

PROPOSED AMENDMENTS TO CONFORM WITH CHAPTER 160D

PART II - CODE OF ORDINANCES
Chapter 24 - FLOODS
ARTICLE II. FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE II. FLOOD DAMAGE PREVENTION ORDINANCE¹

DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

Sec. 24-31. Statutory authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective July 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the city council of the City of Hendersonville, North Carolina, does ordain as follows.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-32. Findings of fact.

- (a) The flood-prone areas within the jurisdiction of the city are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood-prone areas of uses vulnerable to floods or other hazards.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-33. Statement of purpose.

It is the purpose of this article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood-prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

¹Editor's note(s)—Ord. No. 08-0844, adopted Aug. 7, 2008, repealed the former Art. II, §§ 24-31Editor's note(s)—24-43, §§ 24-66Editor's note(s)—24-70, §§ 24-91Editor's note(s)—24-96, §§ 24-116Editor's note(s)—24-117Editor's note(s)— and enacted a new Art. II as set out herein. The former Art. II pertained to flood damage prevention (noncoastal regular phase)and derived from Ord. No. 05-0308, § 2, 3-10-05.

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- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
 - (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
 - (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-34. Objectives.

The objectives of this article are to:

- (1) Protect human life, safety, and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business losses and interruptions;
 - (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
 - (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
 - (7) Ensure that potential buyers are aware that property is in a special flood hazard area.
- [\(8\) Minimize damage to private and public property due to flooding;](#)
- [\(9\) Make flood insurance available to the community through the National Flood Insurance Program;](#)
- [\(10\) Maintain the natural and beneficial functions of floodplains](#)

(Ord. No. 08-0844, 8-7-08)

(6)

Sec. 24-35. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory ~~structure~~ **Structure** (~~appurtenant structure~~ **Appurtenant Structure**) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

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Administrative Decision means decisions made in the implementation, administration, or enforcement of this Ordinance that involve the determination of facts and the application of objective standards set forth in this Ordinance, or other land development regulations as applicable.

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Administrative Hearing means A proceeding to gather facts needed to make an Administrative Decision.

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Alteration of a Watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

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Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this article or -an application to Superior Court for a review of a board of adjustment's decision.

Area of Shallow Flooding means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of ~~special flood hazard~~. See ~~Special flood hazard area~~ Special Flood Hazard. See Special Flood Hazard Area (SFHA).

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a "special flood hazard area", it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Boathouse means a noncommercial, residential accessory structure, including a dock, the principle purpose of which is waterfront mooring or storage of small boats. Such structure may have one enclosed nonresidential level above the boat storage level, provided such area shall not contain more square footage than the boat storage level.

Building. See Structure.

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Design Flood. See Regulatory Flood Protection Elevation.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Development Approval means an administrative or quasi-judicial approval made pursuant to this Ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal.

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Development Regulation means ~~this Ordinance and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.~~

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Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated

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Disposal means, as defined in G.S. 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated ~~building~~ Building means a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Evidentiary Hearing means a hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this Ordinance. An Evidentiary Hearing is also considered a public hearing. An Evidentiary Hearing is conducted in accordance with the terms of this Ordinance and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

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Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Existing Building and Existing Structure means any building and/or structure for which the "start of construction" commenced before the effective date of the floodplain management regulations adopted by a community, dated 12/12/2008.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood ~~insurance~~ Insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood ~~insurance-rate-map~~ Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood ~~insurance study~~ [Insurance Study](#) (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

Flood ~~prone area~~ [Prone Area](#). See *Floodplain*.

Flood ~~zone~~ [Zone](#) means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain ~~administrator~~ [Administrator](#) is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain ~~development permit~~ [Development Permit](#) means any type of permit that is required in conformance with the provisions of this article, prior to the commencement of any development activity.

Floodplain ~~management~~ [Management](#) means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain ~~management regulations~~ [Management Regulations](#) means this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to [Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.](#)

Floodway means the channel of a river or other watercourse, [including the area above a bridge or culvert when applicable](#), and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floodway Encroachment Analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation".

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Functionally ~~dependent facility~~ *Dependent Facility* means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous ~~waste management facility~~ *Waste Management Facility* means, as defined in G.S. 130A, art. 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest ~~adjacent grade~~ *Adjacent Grade (HAG)* means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the secretary of interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the secretary of interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a "certified local government (CLG) program".

