

## ARTICLE VIII

### PLANNED UNIT DEVELOPMENT DISTRICT REGULATIONS

#### CHAPTER 1. GENERAL PROVISIONS

##### 8-101 INTENT AND PURPOSE

The purposes of these planned unit development district regulations are as follows:

- (A) To promote flexibility in design and permit planned diversification in the location of structures;
- (B) To promote the efficient use of land in order to facilitate a more economic arrangement of buildings, circulation systems, land use, and utilities;
- (C) To preserve to the greatest extent possible the existing landscape features and amenities and to utilize such features in a harmonious fashion; and
- (D) To encourage the total planning of tracts of land consistent with pertinent long-range plans.

##### 8-102 APPROVED PLANNED UNIT DEVELOPMENTS CONTINUED

Any planned unit development approved under the provisions of ARTICLE IX, A, of the "Zoning Ordinance of Hendersonville, Tennessee", dated **July 3, 1970, (Ordinance 1970-16)** or the provisions of Ordinance 1974-54 (as amended) is hereby approved under the original conditions as may have been amended and is hereby incorporated into the zoning map as a part of this ordinance. Provided, however, any alterations or amendments to any such projects shall be under the procedures as set forth in CHAPTER 2 of this article.

##### 8-103 CONSISTENCY WITH THE GENERAL PLAN

No planned unit development shall be approved unless all plans for development are found to be consistent with the then current issue of the adopted development plan for the area in which the development is proposed. The Planning Commission shall make a formal, written finding regarding the consistency of any proposed planned unit development, said report to include findings that the development:

- (A) Will be consistent with the currently effective development plan for the area; and
- (B) Is likely to be compatible with development permitted under the general development provisions of the zoning ordinance; and
- (C) Will not significantly interfere with the use and enjoyment of other land in the vicinity.

##### 8-104 MASTER PLAN OF PLANNED UNIT DEVELOPMENT

No application for PUD Zoning shall be considered, unless a master plan of the development meeting requirements set forth in Subsection 8-203.2, is submitted therewith.

**8-105 RELATION OF PUD REGULATIONS TO GENERAL ZONING, SUBDIVISION, OR OTHER REGULATIONS; VARIATIONS ON EQUAL SATISFACTION OF PUBLIC PURPOSES**

The planned unit development regulations that follow shall apply generally to the initiation and regulation of all planned unit development districts. Where there are conflicts between the special PUD regulations herein and general zoning, subdivision, or other regulations or requirements, these regulations shall apply in PUD Districts, unless the Board of Commissioners [Board of Mayor and Aldermen] shall find, in the particular case, that provisions herein do not serve public purposes to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements.

Where actions, designs, or solutions proposed by the applicant are not literally in accord with applicable PUD or general regulations, but the Board of Commissioners [Board of Mayor and Aldermen] makes a finding in the particular case that public purposes are satisfied to an equivalent or greater degree, the commission may make specific modification of the regulations in the particular case, provided that where floor area and similar ratios (other than off-street parking) have been established by these regulations, the commission shall not act in a particular case to modify such ratios.

Except as indicated above, notwithstanding procedures and requirements generally in effect, procedures and requirements set forth herein and in guides and standards officially adopted as part of regulations for particular classes of PUD Districts shall apply in PUD Districts, to any amendments creating such districts, and to issuance of all required permits therein.

**8-106 COMBINATION OF SEPARATE TYPES OF PLANNED UNIT DEVELOPMENT**

The Planning Commission and the Board of Commissioners [Board of Mayor and Aldermen] may consider separate types of planned unit developments (such as residential and commercial PUD) within a consolidated master plan as a single administrative procedure provided the total tract is under the unified control of a landholder and the land area is sufficient to comply with the separate area requirements combined. This provision in no way alters any requirements in this article.

**8-107 STAGING OF DEVELOPMENT**

The Planning Commission may elect to permit the staging of development, in which case, the following provisions shall apply.

- (A) In a residential planned unit development, the ratio of gross floor area of commercial activity to residential activity in the plan as initially approved or amended shall not be exceeded at any given stage of construction.
- (B) Each stage shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed with subsequent stages will not have an adverse impact on the planned unit development or its surroundings.
- (C) The commencement of actual construction of any stage of the planned unit development shall be governed by the provisions of Section 8-206.
- (D) In the instance of a combined planned unit development the Planning Commission may permit commercial and industrial uses to be constructed first, but only if it finds--and records its finding on the final development plan--that the

nonresidential uses are consistent with current development plans, even if no residential construction takes place.

**8-108 DEVELOPMENTAL CONTROL AND DIVISION OF LAND (AMENDED BY ORDINANCE 2010-20, AUGUST 10, 2010)**

No tract of land may receive final approval as a planned unit development, unless such tract is under the unified control of a landholder as defined by this ordinance. Unless otherwise provided as a condition of approval of a planned unit development, the landholder of an approved planned unit development may divide and transfer parts of such development. The transferee shall complete each such unit, and shall use and maintain it in strict conformance with the adopted final master development plan.

