

ARTICLE XI

ADMINISTRATION AND ENFORCEMENT

CHAPTER 1. APPOINTMENT AND DUTIES OF THE ZONING ADMINISTRATOR

11-101 APPOINTMENT OF THE ZONING ADMINISTRATOR

There is hereby created the office of Zoning Administrator. The Zoning Administrator shall be executive head of the office and shall be appointed by the city manager in accordance with all applicable administrative procedures.

11-102 DUTIES OF THE OFFICE OF THE ZONING ADMINISTRATOR

The Zoning Administrator shall enforce this ordinance, and in addition thereto and in furtherance of said authority he shall:

- (A) Issue all zoning permits, and make and maintain records, thereof.
- (B) Issue all use and occupancy permits, and make and maintain all records thereof.
- (C) Conduct inspections of buildings, structures, and use of land to determine compliance with the provisions of this ordinance.
- (D) Maintain permanent and current records of this ordinance, and subsequent amendments, including, but not limited to, all maps, amendments, conditional uses, variations, appeals, and applications therefore.
- (E) Provide information to the public on all matters relating to this ordinance.
- (F) Receive, file, and forward to all necessary agencies all applications for conditional uses, and for amendments to this ordinance.
- (G) Receive, file, and forward to the Board of Zoning Appeals all applications for variances or other matters on which the board is required to pass under the provisions of this ordinance.
- (H) Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and make reports of this recommendations to the Planning Commission at least annually.

11-103 POWERS OF THE ZONING ADMINISTRATOR REGARDING THE ISSUANCE OF PERMITS

The Zoning Administrator shall have the power to grant building permits and use and occupancy permits, and make inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance. It shall be unlawful for the Zoning Administrator to approve any plan or issue any permits or certificates of occupancy for any excavation or construction until he has inspected such plans in detail and found them to conform to his ordinance.

Excepting as provided in ARTICLE VIII, Section 8-209, the Zoning Administrator is not permitted to make changes in this ordinance or to vary its terms and provisions in carrying out his duties.

The Zoning Administrator shall not refuse to issue a permit when conditions imposed by this ordinance are complied with by the applicant despite the violations of contracts such as deed covenants or private agreements which may occur upon the granting of said permit.

CHAPTER 2. ZONING PERMITS (REPLACED SECTIONS 11-201 THROUGH 11-203.3, BY ORDINANCE NO. 1991-24, JULY 23, 1991.)

11-201 ZONING PERMITS REQUIRED

Zoning permits of various types as indicated within this chapter are required before any site grading or construction activity of any type is initiated upon any zone lot or parcel of land or before extending or changing to another activity type on any zone lot.

Except as hereinafter provided, no permit pertaining to the use or land of buildings shall be issued by any officer, department, or employee of the city unless the application for such permit has been examined by the office of the Zoning Administrator indicating that the proposed building or structure complies with all the provisions of this ordinance. Any building permit or use and occupancy permit issued in conflict with the provisions of this ordinance shall be null and void.

11-202 GRADING AND BUILDING PERMITS

Before commencing the site grading upon any site for which a permit is required by this section and before commencing any excavation, including the removal of trees, or construction, reconstruction, alteration or extension of any building or other structure or parking lot which is located or to be located upon such site, the owner or his agent shall receive approval for grading and/or building permits as required by this section. **(REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)**

11-202.1 Plans Required

No grading permit or building permit shall be issued until such plans as are required by this section have been submitted to and approved by the City. **(REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)**

11-202.101 Plot Plan Required for One- and Two-Family Detached and Semi-Detached Dwellings

The plot plan for any one- or two-family detached or semi-detached dwelling (including mobile homes located on individual lots) shall indicate:

- (1) The actual shape, location, and dimension of the lot.
- (2) The shape, size, and location of all buildings or other structures to be erected, altered or moved, and of any building or other structure already on the lot.
- (3) The existing and intended use of the lot and of all such buildings or other structures upon it, including the number of dwelling units the building is intended to accommodate.
- (4) Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this ordinance are being observed.
- (5) Location of areas subject to flooding. (See Subsection 11-202.104, below.)

- (6) Where subsoil sewage disposal is anticipated, certification from the county health department approving the lot for such use.

11-202.102 Site Development Plan Required for all Other Residential Activities, Community Facilities, Commercial, Industrial and Certain Agricultural and Extractive Activities (REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

A site development plan shall be submitted to the Planning Department for review and approval by the Planning Commission or Staff prior to the issuance of a grading and/or building permit for the construction of a building or structure or the placement of a building or structure on the property for any of the following activities:

- (1) Residential Activities, excepting one- and two-family detached and semi-detached dwellings as regulated by 11-202.101;
- (2) Community Facilities Activities;
- (3) Commercial Activities, including automotive parking, including parking lots;
- (4) Manufacturing Activities;
- (5) Feed Lots, Stockyards, Mining, Quarrying, and Plant and Forest Nurseries

A site development plan shall also be submitted and approved for the occupancy of land (without a building or structure) for any of the above listed activities. Likewise, a site development plan shall be submitted and approved for the construction or establishment of a parking lot and for the construction of an addition to an existing building or structure and for the construction or placement of an accessory building or structure for any of the above listed activities.

Site development plans as required above shall be prepared and stamped by an individual licensed and/or certified by the State of Tennessee to perform such design services as may be required and shall contain the information listed below and shall be accompanied by an application form, fee (as specified by separate ordinance or resolution) and other items as specified by the Planning Department submittal requirements.

- (1) The actual shape, location, and dimension of the lot.
- (2) The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of buildings or other structures already on the lot.
- (3) The existing and intended use of the lot and of all such buildings or other structures upon it, including the number of dwelling units the building is intended to accommodate.

- (4) Topographic features, both existing and proposed, with contours of not more than two (2) foot intervals.
- (5) Location and dimensions of all driveways and entrances.
- (6) Location and design of all existing and proposed accessory off-street parking areas. Dimensions shall be shown. **(REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)**
- (7) Location of all accessory off-street loading berths.
- (8) Location of open space.
- (9) Proposed ground coverage, floor area, and building heights.
- (10) Proposed landscaping and screening as required to meet the provisions of ARTICLE IX.
- (11) Position of fences and walls (materials specified).
- (12) Position of screening planting (type of planting specified).
- (13) Location of windows and courts.
- (14) Location, type, and size of proposed signs.
- (15) Proposed means of surface drainage.
- (16) Location of all easements and rights-of-way.
- (17) Location of areas subject to flooding. (See Subsection 11-202.104, below.)
- (18) Where subsoil sewage disposal is anticipated, certification from the county health department approving the lot for such use.
- (19) Location of all existing trees measuring 10" diameter-at-breast-height and greater.
- (20) Location and height of any lighting.
- (21) Impermeable Surface Ratio.
- (22) Required improvements. **(ADDED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)**

11-202.103 Approval by Planning Commission or Staff (REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

The site development plan shall be distributed by the Planning Department to appropriate city staff including the City Engineer, Codes Director, and Fire Marshall as well as the appropriate water and sewer utility for review and comment as to conformance with this ordinance. Final staff comments and final site development plan shall be submitted by the

Planning Department to the Planning Commission for review and approval or approval conditioned upon compliance with staff comments. Should the Planning Commission determine the plan does not conform to this ordinance, the Planning Commission shall deny approval of the site plan. The Planning Commission may also defer the matter until the next meeting, or, if agreed to by the applicant, a longer period.

The city staff is hereby authorized to review and approve with comments/conditions the following:

- (1) An addition to an existing building or structure which measures up to 25% of the area of the existing building on the site;
- (2) The addition of accessory building(s) measuring up to 25% of the area of the existing principal building(s) on the site;
- (3) The addition of less than 25% additional parking spaces;
- (4) Any decrease in square footage for structures, parking or paved areas.

Site plans which qualify for staff approval shall comply with all submittal requirements unless explicitly exempted by staff.

If the staff finds that the site plan does conform to the standards and requirements of this ordinance, the staff shall forward the site plan to the Planning Commission for action. Likewise, if the staff is uncertain as to whether the plan is in compliance and/or if discretion is required to ascertain compliance, the staff shall forward the site plan to the Planning Commission for action.

11-202.104 Site Utilization and Reclamation Plan

A site utilization and reclamation plan containing the information indicated herein is required for the following temporary uses subject to the provisions in Subsection 11-202.2, of this article:

- (1) the removal excavation or placement of fill material in excess of 500 cubic yards;
- (2) excavation or placement of fill material which would infringe upon a floodplain or wetland area as determined by the City Engineer.

This section expressly exempts excavation or fill for the purpose of constructing a swimming pool, basement, garage or similar use which is deemed to be an accessory structure to a principal residential building. This section also exempts excavation for the installation of utility lines, including sanitary sewer, storm sewer, water, gas, electric and phone lines. However, the placement of fill material obtained from excavation for the purpose of extending utility services is nonexempt.

In the event the City Engineer determines utilization of this site necessitates off-site drainage improvements or drainage retention on-site the City Engineer may require the plan be prepared and stamped by an

individual licensed and/or certified by the State of Tennessee, to perform such design service as may be required. This plan shall be approved prior to any grading, placement of fill material or excavation, including the removal of trees, or any construction activity of any type.

The City reserves the right to hold a bond or letter of credit (Reference Article XI) for any anticipated damages sustained by public streets or other public improvements. The Public Works Department will review the site utilization plan to determine the need and amount of such bond. This bond will be held separate from the bond provisions referenced in subsection 11-202.105(b).

This site utilization plan shall include:

- (1) The actual shape, location, and dimension of the lot.
- (2) The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of buildings or other structures already on the lot.
- (3) The existing and intended use of the lot and of all such buildings or other structures upon it, including the number of dwelling units the building is intended to accommodate.
- (4) Topographic features, both existing and proposed, with contours of two (2) to five (5) foot intervals as required by the City Engineer based on the character of site topography.
- (5) Location of all driveways and entrances.
- (6) Proposed seeding if required by City Staff to stabilize eroding slopes.
- (7) Proposed means of surface drainage and siltation control.
- (8) Proposed hours of operation.
- (9) Total time period of expected operations with beginning and ending dates specified. (See subsection 11-202.106)
- (10) Proposed means of air pollution and/or dust control.
- (11) Location of areas subject to flooding. (See subsection 11-202.107).

11-202.105 Additional Provisions for Large Sites

Any site utilization and reclamation plan prepared for a site on which the removal, excavation or placement of fill material meets or exceeds 1000 cubic yards of material shall meet the following criteria.

- (1) The plan shall be prepared and stamped by an individual licensed and/or certified by the State of Tennessee to perform such design service as may be required.

- (2) A proposed plan for site reclamation and infrastructure rehabilitation which shall include the expected cost for reclamation activities upon the site and any cost of repair for off-site damages. A bond made payable to the City of Hendersonville in an amount equal to the estimated cost of these activities, as determined by the City Engineer, plus ten (10) percent additional for each year of operation shall accompany such plan.

