provider~~ certifies in writing that ~~such clearance is unnecessary. clearing is not necessary to enable the utility provider to utilize the easements.~~
2. Clearance is not required for easements that are provided for possible future use.
3. Easements for stormwater management facilities and stormwater drainage systems located outside the street right-of-way shall be maintained by an owner's association, and maintenance responsibility for these features shall be indicated on the final plat.

**F. IDENTIFICATION**

All easements shall be granted in favor of the City of Hendersonville, the State of North Carolina, the appropriate utility provider, an owner's association, as appropriate, and shall be shown and clearly labeled on the final plat.

**SECTION 3.07. SUBDIVISION NAMES**

The name of a proposed development shall not duplicate or be phonetically similar to an existing development name in the County unless the proposed development lies adjacent or in proximity to the existing development.

**SECTION 3.08. CLUSTER MAILBOX UNITS**

New residential subdivisions shall include cluster mailbox units in accordance with U.S. Postal Service guidelines and the following:

- A.** Wherever possible, cluster mailboxes shall be located in a centralized location, within an open space set-aside, served by pedestrian access and served by two or more off-street parking spaces.
- B.** In cases where the cluster mailboxes must be placed within a public right-of-way, the mailbox unit(s) shall be located and configured in accordance with the latest revision of the NCDOT policy guidance on the placement cluster box units (CBUs), including provision of a vehicular turnout.
- C.** Cluster mailbox units placed on a private street shall comply with NCDOT policy guidance on the placement of cluster box units (CBUs) on State-maintained streets.

**SECTION 3.09. DEDICATION OF PUBLIC LAND****A. DEDICATION OF LAND FOR PUBLIC PARKS**

Subdivisions of land for 30 or more single-family residential lots (including detached and attached units) shall be required to dedicate a portion of the land, or pay a fee-in-lieu thereof, for public parkland, in accordance with the standards of this section.

**1. DEDICATION AMOUNT**

- a. Single-family residential subdivisions of 30 or more lots shall dedicate 500 square feet of land per residential lot to the City for its use in developing public parkland.
- b. No credit towards required parkland dedication is given for lands mandated for preservation by State or federal requirements.
- c. No more than 25 percent of the total dedication requirement may be met through dedication of water areas.

**2. PROCEDURE FOR DEDICATION OR PAYMENT**

- a. The developer shall identify land proposed for dedication on the ~~major-subdivision~~ Major Subdivision, or propose payment of an in-lieu fee as part of the application for approval of a ~~major-subdivision~~ Major Subdivision.
- b. The City shall review the proposed application and determine if it complies with the standards in Section 3.09.A.3, Nature of Area to be Dedicated, or Section 2.06, Fee-in-Lieu, as appropriate. The decision to accept dedication is up to the sole discretion of the City Council.
- c. Land shall be dedicated prior to recording the first final plat for the subdivision, or the payment-in-lieu shall be paid prior to recording the first final plat for the subdivision for which the payment-in-lieu is paid.

**3. NATURE OF AREA TO BE DEDICATED**

All lands proposed for dedication as park areas shall meet the following standards:

**a. UNITY**

The dedicated land shall be a single parcel of land if the parcels are contiguous, whether the subdivision is developed in phases or sections, ~~except where it is determined by the City Manager that multiple parcels would better serve City residents.~~

**b. USABILITY**

Public parkland must be without significant topographic elevation changes, well-drained, and suitable usable land for use as a public park under generally accepted public park development standards for the development of a public park, as determined by the City Manager. In cases where dedication includes an area of water, public access to all portions of a water feature shall be provided and maintained, regardless of water feature's size.

**c. SHAPE**

The dedicated land shall be of a shape that supports gathering and recreation activities.

**d. LOCATION**

- i. The dedicated parkland shall be located so it can reasonably serve the park needs of the residents of the subdivision and immediate area.
- ii. The City ~~Council~~ may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the recreation and park area with adjacent development or park facilities, existing or planned.

**e. ACCESS**

- i. All dwelling units in the subdivision and residents in the immediate area shall have access to and from the parkland provided by means of streets and public walkways or trails.
- ii. Rights-of-way for this access shall be shown on the preliminary and final plats.

- iii. All dedicated lands shall have access by way of a street. Such access can be provided when the dedicated land is adjacent to existing or proposed public parkland with street access.

**4. CREDIT FOR GREENWAYS**

Land or easements dedicated to the City in accordance with Section 4.05, Greenways, shall be credited towards the standards in Section 3.09.A.1, Dedication Amount.

# ARTICLE 4: INFRASTRUCTURE

## SECTION 4.01. PURPOSE AND INTENT

The purpose of this section is to establish standards for the planning, installation, and operation of public infrastructure as part of the subdivision of land in the City's planning jurisdiction. More specifically, this section is intended to:

- A.** Provide for the orderly growth and development of the City;
- B.** Coordinate the provision of streets within and contiguous to proposed subdivisions with other existing or planned streets in the general area;
- C.** Provide for the adequate provision of public services and infrastructure;
- D.** Maintain conditions essential to the public's health, safety, and general welfare; and
- E.** Facilitate the further re-subdivision of larger tracts into smaller parcels of land, where appropriate.

## SECTION 4.02. GENERAL REQUIREMENTS

### A. REASONABLE RELATIONSHIP

All required improvements and rights-of-way (other than required reservations) in this article shall substantially benefit the development or bear a reasonable relationship to the need for public facilities attributable to the new development.

### B. CONSISTENCY WITH ADJACENT DEVELOPMENT

Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, the utility facilities (such as, water or sewer lines) shall be located and constructed in accordance with the standards in this section so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

### C. WITHIN SPECIAL FLOOD HAZARD AREAS

Placement of required infrastructure within a special flood hazard area shall only be in accordance with the applicable standards for flood damage prevention in the Flood Damage Prevention Ordinance.

### D. AS-BUILT PLANS REQUIRED

1. Whenever a developer installs or causes to be installed any water, sewer, stormwater, or sidewalk, the developer shall, as soon as practicable after installation is complete, and before acceptance, furnish the City with an as-built plan prepared by a licensed professional that shows the exact location and configuration of the utility. Nothing shall limit the depiction of more than one type of utility on the same as-built plan sheet.
2. The as-built plan must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing the development.
3. As-built plans shall be prepared and verified prior to issuance of a certificate of occupancy, commencement of operation, approval of a final plat, or release of a performance guarantee, as appropriate.

### E. MAINTENANCE REQUIRED

1. Required infrastructure installed or caused to be installed by a developer and intended for ownership or operation by another entity shall be maintained by the developer until such time as the infrastructure is accepted by the entity who will own or operate it.
2. All utility facilities shall be constructed in a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

### F. DEDICATION AND ACCEPTANCE

#### 1. STREETS AND ASSOCIATED FACILITIES

- a. The subdivider or developer shall install all streets in accordance with all NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements, as appropriate.
- b. Streets and their associated infrastructure shall remain under private ownership or be dedicated to the City or NCDOT, in accordance with all applicable requirements.

## **2. POTABLE WATER**

- a. The subdivider or developer shall install all potable water supply lines and meters in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.
- b. Potable water supply lines, including water tanks, distribution lines, water mains, and laterals shall be dedicated to the City or other public entity providing potable water for maintenance and operation. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City or another public entity providing potable water.
- c. All lots in new subdivisions subject to the standards in this Ordinance shall abut a potable water main line.
- d. In no instance shall a potable water service line serving an individual use extend across the lot line.

## **3. SANITARY SEWAGE SYSTEM**

- a. In cases of development being served by a public sewage systems, the subdivider or developer shall install all sewer lines in accordance with the applicable standards in Chapter 52 of the City's Code of Ordinances and other State or federal requirements.
- b. All lots in new subdivisions subject to the standards in this Ordinance shall abut a sanitary sewer main line.
- c. Except for private centralized systems, sanitary sewage lines, pump stations, and treatment facilities shall be dedicated to the City for maintenance and operation.
- d. In no instance shall a sewer service line serving an individual use extend across the lot line.
- e. Sewer lines serving individual lots or uses prior to their connection to the central collection system shall not be the responsibility of the City.
- f. Centralized private sewage systems shall be offered for dedication to the City, who may choose to accept the system in the sole discretion of the City Council.

## **4. STORMWATER MANAGEMENT FACILITIES**

- a. The subdivider or developer shall install all stormwater management facilities in accordance with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, and any applicable State or federal requirements.
- b. The City shall not accept dedication of land occupied by a stormwater management facility or maintenance responsibilities, though the City may require posting of a performance guarantee for stormwater management facility maintenance in accordance with Section 5.01, Stormwater Management.
- c. The City may require granting and recordation of an access and maintenance easement to allow the City or its designated representatives to access and maintain a stormwater management facility required by this Ordinance.

## **5. PUBLIC PARK LAND**

- a. Land designated as public park land on a final plat shall be considered to be offered for dedication until such offer is accepted by the City. The offer may be accepted through conveyance of fee simple marketable title (unencumbered financially and environmentally) of the land to the City at the time of final plat recordation, or by other appropriate manner of acceptance in the City's discretion.
- b. Until an offer of dedication is accepted by the City, land offered for dedication may be used for open space purposes by the landowner or by the owners' association. Land offered for dedication shall not be used for any purpose inconsistent with the proposed public use.

**SECTION 4.03. STREETS****A. GENERALLY****1. STREETS DISTINGUISHED**

All streets, roads, and alleys within the City's planning jurisdiction shall be designated as one of the following street types, based on maintenance responsibility:

- a. State-maintained, or NCDOT streets (this includes roadways in the federal highway system);
- b. City streets that ~~are will be~~ owned, ~~maintained or and~~ operated by the City of Hendersonville; or
- c. Private streets that ~~are will be~~ owned and maintained by individuals or owner associations.

**2. TYPES OF STREETS****a. PUBLIC STREETS**

Streets that are owned, operated, or maintained by the NCDOT, the City, or the federal government shall be considered as public streets.

**b. PRIVATE STREETS**

Streets that are owned, operated, or maintained by an individual or an owner's association shall be considered private streets.

**3. STREET CLASSIFICATION**

- a. All new and existing streets in the City's planning jurisdiction shall be identified in the City's adopted policy guidance as one of the following street classifications:

**TABLE 4.03.3: STREET CLASSIFICATION**

STREET TYPE	DESCRIPTION
<b>Freeway</b>	Freeways are the highest classification of streets and are designed and constructed with mobility and long-distance travel in mind. Access is controlled, intersections are grade-separated, driveways serving individual lots are prohibited, and roadways are designed for high-speed travel of 55 mph or greater. Roadways in this functional classification category connect the City to other destinations in the State and connect major activity centers in the City to one another. Freeways carry the highest traffic volumes.
<b>Expressway</b>	These streets provide a high degree of mobility both within the City's urban areas as well as through neighboring rural areas. Vehicles move at high-to-moderate speeds and four-way intersections are often signal-controlled. These streets include at-grade intersections with other streets typically spaced 2,000 feet apart, but driveways to individual lots are typically limited to right-in/right-out or grade separated left turns. The average number of vehicles trips can vary widely based on the urban or rural location of an expressway.
<b>Boulevards</b>	Boulevards connect major streets to one another and provide for vehicle trips of moderate length at medium speeds. The road is typically two or more lanes with a median with median breaks provided for U-turns. Full-movement driveways may be provided when alternative forms of access are not available.



**TABLE 4.03.3: STREET CLASSIFICATION**

STREET TYPE	DESCRIPTION
<b>Major Thoroughfare</b>	Major thoroughfares provide a balance of mobility and access with moderate traffic volumes and low-to-medium speeds between 25 and 55 mph. Streets may be up to four lanes wide with no median and no requirements for access control. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
<b>Minor Thoroughfare</b>	Minor thoroughfares provide balanced mobility and access with moderate traffic volumes and lot-to-medium design speeds of up to 45 mph. Streets may have up to three lanes with no more than one lane per direction. Access management may be provided in the form of continuous left turn lanes, shared driveways, full movement driveways are permitted on two-lane streets with a center turn lane. Cross-parcel connectivity between adjacent lots is strongly encouraged.
<b>Local</b>	Local streets occupy the largest percentage of lane miles across all types of streets and primarily provide direct access to individual lots. Local streets are often configured to discourage through traffic, though local streets can also effectively disperse local traffic when configured as part of a highly connected network offering multiple routes.
<b>Cul-de-Sac</b>	A dead-end local street that terminates in a vehicular turnaround.
<b>Alley</b>	A secondary street that provides direct access to a limited number of individual lots or land uses. In most cases, access is provided to the side or rear of the lot served by the alley.

- b. Nothing shall prohibit a change in street classification based on traffic volumes or anticipated needs.
- c. In no instance shall a private street be classified as a freeway, expressway, boulevard, or thoroughfare street.

#### 4. COMPLIANCE WITH POLICY GUIDANCE

##### a. ALL STREETS

Except where otherwise allowed in accordance with Section 3.04.A.2, Street Access Exemptions, all streets and rights-of-way within the City's planning jurisdiction shall be designed, constructed, and maintained in accordance with the following:

- i. Streets maintained by the State shall comply with the standards established for the particular classification of street in question by the NCDOT.
- ii. Streets dedicated to or maintained by the City shall comply with all applicable standards established by this Ordinance or the City's Code of Ordinances, whichever is higher or more restrictive.

##### b. ADDITIONAL STANDARDS FOR STATE-MAINTAINED STREETS

- i. All streets intended for dedication to the State shall have rights-of-way and construction meeting the standards contained in the *Subdivision Roads, Minimum Construction Standards Handbook*, as revised, published by the NCDOT.
- ii. The District Highway Engineer shall approve the plat with respect to road construction, road width, and right-of-way prior to recording. Without the approval, the plat cannot be recorded.