A report identifying all property owners within the area of the proposed district and giving evidence of unified control of its entire area shall be submitted along with any application for approval of a preliminary development plan. The report shall state agreement of all present property owners and/or their successors in title:

- (A) To proceed with the proposed development according to the regulations in effect when the map amendment creating the PUD District is passed, with such modifications as are set by Board of Commissioners [Board of Mayor and Aldermen] in the course of such action; and
- (B) To provide sureties, dedications, guarantees, agreements, contracts and deed restrictions acceptable to the Board of Mayor and Aldermen for completion of such developments according to approved plans; and for continuing operation and maintenance of such areas, facilities and services as are not to be provided, operated or maintained at general public expense; and such dedications, contributions or guarantees as are required for provision of needed public facilities and services; and
- (C) To bind further successors in title to any commitments under (A) or (B) above.

**8-109 COMMON OPEN SPACE**

Any common open space established by an adopted final master development plan for a planned unit development shall be subject to the following:

**8-109.1 Quality Use and Improvement of Common Open Space**

- (a) Common open space must be for amenity or recreational purposes. The uses authorized for common open space must be appropriate to the scale and character of the planned development considering its size, density, expected population, topography and other factors.
- (b) No common open space may be put to any use not specified in the approved final development plan, unless such plan has been amended under the provisions of Subsection 8-211.2. However, no change authorized may be considered as a waiver of any of the covenants limiting the use of common open space areas, and all rights to enforce these covenants against any use permitted are expressly reserved.
- (c) Common open space may, subject to approval by the Planning Commission and Board of Commissioners [Board of Mayor and

Aldermen], consist of either improved or unimproved land. In this regard the approving agency may determine that all or part of stream areas, bodies of water and slopes in excess of fifteen (15) percent may be included in common open space. In making this determination the approving agency shall be guided by the extent of these areas in relation to the planned unit development and the degree to which these areas contribute to the quality, livability, and amenity of the planned unit.

#### **8-109.2 Conveyance of Common Open Space**

All land shown on the final development plan as common open space must be conveyed under one of the following options:

- (a) It may be conveyed to a public agency which will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on it.
- (b) It may be conveyed to trustees provided in an indenture establishing an association, funded trust, or similar organization meeting the requirements of Subsection 8-109.3, for the maintenance of the planned development. The common open space must be conveyed to the trustees subject to covenants to be approved by the Planning Commission which restrict the common open space to the uses specified on the final development plan, and which provide for the maintenance of the common open space in a manner which assures its continuing use for its intended purposes.

#### **8-109.3 Requirement for Maintenance Organization**

In any instance where common open space is to be conveyed to an organization other than a public agency the Planning Commission and the Board of Commissioners [Board of Mayor and Aldermen] shall require that the landholder provide for and establish an organization for the ownership and maintenance of any common open space, and such organization shall not be dissolved nor shall it dispose of any common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate the same to the city and the said dedication be approved by the Planning Commission. However, the conditions of any transfer shall conform to the adopted final development plan.

#### **8-109.4 Mandatory Provisions Governing Organization and Operation of Maintenance Association**

In an instance where common open space is to be deeded to a maintenance organization, the developer shall file a declaration of covenants and restrictions that will govern the association. This document is to be submitted with the application for final approval of the planned unit development plan. The provisions shall include but not be limited to, the following:

- (a) The maintenance organization must be established and operational before any homes are sold.
- (b) Membership must be mandatory for each home buyer and must run with the land so that any successive purchaser will automatically become a member.

- (c) The restrictions covering the use, etc., of the open space must be permanent, not just for a period of years.
- (d) The association(s) must be responsible for liability insurance, local taxes and the maintenance of all facilities and lands deeded to it.
- (e) Home owners must pay their pro rata share of the cost assessed by the maintenance association; said assessment by the association can become a lien on the homeowner's property for failure to pay.
- (f) The association must be able to adjust the assessment of fees to meet changing needs.

**8-109.5 Failure of Maintenance Organization**

In the event that the organization established to own and maintain common open space, or any successor organization shall at any time after the establishment of the planned unit development fail to maintain the common open space in reasonable order and condition in accordance with the adopted final development plan, the zoning administrator may serve written notice upon such organization and/or the owners or residents of the planned unit development and hold a public hearing. After thirty (30) days when deficiencies of maintenance are not corrected, the zoning administrator shall call upon any public or private agency to maintain the common open space for a period of one (1) year. When the zoning administrator determines that the organization is not prepared for the maintenance of common open space such agency shall continue maintenance for yearly periods. The cost of such maintenance shall be assessed proportionately against the properties within the planned unit development that have a right of enjoyment of the common open space, and shall become a lien on said properties.

**8-109.6 Assurance Involving the Provision of Common Open Space**  
**(AMEND BY ORDINANCE 2010-20, AUGUST 10, 2010)**

The Planning Commission shall require adequate assurance, in a form and manner which it approves, that the common open space shown in the final development plan will be provided and developed. The following methods of assurance are illustrative of the types of assurances required. They may be used singly, in combination or in conjunction with other similar methods:

- (a) The city may accept a surety in an amount sufficient to purchase the common open space shown in the final development plan or alternative acreage which is equivalent in size and character.
- (b) The title to the land shown as common open space may be put in escrow. The escrow agreement to provide that the land is to be held in escrow until the planning commission has certified to the escrow agent that the planned development has been completed, at which time the common open space is to be conveyed as provided in Subsection 8-109.2, of this article. The escrow agreement may provide for the release of common open space by the escrow agent in stages. In such instance the Planning Commission is to certify the completion of each stage of the planned development to the escrow agent and the escrow agreement must provide that the open space may be conveyed in stages. In this event, the open space which is

conveyed is to be of the same proportions to the open space provided on the final development plan as the dwelling units that have been built are to the total number of dwelling units which are allowable by the final development plan.