11-202.106 Phasing

A site utilization plan for an extensive site may be completed in phases. A site for which phasing is proposed shall meet the following criteria.

- (1) A phasing schedule shall be included with the site utilization plan and approved by the City Engineer.
- (2) Phased areas included in the site utilization plan shall be graded to an elevation determined by the City Engineer in six (6) month intervals.

11-202.107 Special Information Required Within Areas Subject to Flood

Within all floodplain districts, floodplain development permits are required prior to the initiation of any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations. The content and procedures for these permits are set forth in ARTICLE VII, CHAPTER 2.

11-202.108 Compliance of Existing Sites

Any site on which the excavation or placement of fill material is presently occurring as per section 11-202.104 shall within one (1) year from the date of passage of this amendment file a site utilization and reclamation plan with the City Engineer. This plan shall meet all provisions of this article with the following modifications:

- (1) Sites holding valid permits prior to the effective date of this ordinance shall be issued a current Grading Permit as required by this ordinance.
- (2) The City Engineer may require necessary information to ensure the intent of this section is met.

11-202.109 Low Volume Sites

Any site on which the excavation or placement of fill material does not exceed 500 cubic yards within a six (6) month period shall be deemed a Low Volume Site. Low Volume Sites shall obtain a Grading Permit as required by this section. The City Engineer shall determine the requirements necessary to ensure compliance with the intent of this section.

11-202.110 Required Improvements (ADDED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

The planning Commission shall, in conjunction with the approval of any site plan, require the construction of any and all infrastructure and other improvements (if not already in place or bonded) necessary to support the development and to satisfy the purposes of this ordinance. These improvements shall include, but are not limited to, streets, curb and gutter, storm sewer, detention/retention and other drainage improvements, sidewalks, utilities, lighting, landscaping, irrigation, fencing, screening, parking, loading areas, and driveways. Street improvements which may be required include public and/or private streets and drives and may include new streets or improvements to existing streets necessary to improve these streets to current city standards and especially includes major thoroughfare, arterial, and collector streets as shown in the City's Major Thoroughfare Plan and includes local streets as well. The owner/developer shall also be required to dedicate all public improvements to the City by dedicating right-of-way or easements or by other methods specified by the City. See Section 11-202.7 regarding recording of plats. All improvements shall be constructed in accordance with the Public Works Department Construction Manual and the construction plans as approved by the City Engineer.

11-202.2 Grading Permits

Grading permits shall be required for any use or activity for which either a site development plan (as specified in Subsection 11-202.102) or a site utilization and reclamation plan (as specified in Subsection 11-202.104) is required. In any instance where no building or construction activity is to take place upon a site such grading permit may be issued by the City Engineer, provided that he has determined that such plans demonstrate that use or activity will comply with all provisions of this ordinance. In any instance where building or construction activity is proposed to take place upon the site, a grading permit may be issued only upon approval of a site development plan.

11-202.3 Building Permits

Upon approval of a plot plan or site development plan (the contents of which are specified in Subsections 11-202.101, 11-202.102, and 11-202.103) a building permit for such use may be issued. A grading permit may be issued prior to the issuance of a building permit with an approved site development plan forming the basis for such action.

11-202.4 Time Limits upon Approvals

Due to rapidly changing conditions within the planning region, it is necessary to establish specific time periods after the passage of which approved plans shall become null and void, thereby assuring that no new development will, due to altered conditions, etc., damage the public interest.

11-202.401 Time Limit on Plot Plans and Site Development Plans

Any plot plan or site development plan approved under the provisions of this ordinance shall become null and void one (1) year after the date of its

approval unless a building permit for the project has been obtained in which case the provisions of Subsection 11-202.402, shall apply, provided, however, that in no instance shall an approved plot plan or site development plan become null and void in less than one (1) year.

11-202.402 Time Limit on Building Permit

Any building permit issued by the Zoning Administrator shall become null and void six (6) months after the date of issuance, unless "actual construction" (as defined by this ordinance) has begun and been continued in a diligent manner.

11-202.403 Time Limit on Site Utilization and Reclamation Plans

Any site utilization and reclamation plan shall remain in full force and effect for the period specified in the approval of such plan. In any event where such period may expire, work shall cease until a new plan as specified in Subsection 11-202.104, is approved.

11-202.5 Construction to Be in Accordance with Approved Plans

In general, all site construction and development activity shall proceed in strict compliance with the site development plan as approved. Minor modifications in the terms and conditions of the approved site development plans may be made from time to time as provided in the following paragraphs. Any proposed modification which is not permitted under these provisions may be approved only as an amendment to the site development plan (see Subsection 11-202.8).

11-202.501 Minor Modifications During Construction (REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

The Zoning Administrator may upon recommendation of affected planning staff approve minor modifications in the location, siting, and configuration of buildings and structures if required by engineering or other circumstances not foreseen at the time the site development plan was approved so long as:

- (1) No modification violates any provision of this ordinance.
- (2) No modification involves an item for which modification is prohibited under the provisions of Subsection 11-202.503, and
- (3) The total of such modifications approved by the Zoning Administrator shall never in aggregate result in:
 - (i) any increase in residential density;
 - (ii) an increase of more than 2,000 square feet or 50% of the total square footage of the existing non-residential building, whichever is less, provided the increase does not exceed the bulk or site coverage provision of this ordinance;
 - (iii) an increase of more than 2,000 square feet or 3% in the total ground area covered by buildings, whichever is greater,

provided that no such increase shall be permitted which would exceed the impermeable surface ration established for the site;

- (iv) a reduction of more than 2% in the area set aside for open space (exclusive of parking area green spaces and required screening areas);
 - (v) movement of a point of access by a distance of greater than ten (10) feet.
- (4) No modification may be approved which is greater than the absolute minimum necessary as defined by the provisions of Subsection 11-202.502.

11-202.502 Minimum Adjustments Only

Any modification identified below must be held to the minimum necessary. The Zoning Administrator must find that each of the following conditions apply to the particular circumstances prior to the granting of the adjustment.

(1) Practical Difficulties or Unnecessary Hardship

That strict application of the provisions of this ordinance would result in practical difficulties or unnecessary hardship.

(2) Extraordinary Circumstances

That there are exceptional or extraordinary circumstances or conditions applying to the land, buildings or uses referred to in the application, which circumstances or conditions do not apply generally to other land, buildings or uses in the same district.

(3) Not Detrimental

That granting the application will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood of the premises.

(4) Health or Safety not Adversely Affected

That granting the application under the circumstances of the particular case will not adversely affect the health or safety of persons working or residing in the neighborhood containing the property of the applicant.

(5) Maintains Intent of Ordinance and the Development Plan

That such adjustment is within the intent and purpose of the ordinance and will not adversely affect the community objectives of the comprehensive plan.

11-202.503 Subjects Not Included for Modification

The following are not subject to modification under the provisions of this section:

- (1) Uses permitted;
- (2) Number of dwelling units or nonresidential floor area permitted;
- (3) Building height (exception minor modifications in nonoccupied portions of the building);
- (4) A reduction of the number of required parking spaces;
- (5) Significant changes to the drainage pattern, as determined by the City Engineer;
- (6) Any reduction in required screening area or planting plan; and
- (7) Minimum required vision clearance area.

11-202.6 Certifications Required During Construction Process

In order to ensure that actual construction and development activity has been accomplished in strict compliance with the approved site development plan, a process is hereby adopted for certification of compliance of the actual construction and development with that depicted upon the approved site development plan.

11-202.601 Certifications of Compliance Required

On at least three (3) occasions during the course of the construction or development activity which is taking place upon any site, certification shall be required as to the correspondence between certain actual conditions which are documented as existing upon the site and the depiction of those conditions upon the approved site development plan. In general, these certifications shall be as follows:

- (1) The first certification shall be presented to the City Engineer when the building foundation is substantially complete. A licensed surveyor shall certify the building location and the first (1st) floor elevation of the foundation. A certificate signed by both the individual conducting the survey and the owner shall indicate the location and first floor elevation for the building.
- (2) The second certification shall be presented to the City Engineer when the site has been rough graded to the point where the drainage system has been installed and parking areas generally established. A licensed engineer engaged in the practice of civil

* In the event that the first floor elevation differs from that shown on the approved site development plan, the plans shall be immediately revised and shall be approved by the city engineer prior to any further work.

engineering shall present to the city engineer a letter which shall indicate the extent of correspondence between actual conditions found upon the development site and those depicted on the approved site development plan. This letter shall detail the location and extent of discrepancies between actual conditions found in the field survey and the depiction of those conditions upon the approved plan.

- (3) The final certification shall be presented to the Zoning Administrator when construction upon the site is substantially complete and the building is ready for occupancy. This certification prepared by a licensed engineer engaged in the practice of civil engineering and a licensed landscape architect, shall indicate if actual conditions upon the development site are in substantial compliance with the plan approved by the Hendersonville Regional Planning Commission. To be included are all aspects of the development project to include, but not be limited to:
- i. Location and dimensions of all buildings, parking areas, and other site features;
 - ii. Location and sizes of all utilities and storm drainage facilities as established on the site; and
 - iii. Location and material (to include plant names and height were specified) of all landscaping and site plantings.*

11-202.7 Final Plats to Be Filed with Site Development Plans

Any site development plan submitted which required dedication of right-of-way or recording of any easements shall either be accompanied by a final plat of the property shown on said plan, or shall be accompanied by a legal instrument which is sufficient in form to record in the Register of Deeds Office. This document must be legally recorded in the Register of Deeds Office prior to issuance of a building permit.

11-202.8 Amendments to Approved Site Development Plans

Any modification to an approved site development plan which exceeds the minor modifications which may be approved by the Zoning Administrator, as provided in Subsection 11-202.501, shall only be approved as provided herein. All such amendments to site development plans shall be presented to and acted upon by the Planning Commission. Should the Planning Commission approve the amendment to the site development plan, the applicant may proceed with the amended plan as a basis for modifications. In the event that the Planning Commission disapproves the proposed modifications, the applicant may either

** In the event that the first or second certification, as referenced in A and B, of this section, differ from that shown on the approved site development plan, the plan shall be revised and submitted for review to the affected Planning Staff prior to any further work. The Planning Staff has the option of approving the revised plans as per 11-202.501 and 11-202.502, of this section or referring the plan to the Planning Commission for further approval. Failure to submit the proper certification at the appropriate time will result in issuance of a stop work order and/or

proceed with the original plan or appeal the decision to the Board of Zoning Appeals.

11-202.9 Bonding of Site Improvements

11-202.901 Completion of Improvements

As a condition of approval of any site development plan submitted in accordance with Subsection 11-202.102, and prior to the issuance of any use and occupancy permit, an applicant shall be required to complete all site improvements as are required by the Planning Commission acting under the authority granted to it by this ordinance.