Certified ~~local government (CLG) programs~~ *Local Government (CLG) Programs* are approved by the US Department of the Interior in cooperation with the state department of cultural resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Legislative Hearing means a hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(a) *Letter of Map Amendment (LOMA)*: An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

(b) *Letter of Map Revision (LOMR)*: A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(c) *Letter of Map Revision Based on Fill (LOMR-F)*: A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(d) *Conditional Letter of Map Revision (CLOMR)*: A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to

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delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

~~Lowest adjacent grade~~ Adjacent Grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

~~Lowest floor~~ Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

~~Manufactured home~~ Home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

~~Manufactured home park or subdivision~~ Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map Repository means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

~~Market value~~ Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

~~Mean sea level~~ Sea Level means, for purposes of this article, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used. Referred to in this Ordinance as NAVD 1988.

N.C.G.S. or G.S. means the North Carolina General Statutes.

~~New construction~~ Construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

~~Nonencroachment area~~ Non-Encroachment Area (NEA) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

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Owner means the holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the owner. As used herein, "owner" refers to all holders of the title in fee simple of a parcel of real property. The owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

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Planning and Development Regulation Jurisdiction means the City of Hendersonville corporate limits and the extraterritorial jurisdiction of the City of Hendersonville.

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Pre-FIRM means construction or other development for which the "start of construction" occurred before the effective date of the initial flood insurance rate map.

Principally ~~above ground~~ Above Ground means that at least 51 percent of the actual cash value of the structure is above ground.

Recreational ~~vehicle~~ Vehicle (RV) means a vehicle, which is:

- (1) Built on a single chassis;
- (2) Four-hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

(5) Is fully licensed and ready for highway use.

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Reference ~~level~~ Level is the top of the lowest floor for structures within special flood hazard areas designated as zone A1-A30, AE, A or A99.

Regulatory ~~flood protection elevation~~ Flood Protection Elevation means the "base flood elevation" plus the "freeboard". In "special flood hazard areas" where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In "special flood hazard areas" where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

Remedy a ~~violation~~ Violation means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage ~~yard~~ Yard means any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Shear ~~wall~~ Wall means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

Solid ~~waste disposal facility~~ Waste Disposal Facility means any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

Solid ~~waste disposal site~~ Waste Disposal Site means, as defined in G.S. 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

*Special ~~flood hazard area~~ **Flood Hazard Area (SFHA)*** means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in section 24-37 of this article.

*Start of ~~construction~~ **Construction*** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

*Substantial ~~damage~~ **Damage*** means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

*Substantial ~~improvement~~ **Improvement*** means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance

*Threat to ~~public safety and/or nuisance~~ **Public Safety and/or Nuisance*** means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Variance is a grant of relief from the requirements of this article.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in divisions 2 and 3 is presumed to be in violation until such time as that documentation is provided.

Water surface elevation ~~Surface Elevation~~ (*WSE*) means the height, in relation to ~~mean sea level~~ NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-36. Lands to which this article applies.

This article shall apply to all Special Flood Hazard Areas within the ~~jurisdiction, including extra territorial jurisdictions (ETJs) if applicable, of the city~~ City's Planning and Development Regulation Jurisdiction and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability. Notwithstanding the foregoing, property that is used for bona fide farm purposes and which is exempt from the City's zoning in the City's extraterritorial zoning jurisdiction pursuant to N.C.G.S. § 160D-903(c) shall be subject to the floodplain regulations of Henderson County.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-37. Basis for establishing the special flood hazard areas.

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for the county dated ~~October 2, 2008~~, which are adopted by reference and declared to be a part of this article, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

The initial ~~flood insurance rate~~ Flood Insurance Rate maps are as follows for the jurisdictional areas at the initial date:

City of Hendersonville, dated January 20, 1982.

Henderson County Unincorporated Area, dated March 1, 1982.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-38. Establishment of floodplain development permit.

A ~~floodplain development permit~~ Floodplain Development Permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of section 24-37 of this article.

(Ord. No. 08-0844, 8-7-08)

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Sec. 24-39. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-40. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-41. Interpretation.

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-42. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-43. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a [Class 1 misdemeanor pursuant to NC G.S. § 143-215.58](#) ~~misdemeanor~~. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, ~~be fined not more than \$50.00 or imprisoned for not more than 30 days, or both shall be punished at the discretion of the court.~~ Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 08-0844, 8-7-08)

Secs. 24-44—24-65. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 24-66. Designation of floodplain administrator.