- (c) In conjunction with paragraph (a) of this section, if any planned development which includes common open space is held by the developer on option, the developer shall assign to the city the right to exercise the option to acquire the common open space.
- (d) In general the construction and provision of all common open spaces and public and recreational facilities which are shown on the final development plan must proceed at no slower rate than the construction of dwelling units. From time to time, the Planning Commission shall compare the actual development with the development schedule. If the commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public and recreational facilities have been constructed and provided, then the Planning Commission may either cease to approve any additional final plats and/or instruct the zoning administrator to discontinue issuance of building permits.

#### **8-110 DEDICATION OF PUBLIC FACILITIES**

The Planning Commission and the Board of Commissioners [Board of Mayor and Aldermen] may, as a condition of approval and adoption, in accordance with the final development plan, require that suitable areas for streets, public rights-of-way, schools, parks, and other public areas be set aside, improved and/or dedicated for public use.

#### **8-111 WAIVER OF BOARD OF APPEALS ACTION**

No action of the board of appeals shall be required in the approval of a planned unit development including those activities which would otherwise require conditional use permits under other articles of this ordinance, provided that such activities comply with the applicable criteria stipulated in ARTICLE XI, CHAPTER 6, of this ordinance, as determined by the Planning Commission and the Board of Commissioners [Board of Mayor and Aldermen].

### **CHAPTER 2. ADMINISTRATIVE PROCEDURE GOVERNING PLANNED UNIT DEVELOPMENTS**

#### **8-201 PURPOSE AND INTENT**

The purpose of these provisions is to prescribe a procedure for the review, approval and continued administration of all planned unit developments provided for by ARTICLE VIII, of this ordinance.

#### **8-202 PREAPPLICATION CONFERENCE**

Prior to filing an application for approval of a planned unit development the applicant shall confer with the zoning administrator and the planning administrator to determine whether the applicant is proceeding under the proper section of this ordinance, to consider the desirability or necessity of amending the master plan or petition, to clarify the issues and to discuss any other matter as many aid in the disposition of the project.

**8-203 PRELIMINARY APPROVAL OF THE PROPOSED PLANNED UNIT DEVELOPMENT**

**8-203.1 Application for Preliminary Approval**

Application for preliminary approval shall be made by the landholder of the affected property or his authorized agent to the zoning administrator in accordance with such written general rules regarding general procedure, form of application, and required information as the Planning Commission may determine, provided they are not inconsistent herewith. The application for preliminary approval shall be accompanied by:

**8-203.2 Preliminary Master Development Plan of a Planned Unit Development**

The preliminary master development plan for the proposed planned unit development shall be a general concept plan which shall include items:

- (a) Sufficient information to disclose:
  - 1. The location and size of the area involved.
  - 2. Transportation routes including streets, driveways, sidewalks, and pedestrian ways, and off-street parking and loading areas.
  - 3. Location and approximate dimensions of structures including approximate height, bulk and the utilization of structures including activities and the number of living units.
  - 4. Estimated population and density and extent of activities to be allocated to parts of the project.
  - 5. Reservations for public uses including schools, parks, and other open spaces.
  - 6. Other major landscaping features, and
  - 7. The general means of the disposition of sanitary wastes and storm water.
- (b) A tabulation of the land area to be devoted to various uses and activities and overall densities.
- (c) The nature of the landholder's interest in the land proposed to be developed and a written statement of concurrence from all parties having a beneficial interest in the affected property.
- (d) The substance of covenants, grants of easements or other restrictions to be imposed upon the use of the land, buildings and structures including proposed easements for public utilities.
- (e) A stage development schedule, setting forth when the landholders intends to commence construction and a completion period.

- (f) When it is proposed that the final master development plan will be submitted in stages, a schedule of submission thereof.

If the application is deemed incomplete by the zoning administrator, a written request shall be made within ten (10) days after the original submittal, for further information. In such case the application shall be held in abeyance until deemed complete for final review. No plan shall be formally presented for Planning Commission action until such plan is found complete and ready for review.

**8-203.3 Review by Other Departments of City Government**

Other departments of the city as appropriate, shall review the plan for the proposed planned unit development.

**8-203.4 Planning Commission Action on Preliminary Application for Planned Unit Development**

Within forty-five (45) days after initial submission to the Planning Commission, the commission shall take action on the preliminary application by any one of the following:

- (a) Unconditional preliminary approval.
- (b) Conditional preliminary approval, in which the Planning Commission expressly denotes modifications which must be a part of the preliminary approval.
- (c) Disapproval.