11-202.902 Performance Bond

The Planning Staff may waive the requirement that the applicant complete and/or dedicate all public improvements and landscaping prior to being issued a final use and occupancy permit. A temporary use and occupancy permit may be issued in the alternative upon posting an acceptable performance bond in order to ensure the construction, installation and/or dedication of all remaining required public and private improvements and landscaping. The bond shall be in the amount of one hundred and ten (110) percent of the actual estimated cost as determined by the Planning Staff. The performance bond shall also secure site improvements and private access improvements required pursuant to this ordinance, including necessary off-site improvements. Posting of an acceptable performance bond shall constitute prior permission for the properly designated parties to enter upon said property to complete these improvements.

11-202.903 Bonding Period - Obligees

The period within which required improvements shall be completed shall be specified by the City Engineer, incorporated in the performance bond, and shall not exceed one (1) year from the date of approval of the Temporary Use and Occupancy Permit.

The performance bond shall name the Planning Commission and/or the city as obligees and shall be satisfactory to the City Attorney as to form, sufficiency and manner of execution. The performance bond shall remain in force in its full face amount until improvements are completed and accepted by the Planning Staff.

11-202.904 Surety

A performance bond authorized by the Planning Staff shall be secured by either a surety bond, irrevocable letter of credit, escrow account or other method of surety agreement deemed adequate by the Planning Staff. The beneficiary of the surety shall be the Planning Commission and/or the city. If a surety bond is used, then the guarantor of the debt shall have a commercial rating of not lower than "A" as designated by the A.M. Best and Company or other similar corporate rating service acceptable to the Planning Commission. If an irrevocable letter of credit is used as surety, then the bank or other financial institution issuing the letter of credit shall

have total capital and unrestricted surplus of not less than twenty million dollars (\$20,000,000). The bank or other financial institution shall allow the letter of credit to be presented for collection at a place physically located within the boundaries of Sumner County or those counties which are contiguous.

11-202.905 Release of Performance Bond and Surety

The performance bond, and the surety securing it, may be released by the Planning Commission upon acceptance of the public improvements and the landscaping.

- (1) A request for reduction of the surety or release of the performance bond shall not be submitted to the Planning Commission until:
 - i. The applicant has presented a letter to the City Engineer requesting release of the performance bond, including a written statement from the engineer employed by the applicant stating that the improvements have been installed in accordance with the plans and specifications approved by the city departments.
 - ii. Assurances have been obtained through either affidavits, releases or waivers of liens from all contractors and subcontractors of the filing of public disclaimers, that liens will not be filed against the dedicated land and/or improvements after they are accepted by the Planning Commission.
- (2) The approval of a site plan shall not constitute or imply the acceptance by the city of any public improvement shown on the site plan. The Planning Commission may require the site plan to be endorsed with appropriate notes to this effect.
- (3) The costs incurred in connection with a request for release of the surety or of the performance bond (that is, engineering, inspection fees, legal fees, etc.) shall be borne by the applicant, regardless of whether his request is ultimately granted. No bond shall be released until the City Recorder certifies that all fees have been paid.

11-202.906 Appeal to the Hendersonville Regional Planning Commission

The applicant may, upon disapproval of a request for release of a bond, appeal the decision of the Planning Staff to the Hendersonville Regional Planning Commission. The appeal shall be filed within ten (10) days of the adverse decision and shall be set for hearing on the next available agenda of the Hendersonville Regional Planning Commission.

11-202.907 Failure to Complete Improvements

Where a performance bond has been posted, and required improvements have not been installed within the terms of the performance bond, then the

Planning Commission and/or Mayor may declare the bond to be in default and authorize the calling of the bond and surety and the completion of the improvements under the supervision of the city departments.

11-203 CERTIFICATE OF USE AND OCCUPANCY

11-203.1 Permits Required

All buildings or additions thereto, which are constructed after the effective date of this ordinance, excluding one- and two-family dwelling units or are to be occupied by any commercial, industrial, multi-family or community facilities activity, and all additions to previous existing buildings to be similarly utilized or occupied and all land uses for such purposes shall be subject to this provision. A use and occupancy permit shall be obtained from the office of the Zoning Administrator prior to occupancy of the building or land area. No change in a use to a use or activity of a different type or class shall take place until a use and occupancy permit has been obtained.

11-203.2 Application for Use and Occupancy Permit

Every application for a building permit shall be deemed to be an application for a use and occupancy permit. Every application for a use and occupancy permit for a new use of land where no building permit is required shall be made directly to the office of the Zoning Administrator.

11-203.3 Issuance of Use and Occupancy Permit

The following shall apply in the issuance of any use and occupancy permit:

11-203.301 Application to Be Accompanied by Certified Final Site Development Plans

Any application for a use and occupancy permit involving any development for which a site development plan is required by the provisions of Subsection 11-202.102, shall be accompanied by the completed final site certification required by Subsection 11-202.601, (c), and/or a performance bond as provided in Subsection 11-202.9; which is submitted to the office of the Zoning Administrator.

11-203.302 Permits Not to Be Issued

No use and occupancy permit shall be issued for any building, structure or part thereof, or for the use of land, which is not in accordance with the provisions of this ordinance.

11-203.303 Permits for New Use of Land

No land heretofore vacant shall hereafter be used or an existing use of land be hereafter changed to a use or activity of a different class or type, unless a use and occupancy permit is first obtained for the new or different use.

11-203.304 Permits for Initial Occupancy of New Buildings

No new building shall be occupied nor any use of the land commenced before a use and occupancy permit has been issued therefor. Provided, however, that no use and occupancy permit shall be issued for any use until a final development review has been conducted and the development has been found to be in full compliance with the provisions of this ordinance.

11-203.305 Use and Occupancy Permits for Existing Buildings

Use and occupancy permits may be issued for existing buildings, structures or parts thereof, if, after inspection, it is found that such buildings, structures or parts thereof, and such use of land, are in conformity with the provisions of this ordinance.

11-203.4 Temporary Use and Occupancy Permits

Nothing in this ordinance shall prevent the issuance of a temporary use and occupancy permit, as provided herein. Provided, however, that any request for a temporary use and occupancy permit involving any use or activity for which a site development plan is required by the provisions of Subsection 11-202.102, shall be accompanied by a bond or letter of credit as referenced in Subsection 11-202.9, which is sufficient as to form and amount to assure completion of all site improvements which are not complete at the time application is made. A temporary use and occupancy permit is to be issued for a time period not to exceed one (1) year. In no instance shall a temporary use and occupancy permit be issued for a longer time period than the performance bond to secure completion of all site improvements, as referenced in Subsection 11-202.9. One extension of a temporary use and occupancy permit may be issued provided the total term of all temporary use and occupancy permits for this project shall not exceed one (1) year. Any extension of the use and occupancy permit shall be accompanied by a renewal of the corresponding performance bond.

11-203.401 Partially Completed Buildings

Temporary use and occupancy permits may be issued for a portion of a building or structure in process of erection or alteration, provided that such temporary permit shall not be effective for a time period in excess of six (6) months, and provided further that such portion of the building, structure, or premises is in conformity with the provisions of this ordinance.

11-203.402 Necessary or Seasonal Uses Temporary in Nature

The provisions of this section are necessary to govern the operation of certain seasonal and other temporary uses. Application for a temporary use and occupancy permit shall be made to the Zoning Administrator. The application shall contain information as to the nature of the proposed use, the anticipated period of operation, the number and location of parking spaces and sanitary facilities. No permit issued, herein under, shall be for a time period in excess of that stipulated below for the individual activity indicated.

- (1) **Circuses, Carnivals and Haunted Houses**: May be permitted in the following districts: **(AMENDED BY DELETING SUBPART (a) AND REPLACING WITH NEW BY ORDINANCE NO. 1997-13, MAY 13, 1997.)**

Commercial Districts - CBD, GCS, MCD, and HSD

Industrial Districts - IR and IG

Such permit may be issued for a period not to exceed fifteen (15) days. The time of operation need not be fifteen (15) consecutive days; however, the site must be vacated within thirty (30) days after initiating operation. Such use shall only be permitted on lots where adequate off-street parking can be provided. An adequate form of surety which meets the provisions of Subsection 11-202.904, shall be posted prior to issuance of a permit to assure clean-up and maintenance of the site. The amount of surety shall be determined by the Zoning Administrator; however, the amount of surety shall be no less than one thousand dollars (\$1,000).

- (2) **Christmas Tree Sale**: May be permitted in any district. Such permit may be issued for a period not longer than thirty (30) days.
- (3) **Religious Tent Meetings**: May be permitted in any district. Such permit shall be issued for not more than a thirty (30) day period. Such activity shall be permitted only on lots where adequate off-street parking can be provided.
- (4) **Special Civic Events Including Festivals, Bazaars, etc.**: May be permitted in any district. Such permit may be issued for a period not longer than fifteen (15) days. Such activity shall be permitted only on lots where adequate off-street parking can be provided.
- (5) **Temporary Construction Offices**: In any district, a temporary use permit may be issued for contractor's temporary office and equipment sheds incidental to a construction project. Such permit shall not be valid for more than one (1) year but may be renewed for six (6) month extensions for a particular use granted. Such use shall be removed immediately upon expiration of the temporary use permit, whichever occurs sooner.
- (6) **Temporary Dwelling Unit in Cases of Special Hardship**: In any residential district, a temporary use permit may be issued to place a mobile home temporarily on a lot in which the principal structure was destroyed by fire, explosion or natural phenomena. The purpose of such temporary placement shall be to provide shelter for only the residents of the principal structure during the period of reconstruction and to prevent an exceptional hardship on the same. Placement of such structure must not represent a hazard to the safety, health, or welfare of the community. An applicant for temporary use permit as provided under this subsection must produce a written statement from the appropriate regulatory authority approving the water supply and sewage disposal systems of the temporary structure. Such a permit may be initially issued for nine (9) months. A permit may be renewed for up to six (6) months

at a time, the total time for all permits not exceeding eighteen (18) months.