- iii. Once the development meets the minimum housing requirements for state road acceptance, the developer shall petition NCDOT for state road acceptance.
- iv. After inspection and upon receipt of outcome of the inspection, the developer shall have 12 months to turn over roads to NCDOT.

**B. STREET DESIGN**

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**1. DEDICATION AND CONSTRUCTION**

- a. All lands associated with a new or modified street right-of-way shall be dedicated to the City or the State as a part of the development process in accordance with Section 136-66.10 of the North Carolina General Statutes.
- b. All streets shall be improved to the full width, cross section, and profile, including paving and drainage, as specified in the development approval, this Ordinance, the City's adopted policy guidance, State or federal law, and any other applicable provisions.
- c. The subdivider or developer shall be responsible for the construction and installation of all streets and infrastructure in accordance with the applicable development approval, NCDOT standards, the standards in this Ordinance, and any applicable State or federal requirements.
- d. No road construction or improvements shall commence until a plan showing the proposed roadway improvements and a construction plan [demonstrating compliance with the standards of this Ordinance](#) is approved by the City Manager.

**2. PRIVATE STREETS****a. NEW STREETS**

- i. Except where otherwise allowed in accordance with [Section 3.04.A.2, Street Access Exemptions](#), all streets constructed, extended, or modified after March 5, 2020 shall be constructed, maintained, and operated in accordance with the standards for public streets.
- ii. Private streets shall not be constructed as part of development within the City's corporate limits.
- iii. Existing streets associated with land or subdivisions proposed for voluntary annexation shall meet applicable City requirements prior to or concurrent with annexation.

**b. EXISTING PRIVATE STREETS**

- i. Neither the City of Hendersonville or NCDOT shall be responsible for maintenance of private streets existing on or after March 5, 2020.
- ii. The City shall not accept maintenance responsibility for any private streets that do not meet the City's standards for street configuration and construction.

**3. GENERAL LAYOUT**

- a. Streets shall be related appropriately to the topography and designed to facilitate the drainage and stormwater runoff.
- b. Street grades shall be governed by NCDOT requirements and shall conform as closely as practicable to the original topography.
- c. Half streets (such as streets of less than the full required right-of-way and pavement width) shall not be permitted, except where the streets, when combined with a similar street, developed previously or simultaneously, on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this Ordinance.
- d. When a development abuts or contains an existing or proposed freeway, expressway, or boulevard, the City Manager may require frontage streets, reverse frontage with landscape plantings, or other treatment as may be necessary for adequate protection of residential properties and to ensure separation of through and local traffic.
- e. Reserve strips or parcels controlling access to streets shall be prohibited, except where required as part of development on a double-frontage lot.

**4. COMPLIANCE WITH TRANSPORTATION IMPACT ANALYSIS FINDINGS**

In cases where new development is subject to a requirement to prepare a transportation impact analysis, all streets and street-related infrastructure shall comply with the findings of the analysis.

#### 5. CONTINUATION AND COORDINATION OF NEW STREETS

- a. New streets or upgrades to existing streets resulting from new development shall comply with the location, classification, configuration, and operation requirements identified in the City's adopted policy guidance or NCDOT standards, as appropriate. For the purposes of this section, the City's adopted policy guidance shall include, but not be limited to the following:
  - i. The Comprehensive Plan;
  - ii. The Comprehensive Transportation Plan from the French Broad MPO, as amended; and
  - iii. The City's Standard Specifications and Details.
- b. Whenever a street within a new development continues an existing street that formerly terminated outside the development or it is expected that a new street will be continued beyond the development at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the development.
- c. The arrangement of streets in a development shall provide for the alignment and continuation of existing or proposed streets into adjoining lands in those cases in which the adjoining lands are undeveloped and deemed appropriate by the DRC for future development or in which the adjoining lands are developed and include opportunities for such connections.
- d. Street rights-of-way shall be extended to or along adjoining property boundaries such that a roadway connection or street stub shall be provided for development where practicable and feasible in each direction (north, south, east, and west) for development which abuts vacant lands.
- e. Boulevard and thoroughfare streets shall intersect with surrounding boulevard and thoroughfare streets at safe and convenient locations, as determined by the NCDOT and the City Manager.
- f. At all locations where streets terminate with no street connection, but a future connection is planned or accommodated, a sign shall be installed at the location with the words "FUTURE ROAD CONNECTION" to inform property owners.
- g. The final plat shall identify all stub streets and include a notation that all street stubs are intended for connection with future streets on adjoining undeveloped or underdeveloped lands.
- h. The use of residential strips of land in order to prevent the extension of proposed or existing streets or access thereto is prohibited.
- i. Where access to a subdivision site is by a street that does not meet City or State standards, that street shall be improved by the developer in order to meet current City or State standards, as appropriate.

#### 6. CONNECTIVITY

Streets within new subdivisions shall be connected to one another to ensure emergency access and prevent traffic congestion in accordance with the following:

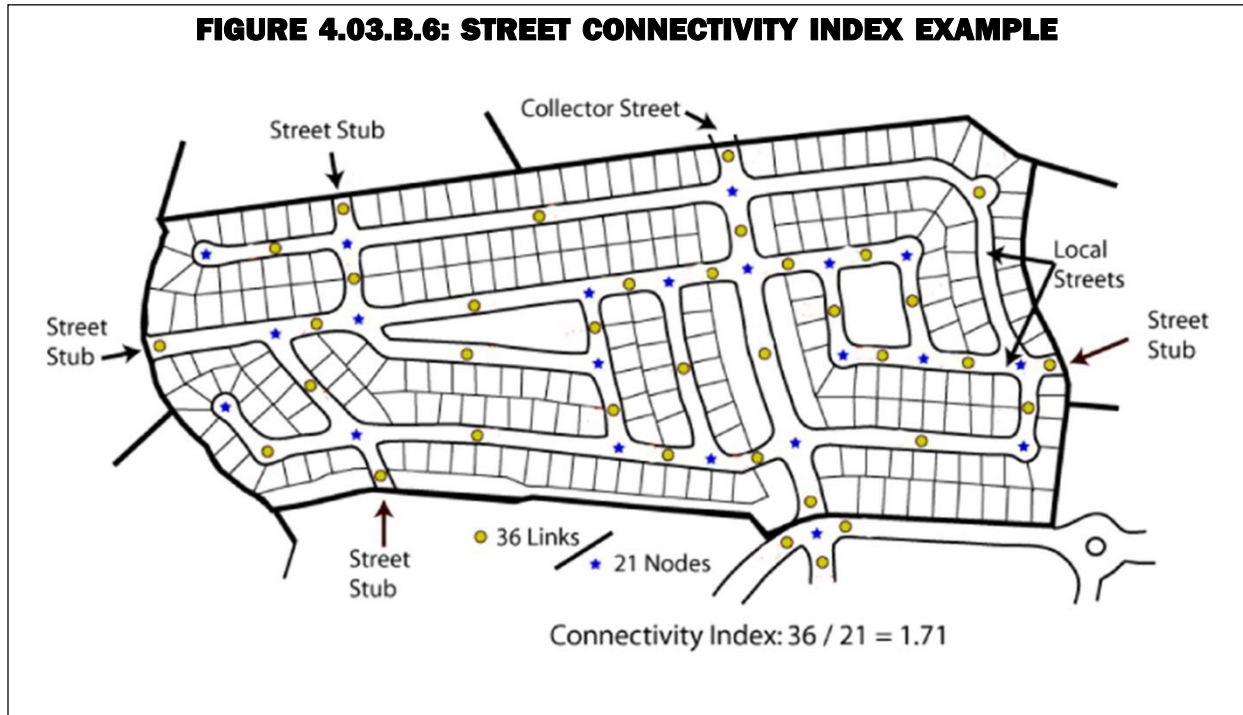
##### a. MINIMUM CONNECTIVITY INDEX SCORE REQUIRED

All development shall achieve an internal street connectivity score in accordance with Table 4.03.B.6: Minimum Street Connectivity Score.

<b>TABLE 4.03.B.6: MINIMUM STREET CONNECTIVITY SCORE</b>	
ZONING DISTRICT WHERE DEVELOPMENT IS PROPOSED	MINIMUM REQUIRED STREET CONNECTIVITY INDEX SCORE
R-15, R-20, and R-40	1.20
All Other Districts	1.40

## b. CONNECTIVITY INDEX SCORE CALCULATION

- i. The connectivity index for a development is calculated by dividing its links by its nodes.
- ii. Figure 4.03.B.6, Street Connectivity Index Example, provides an example of how to calculate the connectivity index. Nodes (stars) exist at street intersections and cul-de-sac heads within the development. Links (circles) are stretches of road that connect nodes. Street stub-outs are considered as links, but temporary dead-end streets internal to a development or alleys are not counted as links. One link beyond every node that exists in the development and provides access to the street system outside the development shall be included in the index calculation. In the diagram, there are 36 links (circles) and 21 nodes (stars); therefore the connectivity index is 1.71 ( $36/21 = 1.71$ ).

**FIGURE 4.03.B.6: STREET CONNECTIVITY INDEX EXAMPLE**

## c. REDUCTION IN MINIMUM INDEX SCORE

The minimum connectivity index score may be reduced if the owner/developer demonstrates it is not possible to achieve due to topographic conditions, natural features, existing road configurations, or adjacent existing development patterns. In these instances, internal street design shall achieve as high a connectivity index score as is reasonably practical.

## C. STREET CONFIGURATION

## 1. STREET RIGHTS-OF-WAY

- a. All new streets established in the City's jurisdiction after March 5, 2020 shall include a minimum street right-of-way configured in accordance with Table 4.03.C.1: Minimum Street Right-of-Way Requirements.

**TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS**

TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]

**TABLE 4.03.C.1: MINIMUM STREET RIGHT-OF-WAY REQUIREMENTS**

TYPE OF STREET	CONFIGURATION	MINIMUM RIGHT-OF-WAY (FEET) [1] [2]
Expressway	8 lanes, raised median	160
	4 lanes, grass median	150
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Boulevard	8 lanes, raised median	160
	6 lanes, raised median	150
	4 lanes, grass median	120
	4 lanes, raised median	110
Major Thoroughfare	7 lanes	120
	5 lanes	100
	4 lanes	90
	3 lanes	80
Minor Thoroughfare	2 lanes, parking on each side	80
	2 lanes, parking on one side	70
	2 lanes, paved shoulder	70
Local	45	
Cul-de-Sac	45 [3]	
Alley	20	
NOTES:		
[1] The street right-of-way shall include curb and gutter, sidewalks, multi-use paths, bicycle lanes (where indicated), and associated utility strips.		
[2] Minimum rights-of-way may need to be wider to accommodate all forms of planned infrastructure in accordance with the City's adopted policy guidance.		
[3] Radius will be wider.		

- b. In cases where an existing street is depicted on the City's adopted policy guidance, but is not configured to the required width or cross section, the roadway shall be improved in accordance with the City's adopted policy guidance as part of the development.

## 2. STREET INTERSECTIONS

Street intersections shall be configured in accordance with the following standards:

- Not more than two streets shall intersect at any one point unless the City or NCDOT certifies that such an intersection can be constructed with no extraordinary danger to public safety.
- Streets shall intersect at right angles to the maximum extent practicable, and no two streets shall intersect at less than 60 degrees.
- Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of the street.
- Where a street center line offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 125 feet.
- Except when no other alternative is practicable or legally possible, no two streets may intersect with any other street on the same side at a distance of less than 200 feet measured

- from centerline to centerline of the intersecting street. When the intersected street is an expressway or boulevard, the distance between intersecting streets shall be at least 1,000 feet, unless no other alternative is practicable.
- f. Property lines at street intersections shall be shown as a chord connecting points not less than 15 feet back from the street intersection along each street right-of-way line. Longer setbacks for chord connections for property lines may be required by the DRC as needed for public safety.
  - g. In commercial developments the City may assign traffic control to thru traffic within 500 feet of the point of access to the public right-of-way.

### 3. DEVELOPMENT ENTRY POINTS

- a. Unless exempted in accordance with subsection (d) below, all subdivisions shall provide streets from the development to the street system outside the development in accordance with Table 4.03.C.3, Required Points of Access:

<b>TABLE 4.03.C.3: REQUIRED POINTS OF ACCESS [1]</b>		
TYPE OF DEVELOPMENT	DEVELOPMENT SIZE	MINIMUM NUMBER OF VEHICULAR ACCESS POINTS [2]
Residential and Mixed-Use Development [3]	30 or fewer lots	1
	31 or more	2
Non-residential Development, other than Industrial [4]	Less than 5 acres or fewer than 10 lots	1
	More than 5 acres	2
<b>NOTES:</b> [1] Points of access shall refer to streets, not driveways. [2] Additional vehicular access points may be required where determined necessary by the City. [3] Multi-family or mixed-use developments of 100 dwelling units or more shall provide at least two points of access regardless of the number of lots. [4] The Fire Code may require a minimum of two points of access.		

- b. Nothing in this section shall limit the total number of streets providing access to the street system outside a development, or exempt a development from meeting all applicable street connectivity standards.
- c. Street stubs shall be credited as an access point when all ingress or egress to a development is only available from a single expressway, boulevard, or thoroughfare street.
- d. Development shall be exempted from these standards if it is demonstrated the following conditions apply:
  - i. A transportation impact analysis allows a deviation;
  - ii. No other street access points can be located due to existing lot configurations, absence of connecting streets, environmental, or topographic constraints;
  - iii. NCDOT will not authorize the required number of entrances; or
  - iv. Alternative access can be provided in a manner acceptable to the City that is supported by a transportation impact analysis.