**8-203.401 Conditional Preliminary Approval - Landholder's Response**

When the Planning Commission's action is conditional preliminary approval, the commission shall transmit in writing by registered mail the conditions or modifications which must be compiled with in order that the proposed planned unit development receive preliminary approval. Within sixty (60) days of the transmittal of the required modifications, the landholder may make a written response concurring with the required modifications, in which case the planned unit development is deemed to have preliminary Planning Commission approval, at the date of receipt by the Planning Commission of said written concurrence. When the landholder makes a negative reply within sixty (60) days of the date of conditional preliminary approval the planned unit development shall be deemed disapproved, unless such time limit is extended by a specific action of the Planning Commission upon a written request of the landholder.

**8-203.402 Action by Board of Commissioners [Board of Mayor and Aldermen]**

Upon completion of preliminary development plan review the Planning Commission shall forward its report and recommendations to the Board of Commissioners [Board of Mayor and Aldermen] for action. Upon receipt

of the Planning Commission's report the board shall consider such report and recommendations, the preliminary development plan and such other information as it may require. The Board of Commissioners [Board of Mayor and Aldermen] shall hold such required hearings and otherwise proceed in the manner set forth in ARTICLE XI, for consideration of an amendment to the zoning ordinance.

In any instance where the Board of Commissioners [Board of Mayor and Aldermen] may act to approve a proposed development which the Planning Commission had recommended for disapproval the board shall provide specific guidance as to:

- (1) Overall design of the plan,
- (2) Any modifications required, and
- (3) Any additional information which may be required by the Planning Commission in order for it to determine substantial compliance between the preliminary and final development plan.

#### **8-203.403 Planned Unit Development and the Official Zoning Map**

Upon approval by the Board of Commissioners [Board of Mayor and Aldermen], the zoning administrator shall place the extent of the planned unit development on the official zoning map identified by the ordinance number providing approval. Similarly in the instance of action by the Planning Commission abolishing or canceling the planned unit development, the zoning administrator shall remove the PUD District from the official zoning map.

### **8-204 FINAL APPROVAL OF THE PROPOSED PLANNED UNIT DEVELOPMENT**

The approval by the Board of Commissioners [Board of Mayor and Aldermen] of the preliminary development plan of the planned unit development shall authorize and form the basis for the Planning Commission's final approval of said development. The final approval by the Planning Commission of the planned unit development shall be subject to the procedures and requirements of this section.

#### **8-204.1 Application for Final Approval (AMENDED BY ORDINANCE 2010-20, AUGUST 10, 2010)**

Within one (1) year of the preliminary approval of a planned unit development, the landholder may make application to the Planning Commission, provided that the proposed master development plan and other elements associated with the planned unit development are in substantial compliance with the substance of the preliminary approval of the Planning Commission. The application shall include all aspects of the preliminary application, the proposed final master development plan, other required drawings, specifications, covenants, easements, and conditions and forms of surety as were set forth by the Planning Commission resolution of preliminary approval. Copies of legal documents required by the commission for dedication or reservation of group or common open space and/or for the creation of a nonprofit association shall also be submitted. When appropriate, this application shall contain the stage development schedule.

In the event the applicant fails to apply for final approval or in the event the Planning Commission finds that conditions in support of the granting of preliminary approval have so changed as to raise reasonable question regarding the landholder's ability to pursue the plan, the Planning Commission may recommend revocation of the zoning approval for the plan. Should the Planning Commission recommend withdrawal of approval of the plan a report of this action shall be sent immediately to the Board of Commissioners [Board of Mayor and Aldermen] along with a recommendation that action be taken to remove the planned unit development district from the zoning map.

#### **8-204.2 Final Approval of Stages**

The application for final approval and the final approval by the Planning Commission may be limited to each stage as appropriate in a large planned unit development, in compliance with the Section 8-107.

#### **8-204.3 Final Master Development Plan of a Planned Unit Development**

The application for final approval shall be sufficiently detailed to indicate the ultimate operation and appearance of the development, or portion thereof, and shall include, but not limited to the following:

- (a) Final development plan drawings at a scale no smaller than one (1) inch to two hundred (200) feet indicating:
  1. The anticipated finished topography of the area involved (contours at vertical intervals no greater than five (5) feet).
  2. A circulation diagram indicating the proposed movement of vehicles, goods, and pedestrians within the planned unit development and to and from existing thoroughfares. This shall specifically include: Width of proposed streets; a plan of any sidewalks or proposed pedestrian ways; and any special engineering features and traffic regulation devices needed to facilitate or ensure the safety of the circulation pattern.
  3. An off-street parking and loading plan indicating ground coverage of parking areas.
  4. Areas proposed to be conveyed, dedicated or reserved for parks, parkways, and other public or semi-public open space uses including any improvements which are to be deeded as part of any common use area.
  5. Information regarding the physical characteristics of the surrounding area and developments within three hundred (300) feet of the proposed planned unit development.
  6. A plot plan for each building site and common open area, showing the approximate location of all buildings, structures, and improvements and indicating the open spaces around buildings and structures.