- (7) **Temporary Borrow Pits:** In any district, a temporary use permit may be issued for the operation of a temporary borrow pit from which soil may be removed to other locations to be utilized as fill material. Such permit may only be issued with an approved site utilization and reclamation plan as the basis for such action. (See Subsection 11-202.104). The period of operation shall be as specified in the approved plan. Such permit shall not be valid for more than one (1) year, but may be renewed for six (6) months extension for particular use granted. Such use shall be removed immediately upon expiration of the temporary use permit, whichever occurs sooner.
- (8) **Seasonal Sale of Farm Produce:** Within any district, a temporary use permit may be issued for the sale of farm produce grown on the premises. Any temporary structure erected in conjunction with such operations shall be removed upon the cessation of such sales or upon the expiration of the temporary use permit, whichever is earlier. All structures shall be set back from the right-of-way a minimum distance equal to the front yard requirement for the zone district wherein the use is located.
- (9) **Temporary Tent Type Sales (ADDED SUBSECTION (h) SUBPARTS (i)-(vi) AND SUBSECTION (i) and SUBPARTS (i)-(vi) BY ORDINANCE NO. 1996-29, JANUARY 14, 1997.)**
- i. Any permit issued shall be for a maximum time period of thirty (30) consecutive days per zone lot. Only one such permit will be issued for each zone lot during a calendar year.
 - ii. This permit is limited to vacant lots with no other uses or structure of any kind present.
 - iii. This permit is limited to tents, awnings and/or open air activities; specifically excluding any structure or building.
 - iv. Adequate off-street parking must be available.
 - v. All setback provisions established for the district shall be met.
 - vi. Any violation of these standards shall be considered a zoning violation, punishable as provided herein.
- (10) **Structures for Temporary Sales:** A temporary permit may be issued by the Zoning Administrator for placement of a structure for temporary sales on a zone lot for a maximum of 4 months in a calendar year. This structure must meet the following criteria as determined by the Zoning Administrator:
- i. Structure must have public water service.

- ii. Structure must have public electrical service.
- iii. Structure must be served by sanitary sewer or septic system.
- iv. Structure must be securely anchored to the site.
- v. Supports and anchors must be screened from public view.
- vi. Upon removal of the temporary structure, all evidence shall be totally removed from the premises from which the activity is conducted.

(11) **Temporary Storage Within Over the Road Trailers or Freight Containers:**

Within all Commercial Zone Districts and Industrial Restrictive (IR) Districts a Temporary Storage Permit may be obtained from the Zoning Administrator. Storage within an over the road trailers or freight containers shall not exceed ninety (90) days during a calendar year. At the end of the ninety (90) days any trailers shall be totally removed from the premises or location where the storage occurred. Storage is not allowed within visibility of a Public Street or residential neighborhood.

(12) **Model Homes and Subdivision/Builder Information and Sales Offices (ADDED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)**

In any residential district, a temporary use permit may be issued by the Zoning Administrator to allow the use of a dwelling unit or club house as a model home and/or Subdivision and/or building information and sales office. This permit may be modified to reflect moving the model home or information and sales office to a new location in the same subdivision. Said use shall be discontinued when all homes in the subdivision, except the model, have been sold. All regulations pertaining to signs as contained in Article VI shall apply. Any parking lots or other parking areas, other than driveways and parking which are accessory to the dwelling, shall require the submittal of a site plan for review and approval of the Planning Department staff as required by Article XI.

11-204 FEES TO DEFRAY ZONING PERMIT PROCESSING (REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

Prior to initiating a response to any zoning change request, site development plan, planned unit development (PUD), or subdivision submittal pursuant to this ordinance, the applicant shall pay to the city the following fees:

11-204.1 Rezoning

- \$500 for the first acre or fraction thereof, plus
- \$20 per acre or fraction thereof for the next 14 acres, plus
- \$5 per acre or fraction thereof for the next 85 acres, plus
- \$2 per acre or fraction thereof over 100 acres

11-204.2 Planned Unit Development

Preliminary Master Development Plan

\$500 for the first acre or fraction thereof, plus
\$25 per acre or fraction thereof for the next 14 acres, plus
\$10 per acre or fraction thereof for the next 85 acres, plus
\$7 per acre or fraction thereof over 100 acres

Final Master Development Plan

\$150 plus \$5 per acre over 5 acres

Revisions

Major Amendment to Preliminary Master Development Plan
50% of the regular Preliminary Master Development Plan fee

Minor Amendment to Final Master Development Plan to add uses
\$100

Minor Amendment to Final Master Development Plan, all other changes
\$200

Major Amendment to Final Master Development Plan
50% of regular Final Master Development Plan fee

11-204.3 Subdivisions

Minor Subdivision	\$150
Minor Subdivision, Staff Approved	\$50
3 page plat amendment	\$50
Sketch, Preliminary or Final (each)	\$150 plus \$5 per lot
Renewal of Expired Subdivision	50% of regular subdivision fee

11-204.4 Site Plans

Commercial, Industrial and Institutional

\$100 plus \$0.05 per square foot for the 1st 10,000 square feet, plus
\$0.02 per square foot for the next 90,000 square feet, plus
\$0.01 per square foot over 100,000 square feet

Residential

\$150 plus \$10 per residential unit

Renewal of Expired Site Plan

\$75.00

Parking Lots, Cellular Towers, Renovation of Existing Building or Structure

\$75.00

Revisions to approved site plan requiring Planning Commission approval
50% of the regular fee

Staff Approved Site Plan

50% of the regular fee

Design Review

Same fee as site plan review, except \$250 minimum and \$1,000 maximum

**11-204.5 Fee Collection and Exemptions (REVISED BY ORDINANCE 2005-34,
NOVEMBER 22, 2005)**

The administrative review fees herein established shall be collected by the Planning Department when plans are submitted. The Planning Director shall be responsible for current accountings and descriptions of fees and expenses relative to this ordinance. Further, government entities and religious facilities are expressly exempted from paying the fees imposed by this ordinance.

CHAPTER 3. BOARD OF ZONING APPEALS

11-301 TERMINATION OF EXISTING BOARDS

The functioning of the existing Board of Zoning Appeals created by the Zoning Ordinance of the City of Hendersonville (**Ordinance 1970-16**) and the Zoning Ordinance of Hendersonville Planning Region (**Ordinance 1974-54**) shall terminate upon appointment of the Board of Zoning Appeals as authorized under this ordinance and as provided for Sections 13-7-205 and 13-7-304, Tennessee Code Annotated.

11-302 CREATION OF MUNICIPAL AND REGIONAL BOARDS OF ZONING APPEALS

Two (2) Boards of Zoning Appeals are hereby established. With the exception of the memberships and terms of office, the provisions of this chapter shall apply equally to both Boards. References to the "Board" or "Board of Appeals", made throughout this ordinance shall apply to the Board having jurisdiction over the territory in question. The Municipal Board of Appeals shall exercise its jurisdiction over all issues within the municipality and the Regional Board of Appeals shall exercise its jurisdiction over the territory within the planning region, but outside the corporate limits.

The Municipal Board of Appeals shall consist of five (5) members, all of whom shall be bonafided residents of the City at the time of their appointment and who shall continue to reside within the City as long as they shall serve.

The Regional Board of Appeals shall consist of five (5) members, all of whom shall live within the unincorporated portion of the planning region at the time of their appointment and who shall continue to reside within the planning region as long as they shall serve.

All members of such Boards shall be appointed in accordance with **City Ordinance 1982-38**.

11-303 TERM OF OFFICE OF BOARD MEMBERS, REMOVAL AND VACANCIES

Members of each Board shall serve for three (3) year terms or until their respective successors are appointed and qualified, except that the members first appointed shall serve respectively for the following terms:

Two Members - One Year
Two Members - Two Years
One Member - Three Years

All members of the Board shall serve with such compensation as may be fixed by the City Council [Board of Mayor and Aldermen] and may be removed from membership on the Board for continued absence or just causes. Any member being so removed shall be provided, upon his request, a public hearing upon the removal decision. Vacancies of said Board shall be filled for the unexpired term of those members whose position has become vacant in the manner provided herein for the appointment of such member.

11-304 POWERS OF THE BOARD

For the territory within its jurisdiction, the Board is hereby vested with the powers to:

- (A) Hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in carrying out the enforcement of this ordinance, whereby it is alleged in writing that the Zoning Administrator is in error or has acted in an arbitrary manner.
- (B) Hear and act upon application for variances in accordance with CHAPTER 4, of this article.
- (C) Hear and act upon applications for conditional use permits in the manner and subject to the standards set out in CHAPTER 5, of this article.
- (D) Hear and decide all matters referred to it on which it is required to act under this ordinance or by statute.
- (E) Interpret the boundaries of the flood hazard districts on appeal from a decision of the Zoning Administrator.
- (F) Within its budget appropriation and other funds at its disposal, enter into contracts for such services as it may require.
- (G) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by the Zoning Administrator or any other administrative official in the carrying out of enforcement of any provision of this ordinance.

11-305 ELECTION OF OFFICERS

Each Board shall elect from its members its own chairman and vice-chairman, who shall serve for one (1) year and may upon election serve succeeding terms. The City of Hendersonville shall provide necessary secretarial services.

11-306 CONFLICT OF INTEREST

Any member of the Board who shall have a direct or an indirect interest in any property which is the subject matter of or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, and proceedings of the Board in connection therewith. The burden for revealing any such conflict rests with individual members of the Board. Failure to reveal any such conflict shall constitute grounds for immediate removal from the Board for cause.

11-307 MEETING OF THE BOARD

Regular meetings shall be held at specified times and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public and proper notice of such meetings shall be given.

11-308 RULES AND PROCEEDINGS OF THE BOARD

The Board shall adopt rules for the conduct of its meetings. Such rules shall at the minimum require that:

- (A) The presence of three (3) members of the Board shall constitute a quorum and the concurring vote of at least three (3) members of Board shall be necessary to deny or grant any application before the Board.
- (B) No action shall be taken by the Board on any case until after a public hearing and notice thereof. Said notice of public hearing shall be a legal notice published in a newspaper of general circulation in Hendersonville at least ten (10) days before the hearing of an appeal. No appeal shall be considered and heard by the Board less than fifteen (15) days after filing such appeal. If new information is uncovered regarding an action of the Board that could not have been reasonably presented in public hearing before the Board, the Board shall establish a date for the purpose of rehearing in accordance with the appropriate procedures herein.
- (C) The Board may call upon any other office or agency of the city government for information in the performance of its duties and it shall be the duty of such other agencies to render such information to the Board as may be reasonably required.
- (D) The Regional Planning Commission shall be permitted to submit an advisory opinion on any matter before the Board and such opinion shall be made part of record of such public hearing.
- (E) Any officer, agency or department of the City or other aggrieved party may appeal any decision of the Board to a court of competent jurisdiction as provided by State law.
- (F) Any decision made by the Board on a conditional use permit shall indicate the specific section of this ordinance under which the permit is being considered and shall state clearly the specific conditions imposed in granting such permit.
- (G) Appeals will be assigned for hearing in the order in which they appear on the calendar thereof, except that appeals may be advanced for hearing by order by the Board, upon good cause being shown.
- (H) At the public hearing of the case before the Board, the Appellant shall appear on his own behalf or be represented by counsel or agent. The Appellant's side of the case shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other.

11-309 STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause imminent peril to life or property. In such instance the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by a court of competent jurisdiction application, on notice to the Zoning Administrator, and on due cause shown.