### 4. TURN LANES

Turn lanes for either or both left and right turns into a commercial or residential subdivision driveway may be necessary for safety when there are high roadway and/or turning volumes or traffic, when the roadway speeds are moderate or high, or where needed due to limited sight distance. When provided, turn lanes shall be configured in accordance with the following:

- a. The final determination for the need, location, and design of a turn lane is the responsibility of the NCDOT, or the City, as appropriate.
- b. Left and right turn lanes shall be constructed in accordance with NCDOT standards and specifications.
- c. Right-turn lanes shall be constructed entirely within the frontage of the property being served, since an adjacent development might subsequently require an entrance that would otherwise encroach into the turn lane.
- d. The NCDOT may require a undivided street to be widened when the median has an inadequate width for a left turn lane.

#### 5. DECELERATION LANES

- a. Any use capable of generating more than 60 trips per peak hour, as estimated by using NCDOT guidelines or the Institute of Traffic Engineers Trip Generation Manual, shall provide at least one deceleration lane per street front in accordance with NCDOT standards when the use is located along an expressway or boulevard street.
- b. Deviations from these requirements may only be authorized when the NCDOT indicates that a particular development design or technique can still achieve a satisfactory level of access control consistent with the objectives of this section.

#### 6. CUL-DE-SAC AND DEAD-END STREETS

- a. No permanently designed cul-de-sac or other dead-end street shall be longer than 800 linear feet, except where land cannot otherwise be subdivided practicably in the opinion of the City Manager.
- b. In cases where one cul-de-sac is accessed from another cul-de-sac, the maximum length for all cul-de-sacs accessed from one another shall be 500 linear feet.
- c. All permanent cul-de-sacs or other dead-end streets shall be provided at the closed end with a turn-around configured in accordance with the City's minimum requirements.
- d. Dead-end streets intended to be continued at a later time shall be provided with a turn-around as required for a dead-end street when required by the City Manager.
- e. Only that portion to be required as right-of-way when the street is continued shall be dedicated and made a public street.

#### 7. STREET GRADE

Street grades shall comply with the following standards:

- a. Streets and their associated gutters shall maintain grade levels in accordance with Table 4.03.C.7, Maximum and Minimum Street Grade.

**TABLE 4.03.C.7: MAXIMUM AND MINIMUM STREET GRADE**

STREET TYPE	MAXIMUM GRADE	MINIMUM GRADE
Expressways and Boulevards	6%	Not less than 1%
Major and Minor Thoroughfares	8%	Not less than 1%
Local Streets	10%	

- b. Street and intersection approaches shall not have grades in excess of three percent for a distance of 100 feet from the intersection of center lines in all directions for all streets.
- c. All changes in grades for local streets and thoroughfares shall be connected by a vertical curve of a minimum length of 40 times the algebraic difference in the percents of grade ("K" value). Stop conditions shall have a minimum "K" value of 14 times the algebraic difference

of the percents of grade. "K" values for arterials shall be per the AASHTO Geometric Design of Highways and Streets based on design speed.

- d. The City Manager may consider deviations from these standards based on topographic conditions or public safety concerns.

#### 8. STREET CURVES

Street curves shall maintain the minimum radii established in Table 4.03.C.8: Minimum Curve Radii and Tangents:

<b>TABLE 4.03.C.8: MINIMUM CURVE RADII AND TANGENTS</b>		
STREET TYPE	MINIMUM RADII (FEET)	MINIMUM TANGENT DISTANCE BETWEEN REVERSE CURVES ON THE SAME STREET (FEET)
Expressways and Boulevards	600	150
Major and Minor Thoroughfares	400	100
Local Streets	150	0

#### 9. STREET DRAINAGE

- a. All required drainage facilities associated with a street right-of-way shall be constructed prior to consideration of a final plat.
- b. Storm sewers, drains, and structures installed by the subdivider shall be installed of a size, type, and in locations as approved by the City Manager, or NCDOT, as appropriate.
- c. Street drainage facilities located outside the street right-of-way shall be maintained by the developer, the landowner, or an owners' association, and maintenance responsibility shall be noted on the final plat.
- d. The City shall not be responsible for any private or commonly-held subdivision drainage infrastructure connected to publically-maintained drainage facilities, streams, or other outlets having constant flow.

#### 10. SIGHT DISTANCE TRIANGLES

##### a. SIGHT DISTANCE TRIANGLES ESTABLISHED

- i. Corner lots and lots with driveways, alleys, or other methods of ingress/egress to a street shall include sight distance triangles to ensure visibility for drivers and pedestrians moving through or in an intersection.
- ii. Required sight distance triangles shall be configured in accordance with Table 4.03.C.10: Sight Distance Triangle Requirements.
- iii. Land within a required sight distance triangle shall comply with the standards in Section 4.03.C.10.c, Limitations on Obstructions within Required Sight Distance Triangles.

<b>TABLE 4.03.C.10: SIGHT DISTANCE TRIANGLE REQUIREMENTS</b>		
TYPE OF STREET, INTERSECTION, OR DRIVEWAY		MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
Intersections of Streets [4]		10/70
Driveways Serving Parking Lots		10/70
Driveways Serving Land Uses Without Parking Lots	Residential	None
	All Other Uses of Land	10/70 wherever possible
NOTES:		
[1] See Figure 4.03.C.10, Sight Distance Triangles, for the 10/70 configuration.		
[2] The NCDOT may require an alternate configuration.		

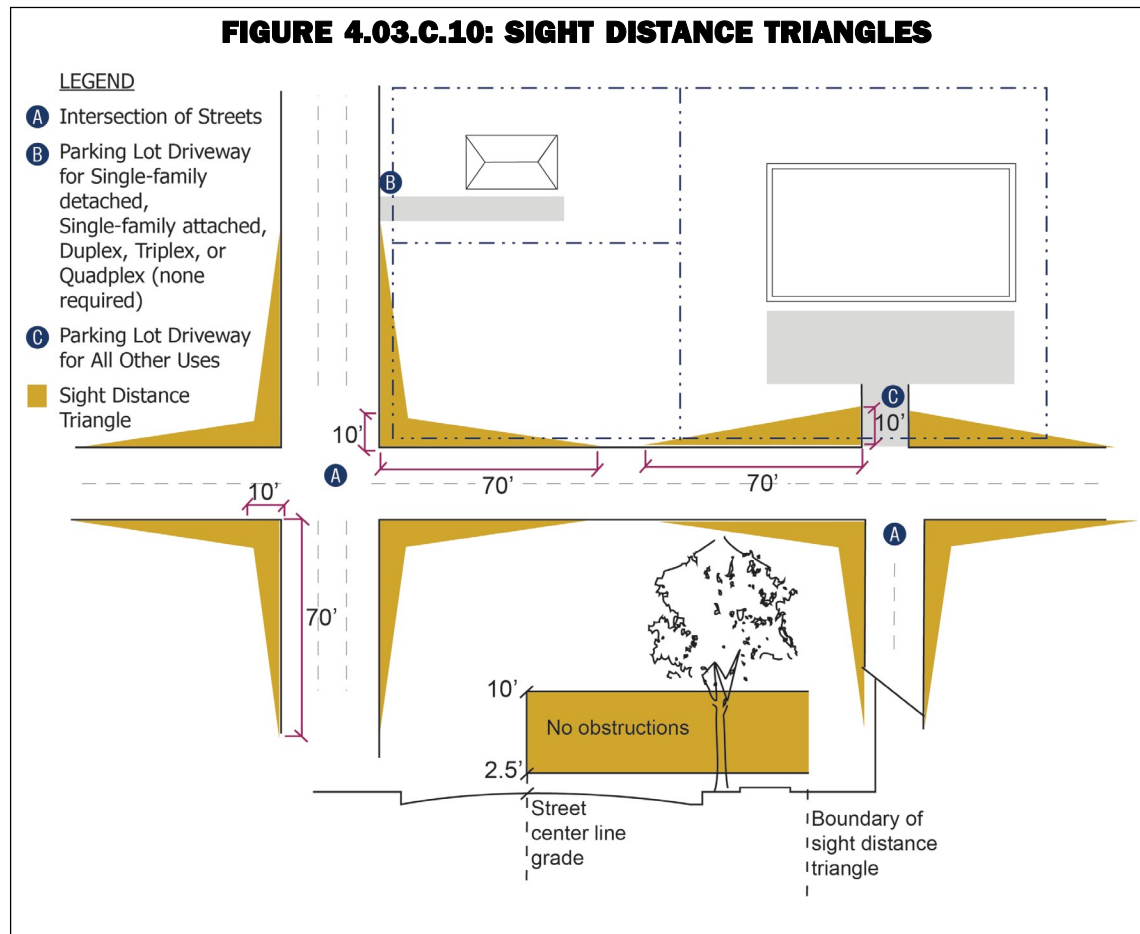


**TABLE 4.03.C.10: SIGHT DISTANCE TRIANGLE REQUIREMENTS**

TYPE OF STREET, INTERSECTION, OR DRIVEWAY	MINIMUM REQUIRED SIGHT DISTANCE TRIANGLE [1] [2] [3]
<p>[3] AASHTO requirements shall be applied to streets with curves.</p> <p>[4] Includes all streets, including public streets.</p>	

b. MEASUREMENT OF SIGHT DISTANCE TRIANGLE

Sight distance triangles shall be an area between a point at the edge of a street right-of-way located 70 linear feet from the intersection and a second point at the edge of the opposing street right-of-way located ten feet from the intersection (see Figure 4.03.C.10, Sight Distance Triangles).



c. LIMITATIONS ON OBSTRUCTIONS WITHIN REQUIRED SIGHT DISTANCE TRIANGLES

- i. No planting, structure, fence, wall, slope, embankment, parked vehicle, or other obstruction to vision between the heights of two-and-one-half (2½) feet and ten feet above the centerline grades of intersecting streets or accessways may be located within a required sight distance triangle.
- ii. No structure or object, regardless of its size, which obstructs visibility within a required sight distance triangle to the detriment of vehicular or pedestrian traffic shall be permitted.

D. STREET FEATURES

**1. STREET NAMES**

Street names and property address numbers shall be assigned by Henderson County.

**2. TRAFFIC CONTROL SIGNS AND SIGNALS**

- a. If deemed necessary by the City or by NCDOT, signals shall be installed by the developer at each street intersection within the subdivision and at each intersection of a subdivision street and a state-maintained road or access road.
- b. Signs and signals shall comply with NCDOT regulations with regards to size, shape, color, location and information contained thereon.
- c. At least two or more traffic-control signs shall be placed at each four-way street intersection and at least one at each "T" intersection.
- d. Signs and signals shall be installed free of visual obstruction.

**3. STREET SIGNS**

- a. The subdivider or developer shall install standard street signs as part of new development.
- b. In cases where decorative street signs are proposed, the developer or subdivider shall be responsible for the cost of the decorative street signs.
- c. Decorative street signs shall be approved as to form and content by the City prior to installation.
- d. Street name signs shall conform to City and NCDOT standards.
- e. At least two street name signs shall be placed at each four-way street intersection and at least one at each "T" intersection.
- f. Street signs shall be installed on the northwest and southeast corners of every four-way intersection.
- g. Signs shall be installed free of visual obstruction.

**4. STREET LIGHTS**

- a. Streets and sidewalks shall be illuminated with street lights or pedestrian lighting for security and safety, in accordance with City, utility company, and NCDOT standards.
- b. Areas adjacent to the vehicular entrances for non-residential, mixed-use, and multi-family residential developments shall be adequately lighted to ensure the safety of persons and the security of the buildings.

**5. VEHICULAR GATES**

- a. Gates to private property shall conform to City requirements for emergency access and be served by a vehicular turnaround.
- b. Proposed gates shall be reviewed and decided by the City Manager.
- c. In no instance shall a vehicular gate be placed within a public street right-of-way, but vehicular gates may be located within the right-of-way for a private street.

**6. BRIDGES AND CULVERTS**

- a. All bridges shall be designed by a professional engineer licensed by the State of North Carolina.
- b. All bridges and culverts shall be built to NCDOT standards.

**7. DAMS**

- a. Maintenance of a dam structure shall be the responsibility of the developer or an owners' association.
- b. The party responsible for dam maintenance shall provide a performance guarantee for the dam's maintenance in perpetuity in accordance with the standards in Section 2.05, Performance Guarantees.

**SECTION 4.04. SIDEWALKS****A. LOCATION**

Sidewalks meeting the requirements in Section 4.04.D, Configuration, are required in accordance with the City's adopted policy guidance and the following standards:

**1. SIDEWALKS PROVIDED ON BOTH SIDES OF THE STREET**

- a. Sidewalks shall be provided along both sides of all expressway and boulevard streets, regardless of the zoning district where located.
- b. Sidewalks shall be provided along both sides of all streets except alleys in the area designated as downtown in the City's adopted policy guidance.

**2. SIDEWALKS PROVIDED ON ONE SIDE OF THE STREET**

- a. Sidewalks shall be required on one side of the street in the following locations:
  - i. Along local streets; and
  - ii. Along cul-de-sac, dead-end, and loop streets serving nine or more lots or nine or more dwelling units.
- b. When sidewalks are required on one side of the street, they shall generally be located on the side of the street to best continue existing sidewalk networks, if present.
- c. Sidewalks are not required around the head of a cul-de-sac street.
- d. Where there is no clear preferable street side for the placement of a sidewalk, the sidewalk shall be placed on the street side where it is least likely to have a negative impact on stormwater management, in the opinion of the City Manager.
- e. In cases where sidewalks are already found on both sides of a street serving immediately adjacent development, sidewalks shall be provided along both sides of the street serving new development.

**3. NO SIDEWALKS REQUIRED**

No sidewalks shall be required in the following locations:

- a. Along freeways and interstate highways maintained by NCDOT;
- b. Along alleys and accessways to individual lots not served by a street; and
- c. Along gravel streets.

**B. CLUSTER MAILBOX UNITS**

Sidewalk access shall be provided to all cluster mailbox installations that do not include vehicle parking spaces in accordance with Section 3.08, Cluster Mailbox Units.