7. A plan for proposed utilities including sewers, both sanitary and storm, gas lines, water lines, fire hydrants and electric lines showing proposed connections to existing utility systems.
- (b) A plan showing the use, height, bulk, and location of all buildings and other structures. Any drawings used to meet this requirement need not be the result of final architectural decisions and need not be in detail.
- (c) A generalized land use map and a tabulation of land area to be devoted to various uses and activities.
- (d) A tabulation of proposed densities to be allocated to various parts of the area to be developed.
- (e) A plan which indicates the location, function, and ownership of all open spaces, excepting those open spaces included in fee simple lots.
- (f) Final drafts of all proposed covenants and grants of easement (particularly those pertaining to common open space).

If the application is deemed incomplete by the zoning administrator, a written request shall be made within ten (10) days after the original submittal, for further information. In such case the application shall be held in abeyance until deemed complete for final review. No plan shall be formally presented for Planning Commission action until such plan is found complete and ready for review.

#### **8-204.4 Action on Final Plan**

In reviewing a final plan, the function of the reviewing agencies is twofold. First, the plan must be found to be in substantial compliance with the previously approved preliminary development plan. Secondly, all new information must be reviewed to determine its quality and compliance with all substantive requirements of this ordinance.

##### **8-204.401 Review Procedure**

- (1) Application for final approval shall be made to the Planning Commission.
- (2) The completed final plan must be submitted to the zoning administrator ten (10) days prior to the meeting of the commission at which the plan is to be presented. Ten (10) copies of the plan and related documents will be required.
- (3) Within thirty (30) days subsequent to the formal presentation of the final plan to the Planning Commission it shall be the duty of the zoning administrator to present data and findings of the various departments and agencies of the government concerning the proposed plan to the Planning Commission.
- (4) In the course of its consideration and prior to any final approval the Planning Commission shall give notice and provide each of the following an opportunity to be heard:

- (i) Any person who is on record as having appeared at the formal public hearing on the preliminary development plan, or
  - (ii) Any other person who has indicated on the Planning Commission in writing that he wished to be notified.
- (5) The Planning Commission may approve the final plan if it finds:
- (i) That the final plan meets the provisions for substantial compliance with the preliminary plan set forth in Section 8-205, (below), and
  - (ii) That the plan complies with all other standards for review which were not considered when the preliminary plan was approved.

**8-204.402 Approval with Modification**

Should the Planning Commission require any modification in the final development plan or any portion thereof including covenants, etc.; such modifications shall be agreed to by the applicant in writing prior to formal acceptance and filing of the final development plan.

The Planning Commission shall transmit in writing by registered mail the conditions or modifications which must be complied with in order that the proposed planned unit development receive final approval. Within sixty (60) days of the transmittal of the required modifications the landholder may make a written response concurring with the required modifications, in which case the planned unit development is deemed to have final Planning Commission approval at the date of the receipt by the Planning Commission of said written concurrence. Where the landholder makes a negative reply or no response is received within sixty (60) days of the date of conditional final approval the planned unit development shall be deemed disapproved, unless such time limit is extended by specific action of the landholder.

**8-204.403 Filing of an Approved Final Development Plan**

Upon formal action by the Planning Commission approving a final development plan, or in the instance of conditional final approval, upon acceptance of the modifications as set forth in Subsection 8-204.402, above, said plan and all maps, covenants, and other portions thereof, shall be filed with the following agencies:

- (1) The Board of Commissioners [Board of Mayor and Aldermen];
- (2) The Planning Administrator;
- (3) The Zoning Administrator;

#### **8-204.404 Disapproval**

If the Planning Commission finds that the final plan does not meet the test for substantial compliance set forth in Section 8-205, or does not comply with other standards of review it shall disapprove the plan. In the event of disapproval a written report shall be prepared by the Planning Commission and sent to the applicant. This report shall detail the grounds on which the plan was denied to specifically include ways in which the final plan violated the substantial compliance provisions or other standards of review.

#### **8-205 DETERMINATION OF SUBSTANTIAL COMPLIANCE**

The final development plan shall be deemed in substantial compliance with the preliminary development plan provided modifications by the applicant do not involve changes which in aggregate:

- (A) Violate any provisions of this chapter;
- (B) Vary the lot area requirement as submitted in the preliminary plan by more than ten (10) percent;
- (C) Involve a reduction of more than five (5) percent of the area shown on the preliminary development plan as reserved for common open space and/or usable open space;
- (D) Increase the floor area proposed in the preliminary development plan for nonresidential use by more than five (5) percent; and
- (E) Increase the total ground area covered by buildings by more than two (2) percent.

#### **8-206 FAILURE TO BEGIN PLANNED UNIT DEVELOPMENT**

If no "actual construction" has begun in the planned unit development within three (3) years from the date of approval of the final development plan, said approval shall lapse and be of no further effect. The Planning Commission, upon showing of good cause by the landholder, may extend for periods of twelve (12) months, the time for beginning construction. However, at least annually the Planning Commission shall review the status of any planned unit development on which construction has not begun in order to determine that the project has not been abandoned.