11-310 LIABILITY OF BOARD MEMBERS, ZONING ADMINISTRATOR AND EMPLOYEES

Any Board member, Zoning Administrator, or other employee charged with the enforcement of this ordinance, acting for the City of Hendersonville in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability and shall be held harmless by the City of any damage that may

assure to persons or property as the result of any act required or permitted in the proper discharge of their duties. Any suit brought against any Board member, Zoning Administrator, or employee charged with the enforcement of any provision of this ordinance shall be defended by legal representatives furnished by the City until the final termination of such proceedings.

11-311 RIGHT OF ENTRY UPON LAND

The Board, its members and employees, in the performance of its work, may enter upon any land within its jurisdiction and make examinations and surveys and place or remove public notices as required by this ordinance.

11-312 REHEARINGS

- (A) No rehearing of the decision by the Board shall be had except:
 - (a) On motion to reconsider the vote.
 - (b) On a written request for a hearing.
- (B) If the motion to reconsider receives a majority affirmative vote, the Board of Zoning Appeals may vote on the motion to grant the request for a rehearing, subject to such conditions as the Board may, by resolution in each case, stipulate.
- (C) No request to grant a rehearing will be entertained unless new evidence is submitted which could not reasonably be presented at the previous hearing.

If the request for a rehearing is granted, the case shall be put on the calendar for a rehearing. In all cases, the request for a rehearing shall be in writing, reciting the reasons for the request and shall be duly verified and accompanied by the necessary data and diagrams. The persons requesting the rehearing shall be notified to appear before the Board on a date to be set by the Board.

- (D) No rehearing for a variance shall be granted an applicant found by a court of competent jurisdiction to be in willful violation of the express provisions of a prior variance granted under the authority of this article.

11-313 TIME LIMITATIONS ON OBTAINING PERMITS

All permits authorized by the Board of Zoning Appeals after the effective date of this ordinance, whereby variances, special uses or exceptions, or conditional uses are granted, shall be obtained within three (3) years from the date of the original authorization by the Board, otherwise, the right to obtain said permit shall expire and become invalid.

CHAPTER 4. ZONING VARIANCES

The Board of Zoning Appeals may grant variances where it makes findings of fact based upon the standards prescribed in this chapter.

11-401 APPLICATION FOR VARIANCES, NOTICE OF HEARING, FEE

A written application for a variance shall be filed with the Board by the property owner or his designated agent on forms provided by the Board and the application shall contain information and exhibits as may be required under Subsection 11-202.102. No more than sixty (60) days after the filing of the application, a hearing shall be held on the application, unless otherwise withdrawn or postponed by written request by the applicant. Notice of hearing shall be in accordance with Section 11-308, (B) and 11-402. A fee of twenty-five dollars (\$25.00) payable to the City shall be charged to cover partial review and processing of each application for a variance, except that the fee shall be waived for a governmental agency.

11-402 NOTICE TO AFFECTED PROPERTY OWNERS

It shall be the general rule of the Board that reasonable efforts shall be made to contact and notify interested parties, who in the opinion of the Board, may be affected by any matter brought before the Board. In all cases all owners of record of adjoining property, including those separated by a public way from the premises in question shall be notified. The notification required to meet this provision shall be accomplished by certified mail, return receipt request. Return receipts shall be maintained and subject to public examination upon request.

11-403 STANDARDS FOR VARIANCES

The Board shall not grant a variance unless it makes findings based upon evidence presented to it as follows:

- (A) That by reason of exceptional narrowness, shallowness, or shape of a particular piece of property at the time of enactment of this ordinance, or by reason of exceptional topographic conditions or other exceptional and extraordinary situation or condition of such piece of property, the strict application of any regulation contained within this ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.
- (B) That the variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.
- (C) That the variance will not authorize activities in a zone district other than those permitted by this ordinance.
- (D) That financial returns only shall not be considered as a basis for granting a variance.
- (E) That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the

zoning district wherein such property is located or of the general provisions of this zoning ordinance.

- (F) That the proposed variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.
- (G) That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

11-404 NONCONFORMITY DOES NOT CONSTITUTE GROUNDS FOR GRANTING OF A VARIANCE

No nonconforming use of neighboring lands, structures, or buildings in the same district, and not permitted or nonconforming use of lands, structures, or building in other districts shall be considered grounds for the issuance of a variance.

11-405 PROHIBITION OF USE VARIANCES

Under no circumstances shall the Board of Appeals grant a variance to allow a "USE" not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

11-406 CONDITIONS AND RESTRICTIONS BY THE BOARD

The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the provisions set out in Section 11-403, to reduce or minimize the injurious effect to such variation upon surrounding property and better carry out the general intent of this ordinance. The Board may establish expiration dates as a condition or as a part of any variances.

11-407 BOARD HAS POWERS OF ADMINISTRATIVE OFFICIAL ON APPEALS; REVERSING DECISION OF ADMINISTRATIVE OFFICIAL

In exercising the powers granted to it the Board of Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator from whom the appeal is taken.

The concurring vote of a majority of the entire membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance a majority of those present and voting is required.

11-408 VARIANCE APPEALS

Any person including any agency of the city government aggrieved by a decision of the Board on a variance may appeal by certiorari to a court of competent jurisdiction. The judgment and findings of the Board on all questions of fact that may be involved in any appeal, cause, hearing or proceeding under this chapter shall be final and subject to review only for illegality or want of jurisdiction.

11-409 SPECIAL PROVISIONS GOVERNING THE CONSIDERATION OF VARIANCES FROM THE PROVISIONS OF ARTICLE VII (FWD) FLOODWAYS AND (FFD) FLOODWAY FRINGE DISTRICTS

The following requirements are additional to those set forth in other sections of this ordinance and apply to the granting of variance from the provisions of ARTICLE VII, Floodplain District.

11-409.1 Findings by the Board

Upon the submission of a written application to the Board, a variance may be granted permitting the erection of structures with a lowest floor elevation, including basement, lower than regulatory flood elevation if all of the following are met:

- (a) Good and sufficient cause exists for the granting of the variance.
- (b) Failure to grant the variance would result in exceptional hardship to the applicant.
- (c) The issuance of the variance would not result in increased flood heights, additional threats to public safety or extraordinary public expense.
- (d) The variance allowed is the minimum necessary to afford relief.
- (e) The variance would not have the effect of nullifying the intent and purpose of the ordinance.
- (f) All applications for variances shall be heard by the Board after reference to such committees and administrative officials as may be established for purposes of investigation and recommendation.
- (g) Prior to the granting of a variance, the Board must find that justification exists in accordance with the terms of this ordinance. These findings, together with the grant of a variance, shall be reduced to writing and made a part of municipal records. All variances shall pertain to the particular parcel of land and apply only to the proposed structure set forth in the variance application.
- (h) Such variance shall be freely transferable with the land and shall not be personal to the applicant.
- (i) Unless otherwise provided therein, a variance shall be valid for a period of one (1) year after the date of its issuance. If construction has not commenced pursuant thereto within such time, said variance shall become void. Lapse of a variance by the passage of time shall not preclude subsequent application for variance.
- (j) No variance, except as herein specifically permitted may be granted from the provisions of this ordinance. The variance procedures herein provided shall be the exclusive method for obtaining variances.

11-409.2 Content of Application

Each written application for a variance shall reflect the type of structure(s) for which a variance is sought, the size of such structures, the approximate location upon the parcel and the intended use thereof.

11-409.3 Restriction of Variances

Due to the extreme hazardous conditions within the floodway and the effect of obstructions to upstream structures, no variance shall be issued within the designated floodway district (FWD) which would result in any increase in flood levels during the regulatory flood discharge.

11-409.4 Notice to Applicant upon Approval of Variances

Any applicant to whom a variance is granted shall be given notice that the proposed structure will be located in the flood prone area, but the structure will be permitted to be built with a lowest flood elevation _____ feet below the regulatory flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced first floor elevation, and all subsequent purchasers shall be notified in writing, and same shall be set out in any deed or other writing issued to subsequent purchasers, lessees, mortgagors or vendees.

CHAPTER 5. CONDITIONAL USE PERMITS

11-501 CONDITIONAL USES

The Board of Appeals may hear and decide, in accordance with the provisions of this ordinance, request for conditional use permits. For the purposes of administration of this ordinance, conditional uses shall be construed as synonymous with special exceptions, as controlled by Section 13-7-205, Tennessee Code.

11-502 APPLICATION FOR CONDITIONAL USE PERMIT, NOTICE OF PUBLIC HEARING

The application for a conditional use permit shall be made by the property owner or his designated agent and filed in writing with the Board on forms provided by the Board and shall contain information and exhibits as may be required under Subsection 11-202.2, or in the case of buildings or other structures or uses to be located within floodplain districts, as may be required by ARTICLE VII, Subsection 7-304.4, and Section 11-505. Not more than sixty (60) days after filing such application, a hearing shall be held on the application, unless otherwise withdrawn or postponed upon written request by the applicant. Notice of hearing shall be held in accordance with Section 11-308, (C). A fee of twenty-five dollars (\$25.00) payable to the city shall be charged to partially defray cost of review and processing for each application for a conditional use permit, except that the fee shall be waived for any government agency.

11-503 REQUIREMENTS FOR CONDITIONAL USE PERMIT

General requirements are hereby established which shall apply to all applications for conditional use permits, and specific standards listed shall apply to the issuance of a conditional use permit as appropriate. The Board may impose such other conditions and restrictions upon the premises benefited by a conditional use permit as may be necessary to comply with the provisions set out in Section 11-504 through Subsection 11-508.4, in order to reduce or minimize the injurious effect of such conditional uses upon and ensure compatibility with surrounding ordinance. The Board may establish dates for the expiration of any conditional use permit as a condition of approval.

11-504 GENERAL REQUIREMENTS

A conditional use permit may be granted provided the Board finds that the request:

- (A) Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected.
- (B) Will not adversely affect other property in the area in which it is located.
- (C) Is within the provision of "Conditional Use" as set forth in this ordinance.
- (D) Conforms to all applicable provisions of this ordinance for the district in which it is to be located.

11-505 SPECIAL PROVISIONS GOVERNING CONSIDERATION OF CONDITIONAL USES WITHIN FLOODPLAIN DISTRICTS

The special provisions contained within this section shall apply to all applications for approval of a conditional use located within any floodplain district.

11-501.1 Special Information Required

In addition to the requirements for conditional uses set out elsewhere in the ordinance, any application for a conditional use to be located within any floodplain district shall contain the following and any additional information requested by the Board.