**C. RESPONSIBILITY FOR SIDEWALK PROVISION**

1. The applicant or developer of a subdivision or site plan, as appropriate, shall be responsible for the provision of sidewalks required in accordance with this section.
2. In no instance shall a final plat be recorded or land conveyed within a subdivision subject to the standards in this section before the sidewalk is completed, a fee-in-lieu has been provided (see Section 2.06, Fee-in-Lieu), or a performance guarantee has been provided in accordance with Section 2.05, Performance Guarantees.

**D. CONFIGURATION**

1. Sidewalks shall be located within a designated street right-of-way or in another City-approved location.
2. Sidewalks shall be at least five feet wide, and may be required to match the width of a connecting sidewalk that exceeds five feet in width.
3. Sidewalks shall be constructed of concrete or other hard-surface materials, consistent with the established sidewalk patterns on adjacent developments.
4. Pedestrian street crossings shall be raised above the adjacent street level, be constructed of material other than asphalt, or be striped as a traffic-calming measure.

5. Sidewalks shall connect with existing sidewalks at property boundaries.
6. Whenever curb and gutter construction is used on public streets, wheelchair ramps for the disabled, configured in accordance with NCDOT standards, shall be provided at intersections and other major points of pedestrian flow in accordance with Section 136-44.14 of the North Carolina General Statutes.
7. New nonresidential, mixed-use, and multi-family development shall provide at least one on-site improved connection between the development and the adjacent public sidewalk system (planned or existing).

#### E. CREDIT FOR TRAILS

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Hard-surfaced, ADA-accessible trails within open space set-asides shall be credited towards these sidewalk requirements when trails are available for use by the public and connect open space set-asides to schools, shopping areas, or other recreation areas.

**SECTION 4.05. GREENWAYS**

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**A. REQUIRED GREENWAY DEDICATION AND CONSTRUCTION**

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1. Whenever a tract of land included within any proposed ~~minor-subdivision~~ Minor Subdivision, ~~major-subdivision~~ Major Subdivision, or conservation subdivision includes any part of a greenway designated in the City's adopted policy guidance, the greenway shall be platted and dedicated to the City as a greenway easement.
2. Greenways shall be constructed as part of the required infrastructure serving a site or a subdivision.

**B. GREENWAY CONFIGURATION**

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1. A greenway easement shall be at least 50 feet wide, to the maximum extent practicable.
2. The greenway shall include an all-weather surface trail of at least ten feet in width, paved with asphalt or concrete that meets ADA guidelines for accessibility.
3. The trail shall be edged with gravel shoulders of at least one foot in width on each side.
4. Positive drainage shall be established in areas adjacent to the paved trail.
5. In cases where a greenway crosses a street, the pedestrian crossing area shall be demarcated and supplemented with signage that alerts drivers to the presence of pedestrians.

**C. DENSITY CREDITS**

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1. Land that is dedicated in fee-simple interest to and accepted by the City in accordance with this section shall be credited toward the donating parcel's lot or tract area for the purpose of calculating the density of development and area coverage calculations though no longer part of the parcel.
2. Dedicated land credits shall be transferred to subsequent holders if properly noted in transfer deeds.

**D. OPEN SPACE SET-ASIDE CREDITS**

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Land associated with a greenway dedication or easement shall be credited towards any open space set-aside requirements.

**E. PARK LAND DEDICATION CREDITS**

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Land associated with a greenway dedication or easement shall be credited towards any requirements in Section 3.09.A, Dedication of Land for Public Parks.

**F. PAYMENT IN-LIEU OF PROVIDING GREENWAYS**

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Provision for payment of a fee-in-lieu of providing a greenway shall be in accordance with Section 2.06, Fee-in-Lieu.

**SECTION 4.06. POTABLE WATER**

All new development shall comply with the City's standards for potable water in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

**A. WATER SUPPLY SYSTEM REQUIRED**

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1. Every lot within a subdivision shall be served by a means of a water supply that is adequate to accommodate the reasonable needs of the use or subdivision lot(s).
2. All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the potable water system.
3. The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the water supply system requirements of this Ordinance.

**B. CONNECTION TO CITY WATER SUPPLY SYSTEM**

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Except where exempted by this Ordinance, all new development shall connect to the public potable water supply system.

**C. DEDICATION AND ACCEPTANCE**

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1. The subdivider or developer shall install all potable water supply lines and service connections in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
2. The developer shall provide all the necessary pipes and accessories for installation of the required potable water lines.
3. Potable water supply lines, including water tanks, distribution lines, water mains, pump stations, valves, hydrants, laterals, and other appurtenances shall be dedicated to the City for maintenance and operation.
4. Supply lines serving individual lots or uses beyond the water meter shall not be the responsibility of the City.

**D. OVERSIZING OF WATER SUPPLY SYSTEM-RELATED IMPROVEMENTS**

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1. The water supply system where the subdivision is being developed may require installation of certain oversized facilities, such as water mains in excess of eight inches in diameter, when it is in the interest of future development.
2. When oversizing is required, the public water system operating where the subdivision is located shall pay for that portion of the improvement that exceeds the standards set forth in this Ordinance.
3. When oversizing is required, the developer may enter into a development agreement with the City for reimbursement of the cost of the oversize lines.

**SECTION 4.07. SANITARY SEWER**

All new development shall comply with the City's standards for wastewater disposal in accordance with Chapter 52 of the City's Code of Ordinances, the City's Standard Specifications and Details, and the following:

**A. SEWAGE SYSTEM REQUIRED**

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- 1.** Every lot within a subdivision intended to be developed shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of the use or subdivision lot and that complies with all applicable City and State requirements.
- 2.** All materials and pipes shall meet or exceed the requirements established by State law or City requirements for the sanitary sewer system.
- 3.** The City may, before issuing any approval under this Ordinance, make the investigation and require the developer to submit the information as appears reasonably necessary to ensure that the developer or his or her successor will be able to comply with the sanitary sewer system requirements of this Ordinance.
- 4.** No sewage treatment system that discharges into surface waters shall be allowed.

**B. CONNECTION TO PUBLIC SEWER**

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Except where exempted by this Ordinance, all new development shall connect to the public sanitary sewer system.

**C. DEDICATION AND ACCEPTANCE**

---

- 1.** In cases of development being served by the public sewage system, the subdivider or developer shall install all sewer lines in accordance with the standards in this Ordinance, all applicable City requirements, and other State or federal requirements.
- 2.** The developer shall provide all the necessary pipes and accessories for the installation of the required sanitary sewer lines.
- 3.** Sanitary sewage lines, including treatment facilities, pump stations, force mains, and laterals shall be dedicated to the City for maintenance and operation.
- 4.** Service lines serving individual lots or uses outside of a right-of-way or sewer easement shall not be the responsibility of the City.

**SECTION 4.08. FIRE PROTECTION**

All new development shall comply with the City's adopted Fire Code and related appendices, the City's Standard Specifications and Details, as well as the following:

**A. FIRE HYDRANTS**

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- 1.** Every subdivision that is served by a public water system with at least six-inch lines shall include a system of fire hydrants within the development.
- 2.** Fire hydrants must be located so that not more than 400 linear feet, measured along the centerline of the street right-of-way, separates a property within the development and a fire hydrant. However, the City may require a deviation from the standards in this section if a different configuration is warranted [pursuant to the Fire Code or other generally accepted applicable standards](#).
- 3.** Local fire officials shall determine the precise location of all fire hydrants.
- 4.** Fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter and placed within ten feet of the edge of a public street without curb and gutter.
- 5.** The City shall, after consultation with local fire officials, determine the design standards of all hydrants based on fire flow needs, which shall maintain a minimum flow rate of 1,000 gallons-per-minute, and 20 psi, or shall be supplemented with a pump or increased diameter pipe sizes.
- 6.** Additional lots subdivided from the same parent parcel/tract of land shall comply with these fire hydrant standards.



# ARTICLE 5: ENVIRONMENT

## SECTION 5.01. STORMWATER MANAGEMENT

All new development shall comply with the standards in Sections 24-131 through 24-163 of the City's Code of Ordinances, as well as the following:

### A. PURPOSE AND INTENT

These stormwater management standards are proposed to ensure new and existing development is configured to retain and slowly release stormwater to help promote ground water quality and avoid nuisance flooding on surrounding lands. These standards are intended to:

1. Establish basic requirements for stormwater management for all uses in the City's planning jurisdiction; and
2. Identify the types of development required to file a stormwater management plan to control stormwater in accordance with this section.

### B. APPLICABILITY

#### 1. STORMWATER MANAGEMENT REQUIRED

The stormwater management standards in this section shall apply to all development that disturbs one acre of land area or more.

#### 2. STORMWATER MANAGEMENT PLAN REQUIRED

Development subject to these standards shall comply with the following:

- a. Stormwater management plans shall be prepared by a licensed professional authorized by the State to prepare such documents.
- b. Stormwater management plans shall be prepared in accordance with [Chapter 24, Article III3](#), the Stormwater Ordinance, of the City's Code of Ordinances.

**SECTION 5.02. SEDIMENTATION AND EROSION CONTROL**

All new development shall comply with the standards in the Henderson County Soil Erosion and Sedimentation Control Ordinance and the following:

**A. EROSION AND SEDIMENTATION CONTROL PLAN REQUIRED**

Any development subject to a ~~minor-subdivision~~ Minor Subdivision, conservation subdivision, ~~major subdivision~~ Major Subdivision, or final plat that requires land disturbing activity shall require prior approval of an erosion and sedimentation control plan by Henderson County in accordance with Section 113A-57(4) of the North Carolina General Statutes, unless exempted by this section.

**B. EXEMPTIONS**

Section 5.02.A, Erosion and Sedimentation Control Plan Required, shall not apply in cases where the Henderson County or the State Sedimentation Control Commission has certified to the City that:

1. An erosion and sedimentation control plan for the associated project has already been submitted to and approved by the County or the State Sedimentation Control Commission; or
2. The County or the State Sedimentation Control Commission has examined the preliminary plans for the development and it reasonably appears that an erosion and sedimentation control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until the County or the Commission approves the erosion and sedimentation control plan.

**C. TIMING OF REVIEW**

An applicant for development subject to this section shall submit proof of an approved erosion and sedimentation control plan prior to issuance of a building permit or final plat, as appropriate.

**SECTION 5.03. STEEP SLOPES****A. PURPOSE**

These standards establish additional requirements for subdivision and development of lands that include steep slopes, ridgelines, and hillsides that are visible from the public realm as necessary to protect the health, safety, and welfare of the public. More specifically, these standards are intended to:

1. Prevent or reduce the possibility of accelerated erosion on lands with significant slopes;
2. Reduce the risk of landslide or subsidence resulting from inappropriate construction techniques or development patterns in areas with steep slopes; and
3. Protect the scenic character of hillsides and ridgelines visible from the public realm.

**B. APPLICABILITY**

The standards in this section shall apply to ~~minor subdivisions~~ Minor Subdivisions, conservation subdivisions, and ~~major subdivisions~~ Major Subdivisions located on lands with an average slope of 15.1 percent or more.

**C. STANDARDS****1. MINIMUM LOT AREA AND COVERAGE**

- a. Regardless of the zoning district where located, lots located in lands subject to these standards shall maintain minimum lot sizes and maximum lot coverages in accordance with Table 5.03.C, Steep Slope Lot Standards.

<b>TABLE 5.03.C: STEEP SLOPE LOT STANDARDS</b>		
AVERAGE SLOPE OF LOT	MINIMUM LOT SIZE	MAXIMUM LOT COVERAGE BY IMPERVIOUS SURFACE[%]
15.1% - 25%	1.3 times the minimum lot size of the zoning district where located	25
More than 25%	1.5 times the minimum lot size of the zoning district where located	20

- b. Visual examples of slope are provided in Figure 5.03.C, Slope Examples.

**FIGURE 5.03.C: SLOPE EXAMPLES**



**2. DEVELOPMENT PROHIBITED**

- a. Except for public utilities and telecommunications equipment, permanent structures, including driveways, streets, and utilities are prohibited on lots with average slopes of 35 percent or more. Grading of lots is permitted subject to Section 5.02.A, Erosion and Sedimentation Control Plan Required.
- b. Nothing shall limit the ability to credit land with average slopes of 35 percent or more towards the gross residential density of the land.

**SECTION 5.04. OPEN SPACE STANDARDS**

New development shall provide common open space in accordance with Section 6-16, Common Open Space Standards, in the City's Zoning Ordinance.

# ARTICLE 6: OWNER ASSOCIATIONS

## SECTION 6.01. PURPOSE

The purpose of this section is to set out the requirements for establishment of a homeowners' or property owners' association (hereinafter "association") that shall be responsible for the long-term maintenance of common areas, common features, and private infrastructure in a subdivision. This section also sets out the requirements associated with transfer of subdivision control and maintenance responsibility from the subdivider to the association.

## SECTION 6.02. APPLICABILITY

- A. The standards in this section shall apply to subdivisions with open space set-aside(s), lands held under common ownership, or shared responsibility for common infrastructure including, but not limited to streets or stormwater management facilities.
- B. Establishment of an owners' association shall not be required for ~~minor subdivisions~~ Minor Subdivisions (see Section 2.04.I, Minor Subdivision), or expedited subdivisions (see Section 2.04.F, Expedited Subdivision), but the responsible party for any private infrastructure shall be identified in the subdivision approval.

## SECTION 6.03. CREATION REQUIRED

- A. A homeowners' or property owners' association shall be established in areas that have private common open space or shared private infrastructure. Associations are required to accept ownership and maintenance responsibility of all open space set-aside(s), shared infrastructure, or common areas within a development.
- B. Associations are also required in order to fulfill the requirements of Chapter 47C (the "Condominium Act") of the North Carolina General Statutes, or the requirements of Chapter 47F (the "Planned Community Act") of the North Carolina General Statutes.
- C. The association shall be in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development, though maintenance responsibility shall only transfer from the developer to the association in accordance with Section 6.08, Transfer of Maintenance Responsibility.