#### **8-207 ENFORCEMENT OF THE DEVELOPMENT SCHEDULE**

The construction and provision of all common open spaces and public and recreational facilities which are shown on the final development plan must proceed at no slower rate than the construction of dwelling units. From time to time the Planning Commission shall compare the actual development accomplished with the approved development schedule. If the commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public and recreational facilities have been constructed and provided, then the Planning Commission may take either or both of the following actions:

- (A) Cease to approve any additional final plats;

(B) Instruct the zoning administrator to discontinue issuance of building permits.

In any instance where the above actions are taken the Planning Commission shall gain assurance that the relationship between the construction of dwellings or other structures of a commercial or industrial nature and the provision of common open spaces and public and recreational facilities is brought into adequate balance prior to the continuance of construction.

## **8-208 BUILDING PERMITS AND USE AND OCCUPANCY PERMITS**

Building permits and use and occupancy permits shall be issued for uses, buildings and other structures in planned unit developments in accordance with this article; otherwise, permits and certificates shall be issued in accordance with the other applicable provisions of this ordinance as applicable.

### **8-208.1 Building Permits**

A building permit shall be issued for structures, buildings, activities, or uses as a part of a finally adopted planned unit development only in strict compliance with the final development plan of the particular planned unit development as finally adopted including the conditions of approval and only after the administrative procedure outlined in this section has been strictly adhered to. No building permit shall be issued for the area included in a preliminary planned unit development until the final development plan has been adopted.

### **8-208.2 Use and Occupancy Permit**

A use and occupancy permit may be issued only when the zoning administrator determines that the structure, building, activity, or use as a part of a planned unit development conforms with the particular adopted final development plan, including the conditions of its approval or approves a modification under the provisions of Section 8-209.

## **8-209 MINOR CHANGES TO AN ADOPTED FINAL PLANNED UNIT DEVELOPMENT PLAN**

Minor modifications in the terms and conditions of the adopted final development plan 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 adopted final development plan.

### **8-209.1 Minor Modifications During Construction Permitted Modifications**

The zoning administrator may approve minor modifications in the location, siting, and height of buildings and structures if required by engineering or other circumstances not foreseen at the time the final development plan was approved so long as no modification violates the basic policy and concept or bulk and open space regulations of the planned unit development as presented in the preliminary development plan. The total of such modifications approved by the zoning administrator shall never in aggregate result in:

(a) An increase in the residential density;

- (b) An increase of more than three (3) percent in the floor area proposed for nonresidential use of a commercial or industrial nature;
- (c) An increase of more than three (3) percent in the total ground area covered by buildings; or
- (d) A reduction of more than two (2) percent in the area set aside for common open space.

Minor modifications in the location of streets and underground utilities may be approved under this section.

**8-209.101 Subjects Not Included for Modification**

The proposed addition of any use not approved in the final development plan as well as any increases in the number of dwelling units permitted, building height, decreases in the parking requirements, and vision clearance area are not subjects for adjustments by the zoning administrator. Any proposed modifications of any of the above may be made only as amendments to the adopted final development plan.

**8-209-102 Minimum Adjustments Only**

Any modification must be held to the minimum necessary. Each of the following conditions must be found to 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 hardships.
- (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.

**8-210 AMENDMENTS IN AN APPROVED FINAL DEVELOPMENT PLAN DURING THE PERIOD OF INITIAL CONSTRUCTION**

During the period of actual development or construction of any planned unit development, (or when developed in stages of any portion of the total development) the provisions of this section shall apply to all proposed modifications which exceed the minor adjustments permitted by Section 8-209. Once a certificate of completion has been issued thereby signaling completion of the initial development of any planned unit development, or portion thereof, any further changes or alterations shall be governed by the provisions of Section 8-211.

All proposed additions of uses not approved in the final master development plan as well as any increases in the number of parking spaces or vision clearance area shall be subject to these provisions. In addition all minor modifications which exceed the cumulative changes in the ground coverage ration, etc., permitted under Section 8-209, shall be governed by the provisions of this section.

**8-210.1 Addition of Uses Not Authorized in the Approved Development Plan, but Allowable Within the Planned Development District**

The proposed addition of any use not authorized within an approved final development plan, but allowable within the planned development district, may be added to the plan only when approved as provided, herein.

The Planning Commission shall hear all such proposed amendments. In the course of its consideration of any alteration presented hereunder, the Planning Commission shall hold a public hearing for all residents and other parties who in the judgement of the Planning Commission have an interest in the amendment.

Said hearing is held for the purpose of determining whether or not the proposed addition so alters the approved plan as to change the basic policy and concept of that plan.

If the Planning Commission determines that the proposed amendment alters the plan, its action shall be in the form of a submission to the Board of Commissioners [Board of Mayor and Aldermen] for concurrence and the Planning Commission may adopt an amendment to the final plan only with an amended preliminary plan as a basis for such action. A report detailing the action recommended by the Planning Commission shall accompany the submission of the Board of Commissioners [Board of Mayor and Aldermen]. If the Planning Commission determines that the proposed amendment is a minor modification consistent with the preliminary plat, it may take final action on the amendment.

**8-210.2 Addition of Residential Density, Floor Area of Nonresidential Uses and All Other Changes, Other Than Changes in Use, Not Authorized in the Approved Development Plan, but Allowable Within the Planned Development District**

All proposed additions other than the additions of uses governed by Subsection 8-210.1, above, including the addition of residential density or nonresidential use area which exceed the minor changes permitted under Section 8-209, and were not authorized in the approved final development plan, but are allowable within the planned development district, shall be considered as provided herein.