- (a) A map in duplicate, drawn to scale showing the curvilinear line representing the regulatory flood elevation, dimensions of the lot, existing structures and uses on the lot and adjacent lots, soil type, and natural protective barriers, if applicable, existing flood control and erosion control works, existing drainage elevations and ground contours, location and elevation of existing streets, water supply and sanitary facilities, and other pertinent information.
- (b) A preliminary plan showing the approximate dimensions, elevation and nature of the proposed use, amount, area and type of proposed fill, area and nature of proposed grading or dredging, proposed alteration of natural protective barriers, if applicable, proposed flood protection or erosion control works, proposed drainage facilities, proposed roads, sewers, water and other utilities, specifications for building construction and materials included in the flood proofing.

11-505.2 Technical Review Required

The Board shall transmit one (1) copy of the application and all supporting information to the city engineer for technical assistance in evaluating the proposed project in relation to flood heights and velocities, threatened erosion, the adequacy of the plans for flood and erosion protection, the adequacy of drainage facilities, and other technical matters.

11-505.3 Determination by the Board and Attachment of Conditions

The Board shall determine the specific flood or erosion hazard at the site and shall evaluate the suitability of the proposed use in relation to the flood hazard. Upon consideration of the factors listed herein and the purposes of this ordinance, the Board may attach such conditions to the granting of special exceptions as it deems necessary to further the purposes of this ordinance.

11-505.4 Consideration of Special Dangers Posed by Such Uses

In passing upon such applications, the Board shall consider the technical evaluation of the engineer, all relevant factors, and standards specified in other sections of this ordinance, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;

- (b) The danger to life and property due to flooding or erosion damage;
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services provided by the proposed facility to the community;
- (f) The necessity to the facility of a waterfront location, where applicable;
- (g) The availability of alternative locations, not subject to flooding or erosion damage;
- (h) The compatibility of the proposed use with existing development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (j) The safety of access to and from the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
- (l) 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.

11-506 SPECIFIC STANDARDS FOR COMMUNITY FACILITY ACTIVITIES

In addition to the requirements of the applicable district and the general requirements set forth above, a conditional use permit shall be granted for the community facility activities specified in Subsections 11-506.1 through 11-506.7, only when the standards established are met as part of the condition for issuing the permit in the applicable zone districts.

11-506.1 Special Conditions for Community Assembly

- (a) No such facilities shall be permitted on a zone lot, unless it contains twice the lot area requirements of the district; provided, however, that if such community assembly includes outdoor activities the minimum lot area shall be four (4) acres.
- (b) All bulk regulations of the zone district shall apply.
- (c) Off-Street Parking
 1. For nonprofit clubs, lodges, meetings halls and recreation centers, one (1) space for each four (4) seats in assembly area within the

facility, or one (1) space for each seventy-five (75) square feet of gross floor area, whichever is greater, shall be provided.

2. For temporary nonprofit festivals, the required number of off-street parking spaces shall be determined by the Zoning Administrator, taking into account the traffic generation of such facility, the hours of other such factors as affect the need for off-street parking.
- (d) Except for temporary nonprofit festivals, fencing, screening and landscaping shall be provided as appropriate for such facility, except that no landscaped screen shall be located closer than fifteen (15) feet of any vehicular entrance or exit to the property.
- (e) The location and operation of such community assembly facility shall be in keeping with the character of the surrounding area and shall not adversely affect the properties within the surrounding area.
- (f) All public utilities including a central sewage collection and treatment system (as defined by this ordinance) shall be available to the site.
- (g) Except for temporary nonprofit festivals, the site plan shall be approved by the Planning Commission taking into account the above conditions.

11-506.2 Special Conditions for Educational Facilities

- (a) No such facilities shall be permitted on a zone lot, unless such lot contains the acreage recommended for such facilities by the appropriate state agency.
- (b) The traffic generated by such facility shall be safely accommodated along the streets which will provide access to the site.
- (c) The location and design of such facilities shall not have an adverse effect upon surrounding properties.
- (d) The off-street parking requirements, of this ordinance, ARTICLE VI, CHAPTER 1, shall apply.

11-506.3 Special Conditions for Cultural and Recreational Services

- (a) No such activity shall be permitted on a zone lot, unless it contains twice the lot area requirements of the zone district.
- (b) All bulk regulations of the zone district shall apply.
- (c) The off-street parking requirements, of this ordinance, in ARTICLE VI, CHAPTER 1, shall apply.
- (d) Fencing, screening and landscaping shall be provided as appropriate to protect the surrounding area and shall not have an adverse affect on properties within the surrounding area.
- (e) The site plan shall be approved by the Planning Commission taking into account the above conditions.

11-506.4 Special Conditions for Intermediate and Extensive Impact

- (a) The location, size, and design of such facilities shall be such that the proposed development shall be compatible with the development within the surrounding area, thus reducing the impact upon the surrounding area.
- (b) The traffic generated by such facility shall be safely accommodated along major streets without traversing local minor streets.
- (c) The proposed facility shall provide a basic community function or essential service necessary for a convenient and functional living environment in order to be located on the proposed site.
- (d) The off-street parking requirements shall be determined by the Board of Appeals.
- (e) The site plan for such facilities shall be approved by the Planning Commission taking into account the above conditions as well as any other pertinent factors related to the use and operation of such facility.

11-506.5 Conditions for Health Care Facilities

(a) Minimum Lot Area

- 1. No health clinic shall be permitted on a zone lot, unless it contains a minimum of ten thousand (10,000) square feet, or twice the lot area requirements of the district, whichever is greater.
- 2. No hospital, or centers for observation or rehabilitation shall be permitted on a zone lot, unless it contains a minimum of five (5) acres.

(b) Hospitals, Centers for Observation or Rehabilitation

The minimum side and rear yards for hospitals and centers for observation or rehabilitation shall be fifty (50) feet for one (1) or two (2) story building, increased by five (5) feet for each story above two (2).

- (c) All other regulations of the zone district shall apply.
- (d) There shall be provided along the entire site boundaries fencing, screening and landscaping as appropriate to protect the surrounding residential area.
- (e) The location and operation of such facility shall be in keeping with the character of the surrounding area and shall not have an adverse effect on the properties in the surrounding area.
- (f) All public utilities including a central sewage collection treatment system (as defined by this ordinance) shall be available to the site.
- (g) The site plan shall be approved by the Planning Commission taking into account the above conditions.

- (h) The following activity classes and types may be permitted accessory to the health care activities provided they appropriately complement the health care activity, will not impose an adverse impact on the surrounding land use, and be subject to all other provisions of the zoning district:
1. Community Facility Activities
 2. Commercial Activities:
 - Convenience Sales and Services
 - Automotive Parking
 - Food Service
 - Professional Services - Medical

11-506.6 Special Conditions for Special Personal and Group Facilities

11-506.601 Group Child Care Homes

Group child care homes as defined by this ordinance may be located within either a family dwelling of the licensee/care provider or on a premises other than the family dwelling subject to the following:

- (1) All state and local licensing and code requirements including those pertaining to building, fire safety and health shall be met to the satisfaction of the approving agency at all times during operation of the facility.
- (2) Lot size, building coverage and setback provisions shall conform to those applicable to residential uses located within the zoning district.
- (3) One (1) off-street parking space shall be provided for each nonresident or nonfamily member employee in addition to the spaces required for the dwelling. The residential driveway is acceptable for this purpose.
- (4) An off-street drop-off/pick-up area shall be provided.
- (5) Signage shall conform to the provisions of ARTICLE VI, CHAPTER 2.
- (6) No exterior alterations, other than those necessary to ensure the safety of the structure for its intended use shall be made to any group care home which is occupied as a dwelling. Minimal outward modifications may be made to the structure or grounds of group care homes whose principal use is as a child care facility (and not a residence) only if such changes are compatible with the character of the neighborhood or area and with the intent of the zoning district in which the use is located.
- (7) The Board may limit either interior or exterior modifications of any structure built as a dwelling to those which would not hamper reconversion to its original state upon cessation of the child care operation.

- (8) An outside play area of sufficient size to meet the minimum requirements established by the Tennessee Department of Human Services shall be provided. This area shall be fenced and shall be located within portions of the lot other than that utilized for a septic disposal field or any portion of the lot existing from the street line to a line drawn parallel to the front wall of the dwelling extending from one side lot line to the other. No portion of the outside play area shall be at any point closer than fifty (50) feet to any septic disposal field.
- (9) Fencing shall be provided which is adequate for the protection and safety of children being served by the group care facility.
- (10) Screening may be required which is adequate to protect abutting properties.
- (11) The site plan for such facility shall be approved by the planning commission taking into account the above conditions.
- (12) Any child care facility which upon passage of this ordinance does not comply with one (1) or more of the provisions set forth above may continue to operate and to serve the number of children for which such facility is licensed by the State of Tennessee. No such facility shall be permitted to expand or to serve a greater number of children until the facility is brought into compliance with these provisions.

11-506.602 Child Care Centers

In any instance where a child care center is proposed as a principal use or activity such may be permitted subject to compliance with the criteria set out below upon approval of a conditional use permit. A child care center, if sited on the premises of an operating community service activity, such as but not limited to, a private or public school, place of worship, community center or library and associated with that activity, shall be considered accessory to the principal use of the property concerned and no independent permitting process shall be required. However, prior to issuance of any building permit, it shall be demonstrated to the satisfaction of the Zoning Administrator that the child care center meets or exceeds the design criteria and operational standards set forth below:

- (1) All state and local licensing and code requirements including those pertaining to building, fire safety and health shall be met to the satisfaction of the approving agency at all times during operation of the facility.
- (2) No child care center shall be located in any private family residence unless the portion of the residence where the children have access is used exclusively for children during the hours the center is in operation or is separate from the usual living quarters of the family.
- (3) Lot size, building setback and building coverage ratio shall conform to the standards established for the district wherein the center is located.

- (4) At least one (1) off-street parking space shall be provided for each on-duty staff person.
- (5) Signage shall conform to the provisions of ARTICLE VI, CHAPTER 2, for the district wherein the se is located.
- (6) Within residential districts, no structural or decorative alteration that will alter the character of an existing residential structure or be incompatible with surrounding residences may be permitted. Any new or remodeled structure shall be designed to be compatible with the residential character of the surrounding neighborhood.
- (7) The Board may limit either interior or exterior modifications of any structure built as a dwelling to those which would not hamper reconversion to its original state upon cessation of the child care operation.
- (8) An outside play area of sufficient size to meet the minimum requirements established by the Tennessee Department of Human Services shall be provided. This area shall be fenced and within residential districts other than RM-1 and RM-2, shall not be located within any portion of the lot existing from the street line to a line drawn parallel to the front wall of the building extending from one side lot line to the other.
- (9) An on-site vehicle turnaround, or separate entrance and exit points, and exit points, and exit points, and passenger loading area shall be provided.
- (10) To provide for the safe pick-up and delivery of children, and unloading zone is required. One unloading space is required for each twenty (20) children. Loading and unloading of children from vehicles shall only be permitted on the driveway, approved parking area and directly in front of the facility.
- (11) Any child care center shall be served by public sewer.
- (12) All elements of the site and structure shall meet all building, sanitation, health, traffic safety and fire safety code requirements.
- (13) Fencing, screening and landscaping may be required to protect the required area immediately surrounding the day care center.
- (14) The site plan for such center shall be approved by the Planning Commission taking into account the above conditions.
- (15) Any child care center which upon passage of this ordinance does not comply with one (1) or more of the provisions set forth above may continue to operate and to serve the number of children for which such facility is licensed by the State of Tennessee. No such facility shall be permitted to expand or to serve a greater number of children until the facility is brought into compliance with these provisions.