## SECTION 6.04. RESPONSIBILITIES OF ASSOCIATION

Upon transfer of maintenance responsibility, the association shall be responsible for:

- A. Liability insurance and payment of premiums for liability insurance and local taxes;
- B. Maintenance of all common elements including, but not limited to, stormwater management facilities, private utilities, private accessways, private sidewalks and trails, private streetlights, and private common recreation facilities shown on the preliminary and final plats;
- C. Maintenance of public streets until such time as NCDOT or the City agrees to accept the responsibility for street maintenance, as appropriate;
- D. Maintenance of an escrow account intended for the maintenance and repair of community facilities; and
- E. Payment of assessments for public and private improvements made to or for the benefit of the common elements.

## SECTION 6.05. PROCEDURE FOR ASSOCIATION ESTABLISHMENT

- A. Documents for the creation of the association shall be submitted to the City for review and approval prior to approval of a ~~minor subdivision~~ Minor Subdivision (see Section 2.04.I, Minor Subdivision), or final plat (see Section 2.04.G, Final Plat), as appropriate. Documentation shall include, but not be limited to the information in Section 6.06, Documentation Requirements.
- B. The association shall be established by the subdivider prior to the sale of the first lot in the subdivision.

- C.** The association documents shall establish that the subdivider shall maintain the common area, common facilities, and infrastructure until at least 75 percent of the lots are sold; and
- D.** Responsibility for maintaining the subdivision's common areas, common facilities, and private infrastructure shall be transferred in accordance with the standards in Section 6.08, Transfer of Maintenance Responsibility.

**SECTION 6.06. DOCUMENTATION REQUIREMENTS**

- A.** The association documents submitted to the City for review and approval prior to formation shall include, but not be limited to, the following:
  - 1.** A declaration of all restrictive covenants and conditions;
  - 2.** A declaration of all deed restrictions;
  - 3.** A declaration that the association is responsible for liability insurance and all applicable taxes;
  - 4.** A declaration of common ownership and maintenance responsibilities of all on-site improvements not dedicated to a local or state agency, including but not limited to streets, street signs, drainage systems, wastewater systems, open space set-aside areas, recreational facilities, and private infrastructure;
  - 5.** A description of the structural organization and operating procedures of the association;
  - 6.** Association by-laws;
  - 7.** A legal description of all open space set-asides and other lands owned in common;
  - 8.** Provisions establishing the legal authority of the association to maintain control over all common areas, common features, and private infrastructure in the subdivision, following transfer of control by the subdivider;
  - 9.** Provisions authorizing the association to compel contributions from owners in the development to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure;
  - 10.** Provisions authorizing the association to increase the amount of mandatory fees or assessments, when necessary, for the continued maintenance of common areas, common features, or private infrastructure;
  - 11.** Provisions authorizing the association to convert any member's unpaid assessments into a lien on the real property; and
  - 12.** Evidence related to the establishment of a reserve fund to support the continued maintenance and upkeep of common areas, common features, and private infrastructure.
- B.** Following approval of the required documentation by the City, the subdivider shall record all required documentation with the Henderson County Register of Deeds.

**SECTION 6.07. MEMBERSHIP REQUIREMENTS**

- A.** Following establishment of the association by the subdivider, membership in the association shall be automatic and mandatory for all purchasers of land within the subdivision and their successors in title.
- B.** All members of an association shall be responsible for contributions to the association's reserve fund to cover their proportionate share of maintenance costs associated with common areas, common features, and private infrastructure.

**SECTION 6.08. TRANSFER OF MAINTENANCE RESPONSIBILITY**

- A.** The subdivider shall be responsible for maintenance of all common areas, common features, and private infrastructure until maintenance responsibility is transferred to the association in accordance with the standards in this subsection.
- B.** Maintenance responsibility shall not be transferred from the subdivider to the association until all of the following occur:
  - 1.** At least 75 percent of the total number of lots in the subdivision are sold; and

2. The subdivider commissions a report prepared by a licensed professional indicating that all common areas, common features, and infrastructure elements comply with the minimum standards in this Ordinance and the City Code of Ordinances. The report shall also include verification of the reserve fund balance in accordance with the standards in this section; and
  3. The City Manager reviews and approves the report prepared by the licensed professional; and
  4. A reserve fund dedicated to the continued maintenance and upkeep of common areas, common features, and private infrastructure is established with a banking institution acceptable to the City in the name of the association that contains a minimum balance that includes the following:
    - a. Except for sidewalks and street trees, ten percent of the construction costs of common features and private infrastructure;
    - b. Liability insurance and taxes for two years; and
    - c. Facilities, stormwater, and landscaping maintenance costs for two years.
  5. In the event the association has not collected sufficient assessment funds from the lot owners in the subdivision to meet the minimum balance requirements of the reserve fund, the subdivider shall be responsible for the difference needed to meet the minimum balance requirements.
- C.** The subdivider shall retain maintenance responsibility of all private streets until at least 75 percent of the lots are sold.
- D.** Applications to cede maintenance responsibility to the association for common areas, common features, or private infrastructure prior to conveyance of 75 percent of the lots in the subdivision may be reviewed by the City Manager. The City Manager, at the request of the subdivider, may waive the timing and reserve fund requirements upon a finding that the association has sufficient financial capacity to assume maintenance responsibility for common areas, common facilities, and private infrastructure.

#### **SECTION 6.09. FAILURE TO MAINTAIN IS A VIOLATION**

Failure to maintain common areas, common features, or infrastructure is a violation of this Ordinance and is subject to the penalties and remedies in Article 7, Enforcement.



# ARTICLE 7: ENFORCEMENT

## SECTION 7.01. PURPOSE

This section establishes procedures through which the City seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

## SECTION 7.02. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons subdividing or occupying land in the City's planning jurisdiction.

## SECTION 7.03. STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes [and any other applicable periods of limitation imposed by law](#).

## SECTION 7.04. VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

### A. SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Henderson County Register of Deeds;

### B. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plats, permits, certificates, or other forms of authorization as set forth in this Ordinance;

### C. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, ~~variance~~ Variance, adjustment, condition, or qualification placed upon any required plat, permit, certificate, or other form of authorization upon land or improvements thereon;

### D. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Article 5, Environment, or any related environmental provision of the Zoning Ordinance or the City Code of Ordinances.

## SECTION 7.05. RESPONSIBLE PERSONS

### A. GENERAL

The landowner, tenant, or other occupant of any land or structure and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this Ordinance.

### B. FAILURE BY CITY DOES NOT RELIEVE INDIVIDUAL

Failure of a City official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the landowner from responsibility for the condition or damages that may result and shall not result in the City, its officers, or agents being responsible for conditions or damages.

**SECTION 7.06. ENFORCEMENT RESPONSIBILITIES**

The City Manager shall have responsibility for enforcement of this Ordinance in accordance with the following:

**A. INVESTIGATIONS**

The City Manager shall have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

**B. INSPECTIONS**

1. The City Manager has the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
2. If the City Manager cannot obtain permission to enter from a responsible person, the City shall obtain an administrative search warrant prior to entering the property.

**C. SUPPORTING DOCUMENTATION**

The City Manager or a designee shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

**SECTION 7.07. ENFORCEMENT PROCEDURE**

When the City Manager finds a violation of this Ordinance, they shall notify the responsible person(s) of the violation in accordance with the following:

**A. WRITTEN NOTICE OF VIOLATION**

A written notice of violation shall be prepared and shall include all of following:

1. VIOLATION EXISTS  
That the land or activity is in violation of this Ordinance;
2. NATURE OF THE VIOLATION  
The nature of the violation, and citation of the section(s) of this Ordinance violated;
3. REMEDY  
The measures necessary to remedy the violation;
4. ALLOWABLE TIME PERIOD  
The time period in which the violation must be corrected;
5. PENALTIES THAT MAY BE ASSESSED  
That penalties or remedies may be assessed; and
6. APPEAL  
That the party cited has the right to appeal the notice in accordance with Section 2.04.C, Appeal, as an appeal of an Administrative Decision by a City staff person.

**B. DELIVERY OF WRITTEN NOTICE**

Written notice of violation shall be provided to the landowner, occupant, holder of the development approval or any other responsible person by any of the following means:

1. Certified mail~~Electronic delivery~~;
- ~~2. Registered mail to their last known address;~~
- ~~3. 2. Hand delivery; or~~
- ~~3. Posting notice conspicuously on the property~~First Class Mail.
- ~~4. In addition the notice of violation may be posted on the property. The person providing the notice of violation shall certify in writing as to the notice(s) provided.~~

**C. REMEDY UPON NOTICE**

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

**D. FAILURE TO COMPLY WITH ORDER**

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or Section 7.08, Remedies.

**E. EACH DAY A SEPARATE VIOLATION**

Each day a violations continues following notice or failure to comply is considered a separate and distinct offense.

**F. APPEAL OF NOTICE OF VIOLATION**

A notice of violation may be appealed to the Zoning Board of Adjustment in accordance with Section 2.03.C. Appeal

**SECTION 7.08. REMEDIES****A. CIVIL PENALTIES**

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of \$500.00 per day under the procedures provided in Section 7.09, Assessment of Civil Penalties.

**B. DENIAL OF PLAT OR CERTIFICATE**

The City Manager may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

**C. STOP WORK ORDERS****1. GENERAL**

In accordance with N.C.G.S. Section 160D-404(b), wWhenever the City Manager determines that a person is engaged in doing work or activity that constitutes, creates, or results in a-substantial violation of this Ordinance and-or that the work or activity is being conducted in a manner that endangers life or property, that irreparable injury will occur if the violation is not terminated immediately, the City Manager may order the specific part-of-the-work or activity that constitutes, creates, or results in a violation of this Ordinance or that poses a danger to life or property to be immediately stopped.

**2. ORDER IN WRITING**

The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The written stop work order shall be delivered to holder of the development approval and the Landowner(s) if not the holder) by personal delivery, electronic delivery or first-class mail. The person(s) delivering the stop work order shall certify in writing that the order was delivered.

**3. APPEAL**

Except as provided in N.C.G.S. Section 60D-1112 and 160D-208, aAny person aggrieved by the issuance of a stop work order may appeal the issuance of the order in accordance with Section 2.04.C, Appeal. An appeal shall not stay the stop work order. No further work or activity shall take place in violation of a stop work order unless the BOA fails to hear the appeal within 30 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 30 days, the stop work order shall be stayed until the BOA acts on the appeal pending a ruling on the appeal. Violation of a stop work order is a Class 1 misdemeanor pursuant o N.C.G.S. Section 160D-404(b).

**4. COMPLIANCE REQUIRED**

Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with subsection (3) above.

**D. REVOCATION OF PERMITS**

## ARTICLE 7: ENFORCEMENT

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1. The City Manager may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
2. Permits or certificates may be revoked, in accordance with [N.C.G.S. Section 160D-403\(f\)](#) ~~160A-422~~ of the North Carolina General Statutes, for any of the following:
  - a. Any substantial departure from the approved application, plans, or specifications;
  - b. Refusal or failure to comply with the requirements of ~~State or local laws~~ [any applicable City Development Regulation or any State law delegated to the City for enforcement in lieu of the State](#); or
  - c. For making false statements or misrepresentations in securing the permit, certificate, or approval.

3. Any permit or certificate mistakenly issued in violation of an applicable State or City law may also be revoked.
4. Revocation can only be made by the reviewing authority originally approving the development approval, and in the manner of the original approval.
- ~~3.5.~~ The revocation by a staff member may be appealed pursuant to Section 4.04.C. Appeal. If the appeal is filed regarding a local government development regulation adopted pursuant to Chapter 160D, the provisions of N.C.G.S. Section 160D-405(f) regarding stays shall apply.

#### **E. CRIMINAL PENALTIES**

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##### **1. VIOLATION OF EROSION AND SEDIMENTATION CONTROL**

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000) per day up to a maximum amount of twenty-five thousand dollars (\$25,000) in accordance with Section 113A-64 of the North Carolina General Statutes.

##### **2. TRANSFER, SALE OR SUBDIVISION OF LAND IN VIOLAION OF THIS ORDINANCE**

The subdivision of land in violation of this Ordinance, or the transfer or sale of land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved shall be guilt of a Class 1 misdemeanor as provided in N.C.G.S. Section 160D-807. The terms and conditions and remedies provided by N.C.G.S. Section 160D-807 shall apply to this type of violation.

##### **~~2.3.~~ ALL OTHER VIOLATIONS**

Any violation other than a violation of erosion and sedimentation control rules of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175 of the North Carolina General Statutes, subject to a maximum fine of \$500 per day.

#### **F. INJUNCTIVE OR OTHER EQUITABLE RELIEF**

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The City may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the City's application for equitable relief.

##### **1. ACTION BY CITY COUNCIL**

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an subdivision plat, or soil erosion and sedimentation control plan, it may institute a civil action in the name of the City, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation either before, during, or after the institution of any other action or proceeding authorized by this Ordinance.

##### **2. SUPERIOR COURT**

The action shall be brought in the Superior Court ~~of~~for Henderson County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

##### **3. NO RELIEF FROM CRIMINAL PENALTIES**

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

#### **G. STATE AND COMMON LAW REMEDIES**

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In addition to other enforcement provisions contained in this section, the City Manager may exercise any and all enforcement powers granted to it by State law or common law.

#### **H. PREVIOUS ENFORCEMENT**

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## **ARTICLE 7: ENFORCEMENT**

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Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

### **I. REMEDIES; CUMULATIVE AND CONTINUOUS**

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All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

**SECTION 7.09. ASSESSMENT OF CIVIL PENALTIES****A. RESPONSIBLE PARTIES**

Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.