The ~~City Manager shall appoint a zoning administrator, hereinafter referred to as the "floodplain administrator", is hereby appointed~~ to administer and implement the provisions of this article. ~~The zoning administrator is also authorized to act as the floodplain administrator.~~

(Ord. No. 08-0844, 8-7-08)

Sec. 24-67. Floodplain development application, permit and certification requirements.

- (a) *Application requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - b. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 24-37, or a statement that the entire lot is within the special flood hazard area;
 - c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 24-37;
 - d. The boundary of the floodway(s) or nonencroachment area(s) as determined in section 24-37;
 - e. The base flood elevation (BFE) where provided as set forth in section 24-37, section 24-68 or section 24-94; and
 - f. The old and new location of any watercourse that will be altered or relocated as a result of proposed development.
 - (2) Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
 - a. Elevation in relation to ~~mean sea level~~ NAVD 1988 of the proposed reference level (including basement) of all structures;
 - b. Elevation in relation to ~~mean sea level~~ NAVD 1988 to which any nonresidential structure in zones AE or A will be floodproofed; and
 - c. Elevation in relation to ~~mean sea level~~ NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

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- (3) If floodproofing, a floodproofing certificate (FEMA form [81-65086-0-34](#)) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
 - (4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:
 - a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - b. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 24-92(4)c. when solid foundation perimeter walls are used in zones A, [AO](#), AE, and A1-30.
 - (5) Usage details of any enclosed areas below the lowest floor.
 - (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (7) Certification that copies of all other local, state and federal permits required prior to floodplain development permit issuance have been received.
 - (8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsections 24-92(6) and (7) of this article are met.
 - (9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (b) *Permit requirements.* The floodplain development permit shall include, but not be limited to:
- (1) A description of the development to be permitted under the floodplain development permit.
 - (2) The special flood hazard area determination for the proposed development in accordance with available data specified in section 24-37.
 - (3) The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - (4) The regulatory flood protection elevation required for the protection of all public utilities.
 - (5) All certification submittal requirements with timelines.
 - (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
 - (7) The flood openings requirements, if in zones A, [AO](#), AE or A1-30.
- (c) *Certification requirements.*
- (1) *Elevation certificates.* A final as-built elevation certificate (FEMA form [81-31086-0-33](#)) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

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- (2) *Floodproofing certificate.* If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (~~FEMA form 81-65086-0-34~~), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to ~~mean-sea-level~~NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.
 - (3) If a manufactured home is placed within zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of subsection 24-92(3)b.
 - (4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
 - (5) *Certification exemptions.* The following structures, if located within zones A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in subsections (c)(1) and (2) of this section:
 - a. Recreational vehicles meeting requirements of subsection 24-92(6)a;
 - b. Temporary structures meeting requirements of subsection 24-92(7); and
 - c. Accessory structures less than 150 square feet meeting requirements of subsection 24-92(8).

(Ord. No. 08-0844, 8-7-08)

Sec. 24-68. Duties and responsibilities of the floodplain administrator.

The floodplain administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this article have been satisfied.
- (2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received, ~~including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.~~
- (3) Notify adjacent communities and the ~~state department of crime control and public safety~~North Carolina Department of Public Safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the floodcarrying capacity is maintained.

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- (5) Prevent encroachments into floodways and nonencroachment areas unless the certification and flood hazard reduction provisions of section 24-96 are met.
 - (6) Obtain actual elevation (in relation to [NAVD 1988 mean-sea-level](#)) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of subsection 24-67(c).
 - (7) Obtain actual elevation (in relation to [NAVD 1988 mean-sea-level](#)) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of subsection 24-67(c).
 - (8) Obtain actual elevation (in relation to [NAVD 1988 mean-sea-level](#)) of all public utilities in accordance with the provisions of subsection 24-67(c).
 - (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 24-67(c) and subsection 24-92(2).
 - (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or nonencroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
 - (11) When base flood elevation (BFE) data have not been provided in accordance with the provisions of section 24-37, obtain, review, and reasonably utilize any BFE data, along with floodway data or nonencroachment area data available from a federal, state, or other source, including data developed pursuant to subsection 24-94(2)b, in order to administer the provisions of this article.
 - (12) When base flood elevation (BFE) data are provided but no floodway or nonencroachment area data have been provided in accordance with the provisions of section 24-37, obtain, review, and reasonably utilize any floodway data or nonencroachment area data available from a federal, state, or other source in order to administer the provisions of this article.
 - (13) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
 - (14) Make onsite inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
 - (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
 - (16) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the

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requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

- (17) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (18) Follow through with corrective procedures of section 24-69.
- (19) Review, provide input, and make recommendations for variance requests.
- (20) Maintain a current map repository to include, but not limited to, [historical and effective](#), the FIS report, [historical and effective](#), FIRM and other official flood maps and studies adopted in accordance with the provisions of section 24-37 of this article, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
- (21) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMRs).