11-506.603 Family Care and Group Care Facilities

- (1) The purpose(s) of the facility must be clearly established by the agency responsible and the appropriate staff services must be provided to achieve the stated purpose(s). Group care facilities accommodating from seven (7) to twelve (12) individuals shall have twenty-four (24) hour staff and professional services in the behavioral sciences available. Group care facilities accommodating more than twelve (12) individuals shall have resident twenty-four (24) hour staff, and shall provide professional services in the behavioral science. The Planning Commission must make a written finding to the Board of Zoning Appeals regarding these requirements based on advice from such agencies as the Tennessee Department of Human Services.
- (2) An appropriate license must be secured for any activity regulated by any public agency, including the Tennessee Department of Human Services. Any activity lawfully regulated by any public agency may be permitted for only that time period for which a valid license is obtained. Where grades or classes of approvals are granted, only the most restrictive may be permitted.
- (3) No more than one (1) of either a family care or group care community facility may be permitted on a single block having a residential, or MRO zone classification or situated on any opposing block faces having a residential or MRO zone classification. Other criteria may be used to avoid a concentration of such facilities.
- (4) Family care community facility may not accommodate more than one (1) individual (excluding staff) per living room.
- (5) Group care community facility must contain one thousand five hundred (1,500) square feet of net floor space for the first six (6) residents, including resident staff and one hundred fifty (150) square feet of net floor space per person above six (6) residents.
- (6) Necessary utilities including a central sewage collection and treatment system (as defined by this ordinance) shall be available to the site.
- (7) Group care facilities accommodating from seven (7) to twelve (12) persons, and family care facilities accommodating from one (1) to six (6) persons shall meet all bulk regulations of the district for a residence.
- (8) Group Care facilities accommodating from thirteen (13) to fifty (50) shall have a minimum lot area of five (5) acres. When more than fifty (50) persons are accommodated, there shall be one (1) additional acre required for each ten (10) persons accommodated.
- (9) The minimum side and rear yards for group care facilities accommodating thirteen (13) or more persons shall be fifty (50) feet for a one- or two-story building, increased by five (5) feet for each story above two (2).

- (10) One (1) accessory off-street parking space for each three (3) individuals accommodated shall be provided, except that this requirement may be altered depending on the specific program.
- (11) The site plan shall be approved by the Planning Commission taking into account, but not limited to the following considerations: Compatibility with the surrounding area, any adverse impact of the proposed activity on the character of the area, needed fencing and screening, adequate open space and recreation space if appropriate, and all other requirements of this section.

Notwithstanding the aforescribed provisions, the Board may be permitted to vary the required yards, the screening strip for parking when the application involves a change in activities in existing structures. The plan shall provide for compensating features to offset any potentially adverse conditions that might be brought about by said variance.

11-506.604 Nursing Homes, Requirement and Rest Homes

- (1) No such facility shall be permitted on a zone lot, unless it contains a minimum of ten thousand (10,000) square feet, or twice the lot area requirements of the zone district, whichever is greater.
- (2) All bulk regulations of the district shall be met.
- (3) The requirements of the accessory off-street parking regulations, of this ordinance, in ARTICLE VI, CHAPTER 1, shall apply.
- (4) All public utilities including a central sewage collection and treatment system (as defined by this ordinance) shall be available to the site.
- (5) The application shall first be reviewed by the County Health Department, and the site plan for such a facility be approved by the Planning Commission taking into account the above conditions as well as any other pertinent factors.
- (6) Notwithstanding the aforescribed provisions, the Board may be permitted to vary the required yards, the required open space for parking, and the minimum required screening strip for parking when the application involves a change in activities in existing structures. The plan shall provide for compensating features to offset any potentially adverse conditions that might be brought about by said variance.

11-506.7 Special Conditions for Religious Facilities

- (a) No such facilities shall be permitted on a zone lot unless it contains twice the lot area requirements of the district, except those facilities proposed in A-R Districts where minimum district lot size shall apply.
- (b) The location, size, and design of such facilities shall be situated so that the proposed facility shall be compatible with the development within the surrounding area thus reducing the impact upon such area.

- (c) Such facilities shall be located only on major or collector streets as shown on the official major thoroughfare plan.
- (d) All bulk regulations of the district shall be met.
- (e) The off-street parking requirements, of this ordinance, in ARTICLE VI, CHAPTER 1, shall apply.

11-507 SPECIAL STANDARDS FOR COMMERCIAL ACTIVITIES

A conditional use permit shall not be granted for the commercial activities specified in Subsections 11-507.1, 11-507.2 and 11-507.3, unless the standards established therein are met as a part of the conditions for issuing such permit in the applicable districts.

11-507.1 Special Conditions for Scrap Operation Activity in IG Districts

- (1) The location and topography of the site shall be situated so that fencing, screening, and landscaping can be provided as appropriate;
- (2) The scrap operation shall not include any open burning activity on the site;
- (3) The bulk regulations and performance standards of this ordinance shall apply;
- (4) Insect and rodent control measures shall be provided as approved by the County Health Department;
- (5) All required fences and landscaped screens shall be maintained in a neat and attractive manner;
- (6) The operation of such facility shall not have an adverse effect on the properties in the surrounding area;
- (7) The operation of such facility shall not produce damaging pollution to surrounding streams.

11-507.2 Special Conditions for Group Assembly Activities

- (1) The location, size, and design of such facilities shall be situated so that the proposed development shall be compatible with the development within the surrounding area thus reducing the impact upon the surrounding area;
- (2) The traffic generated by such facility shall be safely accommodated along major streets without traversing local minor streets;
- (3) The off-street parking requirements shall be based upon a recommendation from the Planning Commission; and
- (4) The site plan for such facilities shall be approved by the Planning Commission taking into account the above conditions as well as any other pertinent factors related to the use and operation of such facilities;

- (5) When an application for a group assembly permit includes amusement parks, sports arenas, fairgrounds, racetracks, and similar recreational pursuits, the following requirements shall be observed:
- i. The minimum site shall be twenty-five (25) acres;
 - ii. The minimum setback of all structures from all public roads shall be one hundred (100) feet;
 - iii. Such facility shall be situated so that no residential use is located closer than five hundred (500) feet from building entrance of the principal use at the time of approval;
 - iv. Access to such facility shall be by a paved public road and such road shall be either a major arterial or major collector. Traffic shall not be directed through residential subdivisions or on minor residential streets;
 - v. Off-street parking shall be provided at a minimum of one (1) space for each four (4) patrons or seats. For those facilities which are not utilized on a regular and frequent basis, parking may be provided on adjacent parcels of land provided further that any parcel so used is located no more than five hundred (500) feet from the lot boundary;
 - vi. Any lighting provided at such facilities shall be designed so that no direct light falls on adjacent residential property;
 - vii. Accessory uses may be permitted in conjunction with the principal use of the property provided that such uses of the property provided that such uses of the physically designed as a part of or within the principal structure. Such uses may include food sales, beverage sales, gift or souvenir shops, and similar activities;
 - viii. Accessory structures may be permitted which are incidental and subordinate to the principal structure. Such structures may not be located within any required setback or buffer area.

11-507.3 Special Conditions for Entertainment and Amusement Service Activities (ADDED BY ORDINANCE NO. 1989-36, DATED JULY 11, 1989.)

- (a) The facility shall be located so as to be compatible with the surrounding area and provide safety to those using such facility.
- (b) All state and local regulations pertaining to fire safety and emergency access shall be met.
- (c) All public utilities, including a central sewage collection and treatment system (as defined by this ordinance) shall be available to the site.
- (d) That adequate accessory off-street parking shall be provided to accommodate such use.

- (e) The site plan shall be approved by the Planning Commission taking into account the above conditions.
- (f) Notwithstanding the aforescribed provisions, the Board shall in each instance require such additional measures as are in its judgment necessary and proper to protect the health, safety and welfare of users or occupants of the facility and of the public in general.

11-508 SPECIFIC STANDARDS FOR AGRICULTURAL AND EXTRACTIVE ACTIVITIES

A conditional use permit shall not be granted for the agricultural and extractive activity specified in Subsection 11-508.1 through 11-508.4, unless the standards established there in are met as a part of the conditions for issuing such permit in the applicable zone districts.

11-508.1 Special Conditions for Feedlots and Stockyards

- (a) The location of such an activity shall be in an area sparsely developed during the length of time the use as a stockyard or feedlot is anticipated;
- (b) No such facilities shall be permitted on a zone lot, unless it contains twice the lot area requirements of the district; provided, however, that if such activity includes outdoor animal pens, the minimum lot area shall be four (4) acres;
- (c) Any permit issued hereunder shall be based on a site plan or other documents submitted with an application which shall indicate the following:
 1. Existing contours of the site and up to one hundred (100) feet beyond the site boundary. Contour intervals shall be at two (2) foot intervals.
 2. Location of the area in which the proposed keeping of animals is to be conducted.
 3. Location of all proposed buildings, animal pens, roadways and other facilities proposed on the site.
 4. Proposed method of drainage of the animal pens.
 5. Proposed fencing of the site.
 6. Insect, rodent, and odor control measures shall be provided to the satisfaction of the Board of Appeals.
- (d) The owner shall establish to the satisfaction of the Board that the operation of such facility shall not have an adverse effect on the properties in the surrounding area;
- (e) In any instance where sales of any type are to be conducted at the site, the Board shall assure that adequate parking is available.

11-508.2 Special Conditions for Commercial Storage of Explosives

- (a) The location of such an activity shall be in an area likely to be sparsely developed for reason of topography, lack of existing or planned utilities, accessibility of for similar cause.
- (b) Such facility shall not be located on a site having an area of less than fifty (50) acres.
- (c) All regulations of the State Fire Marshal and the Hendersonville Fire Department relating to the storage of explosive shall be met.
- (d) Any special permit issued, hereunder, shall be for a period not exceeding five (5) years. After the expiration of such special permit, the Board may review and grant an extension of time in the same manner and procedure as prescribed for an original application.
- (e) The site plan shall be approved by the Planning Commission taking into account the above conditions as well as any other factors related to the use and operation of such facilities.

11-508.3 Special Conditions for Plant Nursery Activity

The Board of Appeals shall prescribe the number of accessory off-street parking spaces that will adequately service the activity.