**B. NOTICE****1. NOTIFICATION REQUIRED**

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section 7.07, Enforcement Procedure.

**2. CIVIL PENALTY IMPOSED**

If after receiving a written notice of violation under Section 7.07, Enforcement Procedure, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

**3. NOTICE OF PENALTY ASSESSMENT**

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

**4. ASSESSMENT CONTENTS**

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 30 days of the date of the notice.

**5. SEPARATE NOTICES**

Separate notices must be provided for the first or second violations. The City may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

**6. ASSESSMENT UNTIL COMPLIANCE**

Civil penalties may be assessed until compliance is achieved.

**C. CONTINUING VIOLATION**

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

**D. DEMAND FOR PAYMENT**

If compliance is not achieved, then the City Manager shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

**E. NONPAYMENT**

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the City may recover any unpaid civil penalty by filing a civil action in the nature of debt.

**F. PENALTIES**

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation. ~~over the course of a calendar year.~~

# ARTICLE 8: MEASUREMENT

## SECTION 8.01. RULES OF LANGUAGE CONSTRUCTION

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

### A. MEANINGS AND INTENT

1. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section 1.04, Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
2. When a specific section of these regulations gives a different meaning than the general definition provided in Section 9.01, Definitions, the specific section's meaning and application of the term shall control.
3. Terms that are not defined are subject to their common or customary meaning.

### B. HEADINGS, ILLUSTRATIONS, AND TEXT

1. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map other than the Official Zoning Map, the text shall control.
2. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

### C. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

### D. COMPUTATION OF TIME

1. The time in which an act is to be done shall be computed by excluding the first day and including the last day.
2. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the City.

### E. TIME-RELATED LANGUAGE

1. **TIME STANDARD**  
Whenever certain hours are named, they shall mean standard time or daylight saving time, as may be in current use in Hendersonville, North Carolina.
2. **DAY**  
The term "day" means a calendar day, including weekends and holidays.
3. **HOLIDAY**  
The term "holiday" means a legal holiday recognized by the City, State, or federal government.
4. **MONTH**  
The term "month" means a calendar month.
5. **YEAR**  
The term "year" means a calendar year.
6. **TEMPORARY**  
The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

### F. REFERENCES TO THIS ORDINANCE

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.



**G. REFERENCES TO OTHER REGULATIONS OR PUBLICATIONS**

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Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition or amendment of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

**H. REFERENCES TO NORTH CAROLINA GENERAL STATUTES**

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Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

**I. DELEGATION OF AUTHORITY**

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Whenever a provision of this Ordinance requires or authorizes an officer or employee of the City to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision specifically provide otherwise.

**J. JOINT AUTHORITY**

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All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

**K. TECHNICAL AND NON-TECHNICAL TERMS**

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1. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
2. In cases where words or phrases in this Ordinance use two or more meanings, all meanings shall be identified in Article 9, Definitions.

**L. PUBLIC OFFICIALS AND AGENCIES**

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All public officials, bodies, and agencies to which references are made in this Ordinance are those of the City of Hendersonville, North Carolina, unless otherwise indicated.

**M. MANDATORY AND DISCRETIONARY TERMS**

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1. The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.
2. The words "provision," "standard," and "requirement" are used interchangeably and all have the same meaning.
3. The words "condition of approval" are used interchangeably with the word "stipulations" with regard to conditions or requirements attached to the approval of a proposed development.

**N. CONJUNCTIONS**

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Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions, or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

**O. TENSES, PLURALS, AND GENDER OF WORDS**

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**1. TENSE**

Words used in the past or present tense include the future tense as well as the past and present.

**2. NUMBER**

Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

**3. GENDER**

Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

## ARTICLE 8: MEASUREMENT

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### Section 8.01 Rules of Language Construction

#### P. OATH

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The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

#### Q. TERM NOT DEFINED

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If a term used in this Ordinance is not defined, the City Manager is authorized to provide a definition, based upon the definitions used in professionally accepted sources.

**SECTION 8.02. RULES OF MEASUREMENT**

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**A. PURPOSE**

The purpose of this section is to clarify the rules of measurement and exemptions as typically used in this Ordinance. These standards may be modified by other applicable sections of this Ordinance.

**B. MEASUREMENTS, GENERALLY**

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**1. STRAIGHT LINES**

Unless otherwise stated in this Ordinance, distances specified in this Ordinance are to be measured as the length of an imaginary straight line joining two points.

**2. ROUNDING**

All calculations that result in a fractional unit or part of a whole number, the number shall be rounded up to the next highest whole number, unless otherwise provided in this section or elsewhere in this Ordinance.

**3. IRREGULAR SHAPES**

In cases where an irregular shape complicates the application of these standards, the City Manager shall determine the applicable dimensional, setback, or bulk standards.

**4. SEPARATION**

When the provisions of this Ordinance require separation between two or more lots, or a lot and another feature, separation shall be measured by drawing straight lines from the nearest point of one lot line to the nearest point of the lot line subject to the separation requirement.

**5. ABUTTING VERSUS ADJACENT****a. ABUTTING**

The term abutting describes a condition where two or more features (a lot line, building, driveway, etc.) are immediately beside or next to one another either on the same lot or on different lots sharing a common lot line.

**b. ADJACENT**

The term adjacent describes a condition where two or more similar features (a lot line, building, use type, structure, site feature, etc.) are proximate to one another, but are separated by some form of intervening feature, such as a street, alley, water feature, railroad, lot or property under separate ownership, or natural feature of sufficient size so as to prevent direct sight or impede the movement of sound from one feature to another.

**C. LOT DIMENSIONS**

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**1. LOT MEASUREMENTS****a. MINIMUM LOT AREA**

The minimum amount of required land area, measured horizontally, that must be included within the lines of a lot. Lands located within any private easements shall be included within the lot area. The following features shall not be included in calculating minimum lot area:

- i.** Public street rights-of-way;
- ii.** Private street area;
- iii.** The "pole," arm," or "pan handle" portion of a flag lot; and
- iv.** Land that is submerged or regularly underwater and jurisdictional wetlands.

**b. LOT WIDTH**

- i.** The mean width measured at right angles to its depth at the actual or proposed building setback line.
- ii.** Lot width on a cul-de-sac lot is measured at a point 50 feet inwards from the street right-of-way edge.

**c. LOT DEPTH**

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The distance along the perpendicular bisector of the lot.

d. **STREET FRONTAGE**

The length of the lot line of a single lot abutting a public or private street right-of-way.

e. **ACREAGE**

The total number or gross number of acres on a tract or site.

2. **LOT LINES**

A lot line is a line of record bounding a lot which separates one lot from another lot or separates that lot from a public or private street or any other public space. The following terms describe differing types of lot lines:

a. **FRONT LOT LINE**

The lot line connecting the two side lot lines along the edge of the street that provides a lot's street address or that opposes the primary entrance of a building.

b. **REAR LOT LINE**

The lot line opposite and most distant from the front lot line.

c. **SIDE LOT LINE**

The lot line connecting the front and rear lot lines regardless of whether it abuts a right-of-way or another lot line.

3. **LOT TYPES**

a. **CORNER LOT**

A lot which occupies the interior angle at the intersection of two street lines or a single street which make(s) an angle of more than 45 degrees and less than 135 degrees. The front of the lot is the lot line adjacent to the street from which the lot obtains its street address.

b. **FLAG LOT**

A lot having shape and configuration so that it connects to street frontage by an extension and/or arm of the main portion of the lot.

c. **INTERIOR LOT**

A lot other than a corner lot with only one frontage on a street.

d. **LOT OF RECORD**

A lot which is part of a subdivision, a plat of which has been recorded in the Henderson County Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

e. **THROUGH LOT (DOUBLE FRONTAGE LOT)**

A lot which fronts upon two parallel streets, and/or which fronts upon two streets which do not intersect at the boundaries of the lot.

4. **LOTS SERVING CONDOMINIUM USE TYPES**

Individual condominium uses, whether residential or nonresidential, are exempted from minimum lot area requirements in this Ordinance, but shall be located on a larger site or parent tract that meets the standards for the zoning district where located.

**D. SETBACKS**

New lots shall be developed in accordance with all required setbacks for the zoning district where development is located in accordance with the City's Zoning Ordinance.

**E. LOT COVERAGE**

1. Lot coverage is the percentage of a lot or development site that is covered by impervious, or built-upon area.

2. Built-upon area includes buildings, structures, pavement, and site features that are impervious or partially impervious to rain or stormwater runoff.
3. The following features are not considered impervious, and as a result are not included within the built-upon area:
  - a. A slatted deck or walkway;
  - b. The water area of a swimming pool;
  - c. A surface covered by number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric;
  - d. A trail as defined in Section 113A-85 of the North Carolina General Statutes that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or
  - e. Landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

#### **F. SLOPE AND ELEVATION**

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##### **1. SLOPE**

The degree of deviation of the ground surface from a flat, horizontal elevation, usually expressed in percent or degrees of deviation from horizontal.

##### **2. AVERAGE SLOPE**

The amount of elevation change from the lowest point of a lot to the highest point of a lot divided by the distance between the two points.

##### **3. FINISHED GRADE**

The established grade following grading, excavation, or other land-disturbing activity.

##### **4. NATURAL GRADE**

The level of the ground elevation prior to the commencement of development or land disturbing activity.

##### **5. BASE FLOOD ELEVATION**

A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation establishes the Regulatory Flood Protection Elevation.

##### **6. REGULATORY FLOOD PROTECTION ELEVATION**

The minimum height allowable for lowest structural member comprising habitable space within a building. This is a height equivalent to one linear foot in elevation above the base flood elevation.

# ARTICLE 9: DEFINITIONS

## SECTION 9.01. DEFINITIONS

Table 9.01, Definitions, includes definitions of terms used throughout this Ordinance. [The definitions contained in N.C.G.S. Section 160D-102 shall also apply to this Ordinance.](#)

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
<b>#'S</b>	
<a href="#">160D</a>	<a href="#">This refers to Chapter 160D of the North Carolina General Statutes.</a>
<b>A</b>	
ABANDONMENT	The relinquishment of property or a cessation of the use of the property for a continuous period.
ABROGATE	To abolish or annul.
ABUTTING LAND	For the purpose of public notice, abutting land is the condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street or alley.
ACCESS EASEMENT	An easement which grants the right to cross land.
ACCESSWAY	A paved or unpaved travelway intended to serve vehicles for the purposes of obtaining ingress, egress, or circulation around a lot or site. Subdivisions of up to three lots may be served by a vehicular accessway.
ACREAGE	Total acreage means gross acres.
ADJACENT	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street, waterbody, or right-of-way divides the parcels.
ADMINISTRATIVE ADJUSTMENT	A type of <del>flexibility</del> flexible permit approval reviewed and approved or denied by the City Manager or <del>Administrative planning</del> Community Development staff in accordance with <del>Section 2.04.B, Administrative Adjustment.</del>
<a href="#">ADMINISTRATIVE DECISION</a>	<a href="#">Decisions made in the implementation, administration, or enforcement of this Ordinance that involve the determination of facts and the application of objective standards set forth in this Ordinance, or other land development regulations as applicable.</a>
<a href="#">ADMINISTRATIVE HEARING</a>	<a href="#">A proceeding to gather facts needed to make an aAdministrative dDecision. An administrative hearing may be held by City staff or the Planning Board under the terms of this Ordinance. An aAdministrative hHearing is also considered a public hearing if held by the Planning Board.</a>
ADOPTED POLICY GUIDANCE	The combined future land-use policy guidance provided by the adopted comprehensive plan, area plans prepared for specific parts of the City, and system plans related to the City's infrastructure systems.
AFFECTED PARTY	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
AGGRIEVED PARTY	A person, with a legally recognized interest (i.e., fee simple ownership) and standing to appeal, that is injuriously affected by a decision from any decision-making body of the City, including any officer or agent of the City.
AGRICULTURAL ACTIVITIES	For the purposes of this Ordinance, development and activities defined as "agriculture."
ALL WEATHER SURFACE	Paving or surface treatment to a walkway or vehicular use area that is capable of withstanding adverse weather while still maintaining is regular or typical surface characteristics.
AMENDMENT	A <del>minor change</del> <b>9.1</b> <del>deletion to a legal statutory document.</del>

APPEAL	A request for review of an administrative official's or decision-making body's interpretation or decision made under this UDO.
APPLICANT	A person who has submitted a development application for review under applicable provisions of this Ordinance.
APPLICATION	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate City department or board as part of the development review processes.
AS-BUILT PLANS	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.

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## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
AUTHORIZED AGENT	A person with express written consent to act upon another's behalf.
<b>B</b>	
BASE FLOOD	The flood having a 1 percent chance of being equaled or exceeded in any given year. Also known as the "100-year flood."
BASE FLOOD ELEVATION	A determination of the water surface elevations of the base flood as published in the flood insurance study.
BEST MANAGEMENT PRACTICE	A structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
BLOCK	The land lying within an area bounded on all sides by streets.
BLOCK FACE	The lands abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, railroad right-of-way, watercourse, or un-subdivided land.
BOARD OF ADJUSTMENT	<a href="#">Also referred to as "BOA" in this Ordinance.</a> A quasi-judicial board appointed by <del>the Board of Commissioners</del> <a href="#">City Council governed by N.C.G.S. Section 160D-302.</a>
BONA FIDE FARM	A bona fide farm shall be as defined in Section 153A-340 of the North Carolina General Statutes, as amended.
BOND	See "Performance Guarantee."
BUILDING	<del>A structure having a roof supported by walls or columns constructed or used for residence, business, industry, or other public or private purposes.</del> <a href="#">Any structure used or intended for supporting or sheltering any use or occupancy.</a>
BUILDING PERMIT	An authorization issued by Henderson County that allows an applicant to begin construction activities in accordance with the applicable development approval and all applicable City and County requirements.
BUILT-UPON AREA	Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including, but not limited to, buildings, pavement, and certain recreation facilities. (Note: wooden slatted decks, gravel, and the water area of a swimming pool are considered pervious.)
BUSINESS DAY	Any day in which normal business is conducted. A business day does not include a holiday or a weekend day.
<b>C</b>	
CALENDAR DAY	All days in every month, including weekends and holidays.
CERTIORARI	A situation where an appellant may file an appeal of a decision directly to a higher court of law.
CITY	City of Hendersonville, North Carolina.
CITY'S PLANNING JURISDICTION	The land area located with the Hendersonville city limits, the City's extraterritorial jurisdiction, and land subject to a development agreement to which the City is a party.
CIVIL ACTION	Proceedings conducted before a court of law.
CLUSTER MAILBOX UNITS	A centralized series of two or more mailboxes that serve individual housing units within a development.
COMMON DEVELOPMENT REVIEW PROCEDURE	The types of activities undertaken by City staff as part of the review of any application submitted under this Ordinance.
COMMON LAW VESTED RIGHT	Legal doctrine that recognizes where property owners have reasonably made a substantial expenditure of money, time, labor or energy in a good faith reliance on a permit from the government, that they acquire "vested rights" or a protected right to complete the development of their land as originally begun despite any changes in the zoning on the property.