All amendments to an approved development plan proposed under this section shall first be presented to the Planning Commission for a recommendation. In the course of its consideration of any amendment proposed hereunder the Planning Commission may hold a public hearing for all residents and parties who in the judgement of the Planning Commission have an interest in the amendment.

The Planning Commission shall hear the proposed amendment and shall forward its recommendation to the Board of Commissioners [Board of Mayor and Aldermen] for action. The Board of Commissioners [Board of Mayor and Aldermen] shall hold a public hearing for all residents and other interested parties prior to any final action on any amendment proposed hereunder. Should the Board of Commissioners [Board of Mayor and Aldermen] concur in the proposed amendment to the final development plan, the Planning Commission may adopt said amendment only with an amended preliminary plan as a basis for such action.

**8-210.3 Proposed Changes in a Development Plan Which Are Not Allowable Within the Planned Development District**

All other changes in the adopted final development plan exceeding those limits established for the planned development district must be made by the Board of Commissioners [Board of Mayor and Aldermen] under the procedures authorized by this ordinance for amendment of the zoning map. However, prior to any action by the Board of Commissioners [Board of Mayor and Aldermen] on a proposed amendment, the planning commission shall study the proposed amendment and shall prepare a report which will detail its recommendation on the proposed alteration and the reasons therefor. This report shall be submitted to the Board of Commissioners [Board of Mayor and Aldermen] prior to any final action on the proposed amendment.

**8-211 CONTROL OF PLANNED UNIT DEVELOPMENT FOLLOWING COMPLETION**

**8-211.1 Issuance of Certificate of Completion**

Upon completion of a planned unit development, or when developed in stages, of any portion of said development, the Planning Commission shall issue a certificate certifying this fact, and the Zoning Administrator shall note the issuance of the certificate on the recorded final development plan.

**8-211.2 Changes in the Use of Land or Bulk of Structures Within a Planned Development After Completion**

After the certificate of completion has been issued, the use of land and the construction, modification, or alteration of any buildings or structures within the planned development will be governed by the approved final development plan, rather than by any other provisions of this ordinance. No changes may be made in the approved final development plan, except upon application to the appropriate agency under the procedure below:

- (a) Any minor extensions, alterations, or modifications of existing buildings or structures may be authorized by the Board of Zoning Appeals, if the extensions, alterations or modifications are consistent with the purposes

and intent of the recorded final development plan. No change authorized by this section may increase the cube of any building or structure by more than ten (10) percent.

- (b) Any uses not authorized by the approved final development plan, but allowable in the planned development district within which the planned development is located as a permitted use or as a special exception, may be added to the recorded final development plan under the procedures provided by this ordinance for the approval of conditional uses.
- (c) A building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan, unless an amendment to the final development plan is approved, as set forth below.
- (d) Changes in the use of common open space may be authorized by an amendment to the final development plan provided that no amendment approved hereunder may act to abrogate or annul any covenant which provides for the use, operation, or continuance of the common open space.
- (e) All other changes in the final development plan must be made by the Board of Commissioners [Board of Mayor and Aldermen], under the procedures authorized by this ordinance for amendment of the zoning map. No changes may be made in the final development plan, unless such are required for the continued successful functioning of the planned development or unless such are required by changes in conditions that have occurred since the final plan was adopted or by changes in the development policy of the community.
- (f) No changes in the final development plan which are approved under this section are to be considered as a waiver of the covenants limiting the use of land, buildings, structures and improvements within the area of the planned development, and all rights to enforce these covenants against any changes permitted by this section are expressly reserved.

### **8-211.3 Resubdivision of a Planned Unit Development After Completion**

A planned unit development may be subdivided and resubdivided for purpose of sale or lease after the certificate of completion has been issued under the procedures set forth below:

- (a) If the subdivision or resubdivision of planned development will create a new plot line, the applicant shall make application to the Planning Commission for the approval of a subdivision or resubdivision. The Planning Commission may approve the subdivision or resubdivision of each section of the subdivided or resubdivided planned development if it meets the provisions of this article governing density, common open space, and dimensional requirements.
- (b) All sections of a subdivided or resubdivided planned development are to be controlled by the final development plan rather than by the provisions of the zoning ordinance that otherwise would be applicable. The

provisions of Subsection 8-211.2, governing changes in the final development plan, will apply.

- (c) The owners or lessees of a subdivided or resubdivided planned development may jointly make application for a conditional use or for an amendment to the adopted final development plan.

### **CHAPTER 3. RESIDENTIAL PLANNED UNIT DEVELOPMENT**

#### **8-301 PURPOSE AND INTENT OF RESIDENTIAL UNIT DEVELOPMENT DISTRICTS**

These districts are designed to accomplish the following:

- (A) To encourage variety, flexibility and innovation in land development and land-use for basically residential areas which is consistent with the overall goals and objectives of the long-range general plan.
- (B) To encourage a mixture of housing types.
- (C) To provide a harmonious blending with the surrounding development, minimizing such negative influences as land use conflicts, heavy traffic congestion and excessive demands on existing or proposed public facilities.
- (D) To provide for increased safety, amenity and livability through improved design.
- (E) To provide open space.
- (F) To provide for the best use of the site consistent with the goals of protecting and enhancing the natural environment.