11-508.4 Special Conditions for Mining and Quarrying Activity (ADDED BY ORDINANCE 2007-09, MARCH 27, 2007)

- (a) The location of such an activity shall be in an area sparsely developed during the length of time the mining and quarrying activity is anticipated;
- (b) Any permit issued hereunder shall be based on a site plan or other documents submitted with an application which shall provide the following:
 - 1. Existing contours of the site and up to one hundred (100) feet beyond the site boundary. Contour intervals shall be at two (2) foot intervals.
 - 2. Location of the area in which the proposed quarrying activity is to be conducted.
 - 3. Location of all proposed buildings, crusher and screening equipment, roadways and other facilities proposed on the site.
 - 4. Proposed method of drainage of the quarrying area.
 - 5. Proposed fencing of the quarrying area. Fencing shall be provided around all open excavations.
 - 6. Methods proposed for blasting. Open blasting commonly referred to as "pop shots" shall be prohibited.

7. Methods proposed to control noise, vibration and other particulate matter in order to meet the performance standards in this ordinance.
 8. Finished contours of the site after the quarrying operation has been terminated. The site shall be graded and/or filled so as to be in substantial conformity with the topography of the surrounding lands. All fill materials shall be non-toxic, non-flammable, and non-combustible solids. All areas that are back-filled shall be left so that adequate drainage is provided.
- (c) Approval for mining and quarrying activity may also include accessory concrete batching plants, asphaltic cement mixing plants and/or rock crushing activities on the same zone lot or adjoining zone lots which may have directly opposing frontages on the same public street. If such accessory activities are included on the quarrying site, the total site must meet all the special condition requirements for mining and quarrying activity; however, in conditions of multiple zone lots, the outer perimeter of the site shall be considered the lot line.
 - (d) Before issuing a permit the board shall require the owner of the quarrying facility to execute a bond not less than one thousand (\$1,000) or more than two thousand (\$2,000) dollars per acre of active quarrying to restore the lands in the manner prescribed herein, including the removal of all structures and machinery.
 - (e) The site plan is first approved by the planning commission taking into account the above conditions as well as any other factors related to the use and operation of such facilities.

11-509 Conditional Accessory Uses

In addition to the requirements established for accessory uses generally and to the general standards set out in Section 11-504, for review and approval of conditional uses, the specific standards set out below for individual accessory uses and activities shall be met as part of the conditions for issuing the use permit. Upon issuance of any permit for a conditional use allowed by this section such use or activity shall be continuously subject to compliance with the conditions herein established for such use as well as to any operational standard or criteria established by the Board of Appeals for purposes of assuring continuous compliance with:

- (A) Limitations imposed upon such use by virtue of its being classified as "accessory) to a principal use or activity.
- (B) The specific standards established herein for the particular use.
- (C) Other conditions established by the Board in order to assure that such use does not exceed the limits imposed upon its operation by "A" and "B", above.

Any conditional use permit issued hereunder shall be for a maximum time period of two (2) years. Such permit may be renewed for additional periods not to exceed two (2) years upon a finding by the Zoning Administrator that all conditions and operational limitations established by the Board in originally issuing the permit are being complied with fully. In any instance where the Zoning Administrator shall find that question exists concerning compliance with any aspect or limitation of the permit, he shall refuse to

renew the permit and immediately take all actions necessary to have the permit reviewed by the Board of Appeals.

11-509.2 Special Conditions for Major Home Occupations

11-509.201 Special Conditions for Major Home Occupations

Conditional use permits issued for a major home occupation shall comply with the provisions of ARTICLE III, Subsection 3-208.3. Modifications from these regulations may be approved by the Board of Appeals, if the Board finds that such modification is in accordance with the general purposes set out in Subsection 3-208.1, of this ordinance. Additional requirements or conditions may be added as deemed necessary to assure that the home occupation will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the community.

Conditional use permits granted by this section shall be granted to a designated person who resides at a residential address. Such permits are not transferable from person to person or from address to address.

11-509.202 Enforcement of Conditions

Any change in use, area of the dwelling unit being used, or mechanical or electrical equipment being used that results in conditions which violate the terms and conditions established by the Board at the time of issuance of the conditional use permit shall constitute grounds for revocation of such permit.

CHAPTER 6. AMENDMENTS

11-601 GENERAL

The Board of Commissioners [Board of Mayor and Aldermen] may, from time to time, amend this ordinance by changing the boundaries of districts by changing any other provisions whenever it is alleged that there was an error in the original zoning ordinance or whenever the public necessity, convenience, and general welfare require such amendment.

11-602 INITIATION OF AMENDMENT

Amendments may be initiated by the Board of Commissioners [Board of Mayor and Aldermen], the Planning Commission, Zoning Administrator or by an application by any other interested persons.

11-603 APPLICATION FOR AMENDMENT

An application for amendment shall be filed with at least one (1) of the following:

- (A) The Planning Commission.
- (B) The City Recorder.

The City Recorder on receiving such application shall transmit copies, thereof, to the other bodies and the Planning Commission prior to any consideration of the proposed amendment by the City Commission.

11-604 REVIEW AND RECOMMENDATION BY THE PLANNING COMMISSION

The planning commission shall review and make recommendations to the board of commissioners on all proposed amendments to this ordinance.

11-605 Grounds for an Amendment

The Planning Commission in its review and recommendation, and the Board of Commissioners [Board of Mayor and Aldermen] in its deliberations shall make specific findings with regard to the following grounds for an amendment and shall note the same in the official record as follows:

- (A) The amendment is in agreement with the general plan for the area.
- (B) It has been determined that the legal purposes for which zoning exists are not contravened.
- (C) It has been determined that there will be no adverse effect upon joining property owners, unless such effect can be justified by the overwhelming public good or welfare.
- (D) It has been determined that no property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

- (E) It has been determined that conditions affecting the area have changed to a sufficient extent to warrant an amendment to the area's general plan, and consequently, the zoning map.

11-606 PUBLIC HEARING AND NOTICE OF HEARING

A public hearing shall be held on all proposed amendments to this ordinance on second reading by the Board of Commissioners [Board of Mayor and Aldermen]. Notice of such hearing shall be displayed as follows:

- (A) Notice in a newspaper of general circulation within the City of Hendersonville, shall be given at least fifteen (15) days, but not more than thirty (30) days prior to the public hearing. This notice shall specify the location, current and proposed zoning classification, and it shall contain a graphic illustration of the area.
- (B) At least fifteen (15) days prior to the second reading before the Board of Commissioners [Board of Mayor and Aldermen], the affected property owners and all adjoining property owners, including those separated by a public way shall be notified by the City Recorder by mail of the proposed amendment and the time, date, and place of public hearing.

11-607 NOTICE OF ENACTMENT

Upon enactment of an amendment to this ordinance, a notice of such shall be published in a newspaper of general circulation within the City of Hendersonville, within five (5) days following such enactment announcing the new zoning classification of property affected. The change shall become effective upon the date of the announcement.

11-608 AMENDMENTS AFFECTING ZONING MAP

Upon enactment of an amendment to the zoning map which is part of this ordinance, the Zoning Administrator shall cause such amendment to be placed upon the zoning map noting thereon the ordinance and effective of such amendatory ordinance.

11-609 EFFECT OF DENIAL OF APPLICATION

Whenever an application for an amendment to the text of this ordinance or for a change in the zoning classification of any property is denied, the application for such amendment shall be eligible for reconsideration for one (1) year following such denial, except in the following cases:

- (A) Upon initiation by the Board of Commissioners [Board of Mayor and Aldermen], or Planning Commission.
- (B) When the new application, although involving all or a portion of the same property, is for a different zoning district than that for which the original application was made.
- (C) When the previous application was denied for the reason that the proposed zoning would not conform with the general plan, and the general plan has subsequently been amended in a manner which will allow the proposed zoning.

11-610 RESUBMITTAL OF PROPOSED AMENDMENTS

Request for the same amendments shall not be resubmitted within six (6) months for the same property or substantially the same property; however, this shall not prohibit resubmittal if new facts are presented.

11-611 ZONING DISTRICTS AS APPLIED TO TERRITORY ADDED TO JURISDICTION OF THE CITY OF HENDERSONVILLE

Whenever new territory is added to the zoning jurisdiction of the City of Hendersonville, by any means, the Planning Commission shall recommend to the City Commission appropriate zoning districting within thirty (30) days following the final approval of the annex action. Prior to the final enactment, the Board of Commissioners [Board of Mayor and Aldermen], of an amendment to this ordinance establishing zoning districting for said territory, the area shall be temporarily unclassified and no zoning permits shall be issued.

11-612 EXPANSION OF THE DEFINITION OF EXTENSIVE MANUFACTURING ACTIVITY TYPE

The Board of Commissioners [Board of Mayor and Aldermen] may expand the definition of extensive manufacturing activity type to include an arsenal, atomic reactor, explosives manufacture, fireworks manufacture, or radioactive waste handling only to accommodate a specific proposed use on application from the Zoning Administrator and subject to all other amendment provisions of the ordinance provided that the proposed use complies with the standards established herein:

- (A) The proposed use is to be located in an isolated location away from concentrations of persons associated with residential, commercial, community facilities, or industrial activities, or any other type of activity.
- (B) The proposed use is to be located in an area which will remain isolated, in terms of (A), above, for at least twenty-five (250 years in the future and that this condition is reflected upon the land use element of the long-range, land use plan for the Hendersonville Planning Region.
- (C) The proposed use will not pollute or deteriorate air, surface or subterranean water or any other natural features.
- (D) The proposed use will be satisfactorily served by the necessary utilities such as sewerage treatment, or waste disposal and services such as fire protection.
- (E) The proposed use will not result in the transportation of dangerous products or wastes through areas of population concentration which would endanger community safety.
- (F) The proposed lot size is sufficient so that no danger occurs to the adjoining uses.

CHAPTER 7. REMEDIES AND ENFORCEMENT

11-701 COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis, thereof, shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate, and take action, thereon, as provided by this ordinance.

11-702 PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of various or conditional uses) shall constitute a misdemeanor and shall be punished as provided by law. Each day such violation exists shall be deemed a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

11-703 REMEDIES

In case any building or other structure is proposed to be erected, constructed, reconstructed, altered, extended, or proposed to be uses in violation of this ordinance, the Zoning Administrator or other appropriate authority of the city government or any adjacent or neighboring property owner who would be especially damaged by such violation may, in addition to other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, extension, conversion or use, to correct or abate the violation, or to prevent the occupancy of such building or other structure or land. Where a violation of these regulations exists with respect to a building or other structure or land, the Zoning Administrator may, in addition to other remedies, notify all public utilities and municipal service departments of such violation and request that initial or re-establishment of service be withheld, therefrom, until such time as the building or other structure premises are no longer in violation of these regulations.