[Any aggrieved person affected by any administrative decision, order, requirement, or determination relating to the interpretation or application of this article made by the floodplain administrator or zoning administrator may file an appeal to the board of adjustment within 30 calendar days after receipt of said written decision, order, requirement, or determination. Appeals shall proceed in conformance with N.C.G.S. § 160D-405. The appeal shall be conducted as a quasi-judicial proceeding governed by N.C.G.S. § 160D-160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.](#)

(Ord. No. 08-0844, 8-7-08)

Sec. 24-69. Corrective procedures.

[Enforcement of this article shall be governed by N.C.G.S. § 160A-404. To the extent that the provisions of this article conflict with G.S. § 160D-404, G.S. § 160D-404 shall control, unless another North Carolina General Statute supersedes the application of G.S. § 160D-404 to this article in which case such other General Statute shall control.](#)

- (a) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (b) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (1) That the building or property is in violation of the floodplain management regulations;
 - (2) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (3) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (c) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of this article, he or she

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shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

- (d) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the ~~local elected governing body~~board of adjustment by giving notice of appeal in writing to the floodplain administrator ~~and the clerk within ten days following issuance of the final order within the time stated and in accordance with the procedures provided in N.C.G.S. § 160D-405.~~ The appeal shall be conducted by the board of adjustment as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406. Appeals from the board of adjustment shall be governed by N.C.G.S. § 160D-1402. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (e) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a ~~misdemeanor~~Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-70. Variance procedures.

- (a) The board of adjustment as established by the City of Hendersonville, ~~hereinafter referred to as the "appeal board"~~, shall hear and decide requests for variances from the requirements of this article. Consideration of the variance by the board of adjustment shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-160D-406.
- (b) ~~Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S., chapter 7A.~~ The Owner must consent to all applications for a variance if the Owner is not the applicant.
- (c) Variances may be issued for:
- (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (2) Functionally dependent facilities if determined to meet the definition as stated in section 24-35, provided provisions of subsections 24-70(i)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (3) Any other type of development, provided it meets the requirements of this section.
- (d) In passing upon variances, the ~~appeal board~~board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;

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- (5) The necessity to the facility of a waterfront location as defined under section 24-35 as a functionally dependent facility, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (e) A written report addressing each of the above factors shall be submitted with the application for a variance.
 - (f) Upon consideration of the factors listed above and the purposes of this article, the ~~appeal board~~[board of adjustment](#) may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.
 - (g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
 - (h) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
 - (i) *Conditions for variances:*
 - (1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances;
 - (2) Variances shall not be issued within any designated floodway or nonencroachment area if the variance would result in any increase in flood levels during the base flood discharge;
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
 - (4) Variances shall only be issued prior to development permit approval;
 - (5) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(i) Appeals from variance decisions. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

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(Ord. No. 08-0844, 8-7-08)

Secs. 24-71—24-90. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 24-91. General standards.

In all special flood hazard areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
 - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (7) Onsite waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.
- (9) Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, nonencroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, nonencroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in subsection 24-70(i).

A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 24-67(c).

- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a [building or](#) structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations (BFEs), the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

[\(17\) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area](#)

(Ord. No. 08-0844, 8-7-08)

Sec. 24-92. Specific standards.

In all Special flood hazard areas where base flood elevation (BFE) data have been provided, as set forth in section 24-37, or section 24-94, the following provisions, in addition to the provisions of section 24-91, are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 24-35.
- (2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 24-35. Structures located in A, [AO](#), AE, and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 24-67(c), along with the operational plan and the inspection and maintenance plan.
- (3) *Manufactured homes.*

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- a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in section 24-35.
 - b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the state regulations for manufactured homes adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
 - c. All enclosures or skirting below the lowest floor shall meet the requirements of subsection (4).
 - d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.
- (4) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - b. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
 - c. Shall include, in zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - 1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - 2. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
 - 3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - 4. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;
 - 5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - 6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) *Additions/improvements.*

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- a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure;
 2. ~~A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.~~ A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- b. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