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## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
COMPLETE APPLICATION	<p>A complete application is one that:</p> <ol style="list-style-type: none"> <li>1. Contains all information and materials established by the City Manager as required for submittal of the particular type of application;</li> <li>2. Is in the form established by the City Manager as required for submittal of the particular type of application;</li> <li>3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate review standards of this Ordinance; and</li> <li>4. Is accompanied by the fee established for the particular type of application.</li> </ol> <p>An application will not be accepted for review until it is complete.</p>
COMPLETENESS DETERMINATION	The process of determining if an application for a development approval is or is not complete.
CONDITION (OF APPROVAL)	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or an advisory or decision-making body that must be accepted by an applicant to become binding.
CONDOMINIUM	A building or group of buildings in which dwelling units, offices or floor area are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional undivided basis.
CONNECTIVITY	The relative degree of connection between streets, sidewalks, or other means of travel.
CONNECTIVITY INDEX	A measurement of the connectedness of the streets in a single development.
CONSERVATION AND DEVELOPMENT PLAN	The preliminary plan identifying potential areas for conservation and areas for development as part of a conservation subdivision.
CONSERVATION AREA	The portion of a conservation subdivision or open space set-aside that is reserved for the purposes of conservation or natural resource protection.
CONSERVATION SUBDIVISION	The division of a tract of land into two or more lots, building sites, or other divisions along with additional land area set aside as open space for conservation and/or recreation purposes.
CONSTRUCTION	The erection of any building or structure or any preparations (including land disturbing activities) for the same.
CONSTRUCTION PLANS	Drawing and specifications prepared by a qualified person showing buildings, structures, utilities, infrastructures, and site configuration aspects associated with development.
CONTIGUOUS	Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.
CONTINUANCE	The adjournment or postponement of review or decision on an application to specified future date.
CONTRACT PURCHASER	A party to a contract for the purchase of land from the landowner.
CONTROL CORNER	A recognized corner of a lot or piece of real property that is permanently marked with a monument or marker for the purpose of determining distances, bearing, or metes and bounds descriptions of the lot or real property.
CORPORATE LIMITS	The political boundary of the municipal incorporation of the City of Hendersonville.
COUNTY	Henderson County, North Carolina.
COVENANT	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development that runs with the land.
CURB	A constructed element used to stabilize paving, gutter, planting areas, or sidewalks.
<b>D</b>	

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### Section 9.01 Definitions

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TERM	DEFINITION
DECK	A structure, without a roof, directly adjacent to a principal building which has an average elevation above finished grade.
DEDICATION	The act of giving, donating, or dedicating land or infrastructure improvements to a unit of government for their operation and maintenance.
DEED RESTRICTION	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
DEFERRAL	A postponement of consideration of an application or request to a future date that may or may not be specified.
DEMOLITION	Complete or constructive removal of a building or portion of a building on any site.
DESIGNEE	A person selected or designated to carry out a duty or role.
DEVELOPER	<del>A person engaging in land, site, or building development.</del> <u>A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property per NCGS 160D-102 (11). As used herein, the term "Developer" may also include an Applicant.</u>
DEVELOPMENT	<del>Any man-made change to improved or unimproved real estate, including but not limited to: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. Development is also any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.</del> <u>Any of the following, per NCGS 160D-102 (12):</u>  <u>a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.</u>  <u>b. The excavation, grading, filling, clearing, or alteration of land.</u>  <u>c. The subdivision of land as defined in G.S. 160D-802.</u>  <u>d. d. The initiation or substantial change in the use of land or the intensity of use of land.</u>
DEVELOPMENT APPROVAL	<del>The granting of a permit or affirmative decision on a development application reviewed in accordance with this Ordinance.</del> <u>An administrative or quasi-judicial approval made pursuant to NCGS 160D-102 (13) that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, Variances, and Certificates of Appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.</u>
<u>DEVELOPMENT REGULATION</u>	<u>This Ordinance and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.</u>
<del>DEVIATION ALSO MINOR DEVIATION</del>	<del>A de minimus, small, or slight departure from a requirement or standard for good cause shown.</del>
DRAINAGE	General terms applied to the removal of surface or resurface water from a given area either by gravity via natural means or by systems constructed so as to remove water, and is commonly applied herein to surface water.
DRAINAGE EASEMENT	An easement which grants the right to maintain, relocate, or, utilize land within the easement for the improvement of drainage and stormwater flow.
DRAINAGE, POSITIVE	An area that has been graded or shaped to prevent pooling of stormwater runoff.

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DRIVEWAY	The portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not a part of the vehicle accommodation.
DWELLING UNIT	One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided for use as a permanent residence by one family. <u>Occupation of property can be under Condominium or Fee Simple ownership, or rental status.</u>
<b>E</b>	
EASEMENT	The right to use or temporarily occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
EROSION	The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
EROSION CONTROL MEASURE	A device which controls the soil material within the land area under responsible control of the person conducting a land-disturbing activity.
<u>EVIDENTIARY HEARING</u>	<u>A hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this Ordinance. An eEvidentiary hHearing is also considered a public hearing. An eEvidentiary hHearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.</u>
EX PARTE COMMUNICATION	Any communication between a member of a decision-making body and a person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
EXEMPTION	A use, site feature, or development condition that is exempted authorized to deviate from otherwise applicable requirements

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## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
EXISTING DEVELOPMENT	Development that is built or those projects that at a minimum have established a vested right under North Carolina zoning law based on at least one of the following criteria: (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; (b) Having an outstanding valid building permit as authorized by Sections <del>153A-344.1 and 160A-385.1</del> <u>160D-102; 108; 108.1</u> of the North Carolina General Statutes; or (c) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by Sections <del>153A-344.1 and 160A-385.1</del> <u>160D-102; 108; 108.1</u> of the North Carolina General Statutes.
EXISTING LOT OF RECORD	A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this Ordinance.
EXTRA-TERRITORIAL JURISDICTION	The land area located outside the City's corporate limits but still subject to the planning and development regulations of the City of Hendersonville.
<b>F</b>	
FEE	An amount charged in accordance with the regularly adopted fee schedule of the City.
FEE SCHEDULE	The City's published list of application fees and fees for violations.
FILL	The act of depositing soil, sand, stone, or other inert debris customarily used for supplementing or augmenting land. The term "fill" also applies to the deposit soil, sand, stone, or other deposited material.
FINAL PLAT	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
FINANCIAL GUARANTEE	See "Performance Guarantee."
FINE	A sum of money imposed on a violator as punishment for violation of law.
FLAG LOT	An irregularly shaped lot where the buildable portion of the lot is connected to its street frontage by an arm. Further, in cases where a minimum lot width is prescribed, the arm is less than the presumptive minimum required lot width.
FLOOD INSURANCE RATE MAP	An official map of a community issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the City are delineated.
FLOOD OR FLOODING	For flood damage prevention purposes, a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.
FLUSHING HYDRANT	See "Hydrant, Flushing."
FRONTAGE	A strip or extent of land abutting and extending along a street.
<b>G</b>	
GENERAL STATUTES	A statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.
GOOD CAUSE	Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.
GOOD FAITH	A sincere belief or motive without any malice or the desire to defraud others or conceal the truth.
GRADING	Excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

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## Section 9.01 Definitions

<b>TABLE 9.01: DEFINITIONS</b>	
TERM	DEFINITION
GREENWAY	A path, trail, or linear arrangement of land used of purposes of mobility and recreation. A greenway typically includes an improved surface for locomotion flanked by undeveloped lands.
<b>H</b>	
HABITABLE SPACE	A space in a building for living, sleeping, eating or cooking, or used as a home occupation.
HALF STREET	A partial street that has a reduced pavement and right-of-way width.
HARDSHIP	Special or specified circumstances that place an unreasonable or disproportionate burden on one applicant or landowner over another.
HOLIDAY	A holiday observed by the City.
HOMEOWNERS' ASSOCIATION	An organization of homeowners or property owners of lots or land in a particular subdivision, condominium, or planned development. The owners' association is responsible for maintaining and enhancing the shared private infrastructure (e.g., stormwater, streets, and sidewalks) and common elements such as recreation areas.
HYDRANT, FLUSHING	A hydrant that is connected to a public or private water supply system, but that is not intended for fire protection because it lacks sufficient water pressure for firefighting. Flushing hydrants are typically painted a different color than traditional fire hydrants.
<b>I</b>	
IMPERVIOUS SURFACE (OR COVER)	Any structure, material or ground cover consisting of, but not limited to, asphalt, concrete, stone, brick, terrazzo, roofing, ceramic tile or any other natural or man-made material that prevents the absorption of surface water into the soil.
IMPROVEMENT	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
INCENTIVE	Inducement or supplemental reward that serves as a motivational device for a desired action or activity.
IN-LIEU FEE	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
INTESTATE SUCCESSION	The rules governing distribution of an estate to a spouse or other heirs through the laws of descent and marital rights.
<b>J</b>	
JURISDICTION	The official power to make legal decisions and judgments. The term can also be used to describe the geographic boundaries of a municipal corporation or the extent over which a particular agency has control.
JUST CAUSE	Legitimate cause; legal or lawful ground for action.
<b>K</b>	
<b>L</b>	
LAND	Real estate taking the form of a single lots, multiple lots, an un-subdivided tract, or a site.

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### Section 9.01 Definitions

<b>TABLE 9.01: DEFINITIONS</b>	
TERM	DEFINITION
LAND DISTURBANCE	Any movement of earth or substrate, manually or mechanically, including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
LAND DISTURBING ACTIVITY	Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural grade and may cause or contribute to sedimentation, except activities that are exempt under Section 113A-52(6) of the North Carolina General Statutes. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin.
LANDOWNER <u>or OWNER</u>	<del>As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner. The holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the landowner. As used herein, "landowner" refers to all holders of the title in fee simple of a parcel of real property. The land owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.</del>
LEGAL CHALLENGE	The filing of a suit in a court of competent jurisdiction over a decision or action taken by the City, a landowner in the City, or other interested party with standing to file suit.
LEGISLATIVE <del>PUBLIC</del> HEARING	A hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing <del>per NCGS 160D-102 (20).</del>
LOOP STREET	A street that begins and terminates from one other street.
LOT	A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. The term includes plot, parcel, or tract.
LOT FRONTAGE	The portion of a lot adjacent to a street.
LOT OF RECORD	A lot which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Henderson County Register of Deeds or a lot described by metes and bounds the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to the adoption of the City's first subdivision regulations or a lot upon which an existing structure is located provided a valid building permit was obtained for the construction or a lot which at the time of creation met all subdivision and zoning requirements.
<b>M</b>	
MAXIMUM EXTENT PRACTICABLE	No feasible or practical alternative exists, as determined by the City, and all possible efforts to comply with the standards or regulation to minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."
<del>MINOR RELIEF</del>	<del>See "Deviation."</del>

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MIXED USE DEVELOPMENT	A tract of land or structure developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public, or entertainment. Such uses are functionally integrated and share vehicular use areas, ingress/egress, and pedestrian access.
MONUMENT	Permanent markers used to denote lot corners, street curves, and other geographic elements of a subdivision.

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**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
MULTI-FAMILY RESIDENTIAL	Development that includes multiple dwelling units in a single building.
<b>N</b>	
NATURAL RESOURCES	Resources that exist without the actions of humans, including: sunlight, atmosphere, water, land, vegetation, and animal life. For the purposes of this Ordinance, natural resources may include specific areas with unique ecological conditions, views into or out of a particular area, habitats or areas with special circumstances conducive to particular life forms, or raw materials used in a production process.
<a href="#">N.C.G.S or G.S.</a>	<a href="#">The North Carolina General Statutes</a>
NONCONFORMING LOT OF RECORD	A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance.
NONCONFORMITY	A use, building, site, sign, or site feature that does not comply with the minimum requirements of this Ordinance or other applicable City law.
NORTH CAROLINA ADMINISTRATIVE CODE	A set of written rules prepared by the North Carolina Department of Health and Human Services that are used to help affected parties interpret the North Carolina general Statutes.
NORTH CAROLINA GENERAL STATUTES	The set of written laws adopted by the North Carolina General Assembly that Statutes that set forth general propositions of law that courts apply to specific situations.
NOTICE OF PUBLIC HEARING	The formal legal notification of a public hearing on a proposed development application. A "published notice" is one required to be printed in a newspaper of general circulation. A "mailed notice" is one delivered to specified individuals by US Mail. A "posted notice" is a sign posted on or near the property subject to the application
NOTICE OF VIOLATION	A notice indicating a violation of this Ordinance.
NUISANCE FLOODING	Somewhat common or typical flooding that takes places in the same locations or with regular frequency.
<b>O</b>	
OATH	The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."
OCCUPY OR OCCUPANCY	The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.
OPEN SPACE	Areas of land free from buildings, structures, or encumbrances, as well as lands with buildings or structures devoted to active or passive recreational purposes.
OPEN SPACE SET-ASIDE	Land that has been permanently set aside as open space.
ORDINANCE	A legislative enactment of the City of Hendersonville, North Carolina.
OWNER	<del>The person firm or organization in whom is vested the ownership, dominion or title of property. The person firm or organization who is recognized and held responsible by the law as the owner of property.</del> See "Landowner"
<b>P</b>	
PARCEL	See "Lot."
PARENT PARCEL	A lot or tract that is further subdivided.
PARKLAND	Land dedicated to the City for use as a public park.



