

(ENTIRE ARTICLE ADDED BY ORDINANCE NO. 1990-65, NOVEMBER 27, 1990)

**ARTICLE IX
DESIGN REVIEW**

CHAPTER 1. GENERAL PROVISIONS

9-101 INTENT AND PURPOSE

The purpose of this article is to conserve property values within the City of Hendersonville by establishing procedures for the design review of development henceforth erected, reconstructed or altered, and thereby

- (A) To promote qualities in the environment that sustain the community's economic well-being.
- (B) To foster the community's attractiveness and functional utility as a place to live and to work.
- (C) To preserve the community's heritage by maintaining the integrity of areas enjoying a discernible character contributing to this heritage.
- (D) To safeguard public investment within the community.
- (E) To raise the level of citizen expectations favoring the quality of the community's visual environment.

9-102 ROLE OF THE HENDERSONVILLE REGIONAL PLANNING COMMISSION

The Hendersonville Regional Planning Commission shall administer the provisions of this article including, without limitation:

- (A) Certification that proposed development comports with the design standards set forth herein.
- (B) Recommend amendments, as necessary, to the **Design Review Manual**, for approval by the Board of Mayor and Aldermen.
- (C) Consultation with municipal and other appropriate agencies on matters addressed in this article.
- (D) Adoption of such rules of procedure as the commission may deem necessary.

9-103 DESIGN REVIEW MANUAL

To further the purposes of this article as set forth herein, there is hereby adopted a **Design Review Manual**. Amendments to the **Design Review Manual**, shall be made by resolution approved by a majority of the entire membership of the Board of Mayor and Aldermen, with appropriate input from the Hendersonville Regional Planning Commission.

9-104 TOWN CENTER DESIGN GUIDELINES (ADDED BY ORDINANCE 2006-58, JANUARY 9, 2007)

To further the purposes of this Article as set forth herein, there is hereby adopted **Town Center Design Guidelines**. Amendments made to the **Town Center Design Guidelines** shall be made by resolution approved by a majority of the entire membership of the Board of Mayor and Aldermen, with appropriate input from the Hendersonville Regional Planning Commission.

A copy of said **Town Center Design Guidelines** is attached to and made a part of this ordinance.

CHAPTER 2. ADMINISTRATIVE PROVISIONS

9-201 DEVELOPMENT SUBJECT TO DESIGN REVIEW (REVISED BY ORDINANCE 2005-34, NOVEMBER 22, 2005)

The following development shall be subject to the provisions of this section:

- (A) All development requiring Site Plan approval by the Planning Commission as per Section 11-202.102. Site plans eligible for approval by staff are exempt from Design Review;
- (B) Any external modification to the type of development which is subject to Site Plan approval requirements as specified in (A) above where the estimated cost of the modifications and improvements exceed 20% of the total appraised value of the structure(s) improved by said external modifications as set forth in the most current Sumner County tax records;
- (C) The following external modifications, in addition to (B) above, shall require Design Review approval in accordance with the terms of this section, but for the proposed modification only:
 - (1) changing the color of more than 25% of the exterior of the building;
 - (2) adding or replacing awnings except replacing with the same size, style and color;
 - (3) modifying the roof except replacing with the same roof type;
 - (4) adding or changing any dormer, cupola, pergola or other architectural feature;

The modifications described in (1) through (4) above may be approved by the Planning Director and, if so, reported to the Planning Commission at their next meeting. Should the Planning Director determine that the proposed modifications possess design characteristics which, as per the objectives of this Manual, merit review by the Planning Commission, Planning Commission approval shall be required.

- (D) Any development which the Planning Director determines to possess design characteristics which merits review to achieve the purposes of this ordinance. Reasons for the Planning Director's determination shall be clearly stated in writing. Appeals from the Director's determination shall be filed with the Planning

Commission within 15 days thereof, and resolved by the Planning Commission within 45 days of said filing.

9-202 DEVELOPMENT EXEMPT FROM DESIGN REVIEW

Reconstruction or repairs required for immediate public health or safety reasons, as determined by the Mayor or his designee, are expressly exempted from the requirements of this article.