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~~Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.~~

- c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction; consistent with the code and requirements for the original structure.
 2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

- (6) *Recreational vehicles.* Recreational vehicles shall either:

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- a. Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
 - b. Meet all the requirements for new construction.
- (7) *Temporary nonresidential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:
- a. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - b. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - e. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (8) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall not be temperature-controlled;
 - c. Accessory structures shall be designed to have low flood damage potential;
 - d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e. Accessory structures shall be firmly anchored in accordance with the provisions of subsection 24-91(1);
 - f. All service facilities such as electrical shall be installed in accordance with the provisions of subsection 24-91(4); and
 - g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 24-92(4)c.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 24-67(c).

[\(9\) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:](#)

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

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(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

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(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Sec. 24-97 of this ordinance.

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(b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Sec. 24-97 of this ordinance.

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Sec. 24-97 of this ordinance.

(d) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-93. Reserved.

Sec. 24-94. Standards for floodplains without established base flood elevations.

Within the special flood hazard areas designated as approximate zone a and established in section 24-37, where no base flood elevation (BFE) data have been provided by FEMA, the following provisions, in addition to the provisions of section 24-91, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 - a. When base flood elevation (BFE) data are available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this article and shall be elevated or floodproofed in accordance with standards in sections 24-91 and 24-92 of this article.
 - b. When floodway or nonencroachment data are available from a federal, state, or other source, all new construction and substantial improvements within floodway and nonencroachment areas shall also comply with the requirements of sections 24-92 and 24-96 of this article.
 - c. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with the provisions of section 24-37 and utilized in implementing this article.
 - d. When base flood elevation (BFE) data are not available from a federal, state, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in section 24-35. All other applicable provisions of section 24-92 shall also apply.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-95. Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.

Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor nonencroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of sections 24-91 and 24-92; and
- (2) Until a regulatory floodway or nonencroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-96. Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 24-37 of this article. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to the standards outlined in sections 24-91 and 24-92, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of a floodplain development permit; or
 - b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If subsection (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a. The anchoring and the elevation standards of subsection 24-92(3); and
 - b. The no encroachment standard of subsection (1).

(Ord. No. 08-0844, 8-7-08)

Secs. 24-97 — ~~24-115. Reserved.~~ Standards for Areas of Shallow Flooding (Zone AO)

Located within the Special Flood Hazard Areas established in Sect. 24-37, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sec. 24-91 and Sec. 24-92, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of five (5) feet, above the highest adjacent grade; or at least five (5) feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Sec. 24.97 (1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Sec. 24-67 (c) and Sec. 24-92 (2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

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DIVISION 3. GENERALLY APPLICABLE PROVISIONS

Section 24-98. Conflicts between the standards of this Ordinance or land development regulations.

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control. Where the terms of this Ordinance conflict with the terms of a provision in any other Code, ordinance, regulation or policy adopted by the City, the more restrictive standard shall control. The more restrictive standard or provision is the one that imposes greater restrictions or burdens, or more stringent controls.

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Section 24-99. Completeness Determination

On receiving a development application, the Floodplain Administrator shall make a completeness determination in accordance with Sec. 40-78 of the Code of Ordinances for the City of Hendersonville.

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Sec. 24-100. Conflicts of Interest for City Staff

(1) No staff member shall make a final decision on an Administrative Decision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.

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(2) No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.

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(3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.

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(4) For the purposes of this section, a 'close familial relationship' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

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Section 24-101. Notification of Decisions, Approvals and Determinations.

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

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

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

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Sec. 24-102-115. Reserved

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DIVISION 34. LEGAL STATUS PROVISIONS

Sec. 24-116. Effect on rights and liabilities under the existing flood damage prevention ordinance.

This article in part comes forward by reenactment of some of the provisions of the flood damage prevention ordinance enacted January 7, 1982, as amended, and it is not the intention to repeal but rather to reenact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Hendersonville enacted on January 7, 1982, as amended, which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for the unincorporated area of Henderson County is July 5, 2005.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-117. Effect upon outstanding floodplain development permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this article; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.

(Ord. No. 08-0844, 8-7-08)

Sec. 24-118. Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

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Sec. 24-119 Effective Date.

This ordinance shall become effective upon adoption.

Sec. 24-120 Adoption Certification.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the governing body of Community Name, North Carolina, on the Day (number or text) day of Month, Year.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, Year.

(signature)

Secs. 24-118—24-130. Reserved.

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