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PEDESTRIAN PATHWAY	Interconnected paved walkway that provides a pedestrian passage through blocks running from street to street, vehicular use areas, through sites, or other locations.
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TERM	DEFINITION
PENALTY	Punishment for violation of a law or rule.
PERFORMANCE GUARANTEE	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or installation of required private site features prior to issuance of a building permit or other development approval.
PERSON	An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization <a href="#">joint venture, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies, a political subdivision, municipal corporation,</a> or other entity acting as a unit.
PERSONAL PROPERTY	All forms of property, except real property.
PERVIOUS SURFACE	Any land surface not effectively covered by impervious surface, in which rainfall and stormwater runoff can naturally infiltrate.
PHASE	The discrete portion of a proposed development.
<a href="#">PLANNING BOARD</a>	<a href="#">The board established by City Council in Chapter 40 of the City of Hendersonville Code of Ordinances, pursuant to N.C.G.S. Section 160D-301, having the authority as specified in the City's land development regulations and this Ordinance.</a>
PLAT	A map or plan of a parcel of land which is to be, or has been subdivided.
POSITIVE DRAINAGE	Configuration of a walkway or trail in a manner that sheds water.
PRE-APPLICATION CONFERENCE	A meeting or conference conducted by a potential applicant for a permit or development approval and City staff for the purposes of discussing a potential application or City rules regarding development.
PRE-FIRM	Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map..
PRIVATE CENTRALIZED SYSTEM	A private sanitary sewer system that serves multiple uses in a single development.
PRIVATE STREET OR ROAD	A road or way for the use of private individuals that is not dedicated to the City, the State, or other public agency.
PROBATED WILL	A last will and testament authenticated by a court that calls for the distribution of real estate (land) to one or more heirs.
<a href="#">PROPERTY</a>	<a href="#">All real property subject to land-use regulation by the City. The term includes any improvements or structures customarily regarded as part of real property.</a>
PROPERTY OWNER	See "Landowner."
PUBLIC HEARING	A hearing conducted by <a href="#">the Planning Board, the Zoning Board of Adjustment, or the City Council a review authority</a> for the purpose of allowing interested members of the public to provide <a href="#">comments, testimony or evidence as allowed by applicable law and this Ordinance,</a> for their <del>review authority to</del> <a href="#">consideration</a> in deciding an application under this Ordinance. <del>A public hearing is required to be publically noticed prior to conducting the</del> <a href="#">As used herein, a public hearing may be an Administrative Hearing conducted by the Planning Board, an Evidentiary Hearing conducted by the BOA or City Council.</a> <del>hearing.</del>
PUBLIC INFRASTRUCTURE	Infrastructure (such as potable water lines, sanitary sewer lines, streets, storm drainage, sidewalks, trails, etc.) and related facilities or appurtenances that are owned by the public and intended for use by the public.
PUBLIC MEETING	A meeting conducted by a review authority for the consideration of a development application submitted under this Ordinance that is open to any member of the public to attend. A public meeting is not subject to public notification requirements.
PUBLIC NOTICE OR NOTIFICATION	See "Notice of Public Hearing."
PUBLIC RIGHT-OF-WAY	See "Right-of-Way."

## ARTICLE 9: DEFINITIONS

Q	
QUASI-JUDICIAL DECISION	A decision by an elected or appointed body that applies previously-established policies. Examples include decisions on appeals and <del>variances</del> <u>Variances</u> .
QUASI-JUDICIAL <del>PUBLIC</del> <u>EVIDENTIARY</u> HEARING	<del>A formal public hearing involving the legal rights of specific parties conducted by the Board of Commissioners or the Board of Adjustment based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and typically involve findings of fact made by the decision-making</del>  <u>body. An Evidentiary Hearing. An eEvidentiary hHearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.</u>

## ARTICLE 9: DEFINITIONS

### Section 9.01 Definitions

TABLE 9.01: DEFINITIONS	
TERM	DEFINITION
QUORUM	The minimum number of council, board, or commission members that must be present in order to conduct official business or take official action.
<b>R</b>	
RECOMBINATION	The consolidation or shifting of lot lines between two or more parcels.
RECORDATION	Filing a plat or paperwork associated with a subdivision or other form of development at the Henderson County Register of Deeds to ensure the documents are available for public inspection in perpetuity.
REMEDY	The manner in which a right or law is enforced or satisfied when a violation of the <del>UDO</del> ordinance or related law has occurred.
REMEDY A VIOLATION	An act to bring the structure or other development into compliance with State or community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this subchapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
REQUIRED YARD	The land area located between a lot line and the boundary of a required setback.
RESERVATION	Land area set aside by a landowner for use by the public. Reservations typically involve the identification and protection of an easement for some public purpose.
RESERVE FUND	A bank account containing reserve funds for the purpose of maintaining commonly-held land, infrastructure, or facilities.
RESIDENTIAL DEVELOPMENT	Buildings established for residential purposes such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, gazebos, and customary home occupations.
RE-SUBDIVISION	The further subdivision of land already subject to an expedited subdivision, <del>minor-subdivision</del> Minor Subdivision, or <del>major-subdivision</del> Major Subdivision approval in accordance with the City's development regulations. The shifting of a lot line between two established lots shall be considered a re-subdivision.
REVERSE FRONTAGE LOT	A lot with two or more street frontages that includes a building or structure that is oriented in a manner that differs from other existing structures or from the development patterns indicated by adopted policy guidance or good planning practice.
REVIEW AUTHORITY	The City Manager, <u>the City Manager's designee, the Community Development Director</u> , Planning Board, Board of Adjustment, or City Council, as <u>a</u> appropriate.
RIGHT-OF-WAY	Property located within and adjoining the streets, roads and highways within the City, which rights-of-way are owned or otherwise maintained by the state.
ROAD	See "Street."
ROAD, PRIVATE	See "Private Street or Road."
ROAD, PUBLIC	See "Street, Public."
RURAL CHARACTER	Lands and activities located outside a municipal corporation (a city) that has a low population density where the majority of the land is undeveloped and the majority of economic activity revolves around agricultural pursuits. Rural areas are typically occupied by farms, fields, forests, and un-built land, but may also include low concentrations of homes and business activities.
<b>S</b>	
SEDIMENT	Solid particulate matter, both mineral and organic, that is transported by water, air, gravity, or ice from its site of origin.
SEDIMENTATION	The process by which sediment resulting from accelerated erosion is transported off-site by land-disturbing activity.

**ARTICLE 9: DEFINITIONS**

## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
SIDEWALK	A paved area public right-of-way running parallel to the street for the purposes of pedestrian travel and to facilitate pedestrian access to adjacent streets and land.
SIGHT DISTANCE TRIANGLE	The triangular area formed by a diagonal line connecting two points located at designated locations on intersecting right-of-way lines or a right-of-way line and the curb or a driveway.
SIMPLE MAJORITY	More than half of the voting members of a review authority deciding an application under this Ordinance.
SINGLE-FAMILY RESIDENTIAL	Any development where no building contains more than one principal dwelling unit, every principal dwelling unit is on a separate lot, and where no lot contains more than one principal dwelling unit.
SITE SPECIFIC PLAN	A development plan prepared in accordance with <a href="#">Sections 160A-385.1-160D-102; 108; 108.1 of the North Carolina General Statutes Chapter 40 of the City of Hendersonville Code of Ordinances</a> .
SPECIAL FLOOD HAZARD AREA	The land in the floodplain subject to a one percent or greater chance of being flooded in any given year.
SPECIAL LEGISLATION	Laws or acts approved by the North Carolina General Assembly that apply specifically applied to the City of Hendersonville. Special legislation may be applied solely to the City or to multiple jurisdictions, but it is not universally applicable to all units of local government in North Carolina.
STATE	The State of North Carolina.
STATE BUILDING CODE	A series of ordinances enacted by North Carolina that establish the minimum requirements that must be met in the construction and maintenance of buildings for the purpose of safety and sanitation.
STOP WORK ORDER	An order issued by the City to a landowner or developer to cease and desist all land-disturbing or development activity on a site pending resolution of a problem or conflict.
STORMWATER CONVEYANCE	Stormwater management facilities or features designed to facilitate the movement of stormwater runoff.
STORMWATER MANAGEMENT DEVICE	A structure or facility intended to control stormwater runoff on an individual lot or development site.
STORMWATER RUNOFF	The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
STREET	A paved or unpaved travelway intended for use by automobiles and bicycles.
STREET CLASSIFICATION	The type or category of a street.
STREET GRADE	The incline or steepness of a street.
STREET STUB	A nonpermanent dead end street intended to be extended in conjunction with development on adjacent lots or sites.
STREET, BOULEVARD	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, CUL-DE-SAC	A street that terminates in a vehicular turnaround.
STREET, EXPRESSWAY	A street whose principal function is to carry large volumes of traffic at higher speeds through the City or from one part of the City to another.
STREET, LOCAL	A street whose primary function is to provide access to abutting properties. It generally serves or is designed to serve less than 100 dwelling units and handles less than 800 trips per day.
STREET, MARGINAL ACCESS	A street meeting public street standards that provides access solely to lots inaccessible to abutting higher order streets like expressways, boulevards, or thoroughfares.

# ARTICLE 9: DEFINITIONS

## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
STREET, PRIVATE	A vehicular travelway not dedicated or offered for dedication as a public street but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system.
STREET, PUBLIC	A dedicated public right-of-way in which the roadway has been accepted or constructed to public standards for vehicular traffic, but not an alley.
STREET, THOROUGHFARE	A street whose principle function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties. It generally serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used or is used to carry more than 800 trips per day.
SUBDIVIDER	Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.
SUBDIVISION	<p>As used in this ordinance means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition provided, however, that any subdivision document or plat to be recorded pursuant to such exclusions shall have the notation of "No Approval Required" and the signature of the City Manager or his designated agent before filing in the office of the Henderson County Register of Deeds.</p> <p>A "Subdivision" shall not include the following:</p> <ol style="list-style-type: none"> <li><del>1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance.</del></li> <li><del>2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.</del></li> <li><del>3. The public acquisition by purchase of strips of land for the widening or opening of streets.</del></li> <li><del>4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way or easement dedication is involved and where the resultant lots equal or exceed the standards set forth in this Ordinance.</del></li> <li><u>(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.</u></li> <li><u>(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.</u></li> <li><u>(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.</u></li> <li><u>(4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.</u></li> <li><u>(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.</u></li> </ol>
SUBDIVISION, EXEMPT	A division of land that is exempted from review and approval by the City in accordance with the North Carolina General Statutes.
SUBDIVISION, EXPEDITED	A subdivision of land reviewed and approved administratively that is exempted from most of the public infrastructure requirements.
SUBDIVISION, MAJOR	A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development including two or more lots.
SUBDIVISION, MINOR	A subdivision of land that includes up to eight lots (including the residual parcel) with no extension of public streets, public water, public sewer, or other public utility.
SURETY BOND	See "Performance Guarantee."

## ARTICLE 9: DEFINITIONS

<b>T</b>	
THIS ORDINANCE	The Subdivision Ordinance for the City of Hendersonville, North Carolina.
TRACT	A separate tract of land under common or unified ownership in existence on the effective date of this Ordinance.
TRANSFER	Shifting of an ownership interest in land from one owner to another.
<b>U</b>	

**ARTICLE 9: DEFINITIONS**

## Section 9.01 Definitions

**TABLE 9.01: DEFINITIONS**

TERM	DEFINITION
UNSUBDIVIDED DEVELOPMENT	All construction of structures upon land under common singular ownership where such construction does not involve the sale of individual lots or parcels of land and the streets and ways are intended for use by the public or occupants of the development.
UTILITY EASEMENT	An easement which grants the right to install and maintain utilities including, but not limited to, water lines, sewer lines, storm sewer lines, electrical power lines, telephone lines, natural gas lines, and community antenna television systems.
<b>V</b>	
VARIANCE	The permission to develop or use property granted by the BOA, in a manner that that relaxes or waives a requirement in this Ordinance.
VEHICULAR ACCESSWAY	See "Accessway."
VESTED RIGHT	A right pursuant to North Carolina General Statutes Sections <del>160A-385.1</del> <a href="#">160D-102; 108; 108.1</a> to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.
VESTED RIGHT, COMMON LAW	A term that refers generally to the right to complete a proposed development project according to the rules in effect at the time it was approved.
VIOLATION	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or development approval.
<b>W</b>	
WATER SUPPLY WATERSHED	An area of land located within the same watershed of a body of water that serves as a potable water source.
WILDLIFE HABITAT	Land area that includes both physical and biological features necessary for an organism to find food, shelter, protection, and reproductive mates.
WRIT OF CERTIORARI	A writ of <del>superior</del> <a href="#">Superior court</a> <del>Court for Henderson County</del> to call up the records of an inferior court or a body acting in a quasi-judicial capacity.
<b>X</b>	
<b>Y</b>	
YARD	An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is occupied and unobstructed from the ground upward by buildings or structures except by permitted accessory buildings or uses.
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