9-203 DESIGN REVIEW APPLICATIONS AND PROCESSING

9-203.1 Preapplication Conference

Any prospective applicant for a development approval permit that may require design certification under this article may request a preliminary conference with the commission by filing a written request no later than fifteen (15) days prior to the commission meeting at which the PREAPPLICATION conference is sought. Accompanying the request shall be twenty (20) copies of such preliminary exterior drawings, site plans, and related materials as the applicant wishes to bring to the commission's attention. Such requests will be granted to the extent that the commission's agenda permits. Viewpoints expressed by commission members shall be advisory only; no legally enforceable rights or expectations of any kind shall vest until the applicant's formal application for design review has been processed in accordance with the provisions of this article.

9-203.2 Submission to Planning Director; Review by Staff

Applicants for design review certification shall submit to the City Planning Director, the photographs, site plans, site landscaping plans and schematic building plans referenced in Section 3.1, of the **Design Review Manual**, adopted by the City of Hendersonville, concurrent with the adoption of this article. Included in this procedure will be a review performed by a landscape architect retained by the City of Hendersonville, as a consultant to determine compliance with the **Design Review Manual**. The City Planning Director will distribute all submittals to the City Planning Staff, for review. Written comments of all planning staff members will be made available to developers at least one (1) week prior to the Planning Commission meeting, in which their project will be heard. Within eight (8) days of determining that the application comports with the requirements of Section 3.1, the City Planning Director shall transmit the application with all written staff comments and recommendations to the Planning Commission members. This process is discussed in greater detail in ARTICLE XI, of this ordinance. **(AMENDED BY ORDINANCE NO. 1991-12, MARCH 26, 1991)**

9-203.3 Review by Commission

The commission shall approve, approve with conditions, or disapprove an application for design review certification within forty-five (45) days of the application's initial review by the Hendersonville Regional Planning Commission, unless the commission and the applicant agree to a greater time period. Absent such an agreement, all applications not acted upon by the commission within

forty-five (45) days shall be deemed approved. Minutes shall be kept of the commission's proceedings and reasons for its decisions shall be clearly stated in this record. An approved application and its supporting exhibits shall be endorsed as approved by the commission or its authorized representative.

9-203.4 Appeal of Commission Actions

Any person aggrieved by a commission action under this article may appeal the action to the Board of Mayor and Aldermen within thirty (30) days after approval of the minutes with the city recorder, a notice setting forth the respects with which the person filing the appeal takes exception to the written statement of reason as required by Subsection 9-203.3, of this article. Appeals shall be decided within forty-five (45) days of their filing unless the applicant and the Board agree to extend this period. In reviewing the appeal, the Board shall not invalidate the commission's action, unless approved by majority of the entire membership. The reason for the decision of the Board of Mayor and Aldermen determination shall be clearly reflected in the minutes. If the Board invalidates the commission's action, it may, in its discretion, either exercise the powers of the commission or remand the matter, along with its statement of reasons, to the commission for further action not inconsistent with these reasons, which the commission shall take within thirty (30) days.

9-204 DESIGN REVIEW STANDARDS (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)

In reviewing applications, the commission shall ensure that the proposed development satisfies the criteria for the applicable category or type of development as these criteria are set forth, by category or type, in the City of Hendersonville Design Review Manual, Town Center Design Guidelines and in any pertinent City of Hendersonville land use or building regulations and ordinances, including design district development plans approved pursuant to Subsection 9-205.1. In the case of a conflict between this ordinance and other ordinances, the more stringent shall govern.

9-205 DESIGN DISTRICTS

9-205.1 Establishment

The Board of Mayor and Aldermen may designate specific areas of the community as design districts at the request of citizens or of the Planning Commission or upon its own motion, if it determines that the area contains buildings, structures, burial grounds or other features of archaeological, architectural, or design significance.

Prior to the establishment of a design district, the commission, with the assistance of its staff and such consultants as it chooses to utilize, shall prepare a design district development plan which inventories the design characteristics of the area justifying the area's selection and special protection as a design district. The commission shall hold a public hearing on the proposed design district designation and accompanying design district development plan, and shall transmit a written report to the Board, summarizing both community response and the commission's recommendations concerning establishment of the proposed design district. The commission's report shall be placed on file with the Planning Director for inspection by the public. The Board shall hold a public

hearing as required by ARTICLE XI, CHAPTER 6. Should the Board decide to establish the design district, it shall do so by designating on either the City of Hendersonville or the Hendersonville Regional Planning Zoning Map, an overlay design district, the boundaries of which shall conform with the boundaries of the underlying area.

9-205.2 Administration

No building or other development permit shall be issued or the construction, reconstruction, alteration or demolition of any building, structure or physical improvement within any design district absent certification by the Planning Commission pursuant to this article, of the conformance of the proposed development with the design standards referenced, herein. In particular, development must conform with the general land use regulations applicable to the design district's underlying area, the Design Review Manual, and the district's design district development plan, as approved by the Board of Mayor and Aldermen in conjunction with the Board's establishment of the design district. In case of conflict among these requirements, the most stringent, as determined by the commission, shall govern.

9-206 PUBLIC WORKS

In reviewing the design of public buildings as specified in Section 9-201, (B), of this ordinance, undertaken by governmental agencies, other than the City of Hendersonville, the commission shall submit a written report of its recommendations to the agency proposing to construct the public project and seek to the extent permitted under applicable law or through communication with the agency to secure such modifications in the work's design as comport with the standards of this article. In the case of public projects undertaken by the City of Hendersonville, a commission determination to withhold a certificate of design approval shall be binding, unless this determination is reversed by a majority of the entire membership of the Board of Mayor and Aldermen.

9-207 APPLICATION; VESTED RIGHTS

The provisions of this article shall not be applicable to any property owner whose actions prior to the article's effective date have created a vested right to develop under applicable state or federal law. All other development or proposed development shall be subject to the article's provision.

9-208 MODIFICATION OF APPROVED DESIGN FEATURES; MAINTENANCE OF IMPROVEMENTS

Building and site improvements, the design of which is regulated by this Design Review Manual, and which improvements were required and/or provided in conjunction with the approval of a Site Plan by the Planning Commission after the adoption of the Hendersonville Design Review Manual on November 27, 1990, shall not be modified except in conformance with this section. The design of said improvements and all features thereof shall be maintained as originally approved by the Planning Commission.

Minor modifications prior to construction, during construction, and/or following construction may be approved by the Planning Director in accordance with Section 11-202.5 of the Hendersonville Zoning Ordinance provided such modifications are in compliance with this Design Review Manual and are reported to the Planning Commission at their next meeting.

All other changes shall require the review and approval of the Planning Commission. Routine maintenance shall be performed as needed including, as a minimum, the following:

- (A) Building and appurtenances, including signs, shall be cleaned and painted or repaired as to maintain an attractive appearance;
- (B) Illuminated elements of buildings and signs shall be replaced as required to maintain the effect for which designed;
- (C) Landscape or plant materials which are dead or deteriorated shall be replaced to the same specifications on the originally approved site plan.
- (D) Parking areas shall be kept in an orderly state, properly marked, and clear of litter and debris.
- (E) The property shall be kept free of all refuse and debris and shall have the vegetation cut periodically during the growing season as per Ordinance 1982-34.

Failure to comply with the requirements of this section after a notice of noncompliance has been issued by the Zoning Administrator with a stated time frame for compliance shall be deemed a violation of Zoning Ordinance 1985-8 and shall be subject to the sanctions set forth in Article XI, Chapter 7 as well as to the revocation of any permit, license, certificate or other approval initially issued by the city as a basis for construction and/or occupancy of the development on which the violation has occurred. (**AMENDED BY ORDINANCE NO. 2004-17, JUNE 22, 2004**)

9-209 PROHIBITIONS (AMENDED BY ORDINANCE 2010-20, AUGUST 10, 2010)

No building permit, license, certificate or other approval or entitlement shall be issued or given by the city with respect to any development subject to design review, until the development has been approved pursuant to this article. No certificate of use or occupancy, whether temporary or permanent in form, shall be given for any such development until the City Planning Director has certified that the development has been completed in accordance with the design approved by the commission; provided, however, that Planning Staff, in its discretion, may elect to grant a Temporary Use and Occupancy Permit subject to a Performance Agreement guaranteeing that the applicant will complete the development in accordance with the approved design within a time certain. This procedure is detailed in Article XI of this ordinance.