#### **8-302 GENERAL STANDARDS GOVERNING PROJECT APPROVAL**

The Planning Commission shall consider the proposed planned unit development from the point of view of the standards and purposes of the regulations governing the residential planned unit development so as to achieve a maximum of coordination between the proposed development and the surrounding uses; the conservation of woodland and the protection of watercourses from erosion and siltation; and a maximum of safety, convenience and amenity for the residents of the development. To these ends the Planning Commission shall consider the location of buildings, parking areas and other features such as streams and trees; the efficiency, location, and screening of the parking areas; and such other matters as the Planning Commission may find to have a material bearing upon the stated standards and objectives of these regulations.

#### **8-303 ACTIVITIES PERMITTED WITHIN A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

A residential planned unit development may be permitted within any residential district as well as within any commercial district wherein residential activities are permitted as other than an accessory use. The provisions of this section shall govern uses and activities permitted within all residential planned unit developments.

The following activities, as described in the use classifications appearing in ARTICLE I, CHAPTER 3, may be permitted as a part of a planned unit development only when such activities are approved as part of an overall development plan in accordance with the procedure set forth in CHAPTER 2, of this article.

**8-303.1 Permitted Uses**

(a) Residential Activities

All dwelling and rooming unit types are permitted except mobile homes which are permitted only in mobile home parks in accordance with the provisions of Section 8-311.

(b) Community Facility Activities

Administrative Services  
Community Assembly  
Educational Facilities  
Cultural and Recreational Services  
Essential Public Transport, Communication and Utility Services  
Extensive Impact Facilities  
Health Care Facilities  
Intermediate Impact Facilities  
Special Personal and Group Care Facilities  
Religious Facilities

**8-303.2 Accessory Uses**

Any accessory use permitted within any residential district may be permitted within a residential planned unit development to the extent that such activities are approved within an overall development plan.

**8-303.3 Temporary Uses**

The temporary uses and structures specified in Section 11-203.402 as permissible within residential districts may be permitted within residential planned unit developments for the limited time periods specified for each such use or activity.

**8-303.4 Prohibited Uses**

Any use, other than a temporary use, not approved with an overall development plan or subsequent amendment thereto.

**8-304 MINIMUM SIZE OF RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICTS (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)**

No residential planned unit development may contain less than the minimum area as stipulated, unless the Planning Commission and Board of Commissioners [Board of Mayor and Aldermen] find that a tract containing less than this minimum is suitable as a planned unit development by virtue of its historical character, unique scenic qualities, ecological or topographic features. Whenever a residential planned unit development is

proposed to be located within two (2) or more zoning districts with different required minimum areas, the largest required minimum area shall control.

<u>Base Zoning District</u>	<u>Minimum Gross Area for Formation of Residential Planned Unit Development District</u>
AR	15 Acres
R-40	10 Acres
R-20	7 Acres
R-15	4 Acres
R-10	3 Acres
R-5	2 Acres
RM-1	2 Acres
RM-2	1 Acre
MRO	1 Acre
TC-R	2 Acres

**8-305 OVERALL DENSITIES AND BULK REGULATIONS FOR RESIDENTIAL PLANNED UNIT DEVELOPMENTS**

The maximum overall densities for residential planned unit development shall be in terms of the number of dwelling units per gross acre of all the area within said development, as provided in Table 8-305.1A, and as explained herein.

(A) The maximum floor area for residential planned unit development shall be in terms of a ratio of floor area per total area within said development, as provided herein.

Residential floor area shall be construed as the sum of areas for residential use on all floors of the exterior walls, including halls, lobbies, stairways, elevator shafts, enclosed porches and balconies, and below-grade floor areas used for habitation and residential access.

Not countable as floor area are:

1. Open terraces, patios, atriums, or balconies
2. Carports, garages, breezeways, tool sheds
3. Special-purpose areas for common use of occupants, such as recreation rooms or social halls
4. Staff space for therapy or examination in care housing
5. Basement space not used for living accommodations
6. Any commercial or other nonresidential space

**TABLE 8-305.1A (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)**

**DENSITY AND BULK REGULATIONS FOR RESIDENTIAL  
PLANNED UNIT DEVELOPMENT WITHOUT DENSITY BONUS**

<b>Base Zoning District</b>	<b>Maximum Overall Density (Dwelling Units per Gross Acre)</b>	<b>Maximum Floor Area Ratio (Total Floor Area per Total Area in Development)</b>	<b>Minimum Outdoor Area Ratio (out-door Area per Total Floor Area)</b>	<b>Minimum Living Space Ratio (Living Space Area per Total Floor Area)</b>	<b>Minimum Recreation Area Ratio (Recreation Area per Total Floor Area)</b>
AR	.5	.050	17.0	12.4	.35
R-40	1.1	.080	10.0	8.1	.31
R-20	2.2	.150	5.2	3.5	.20
R-15	3.0	.220	3.4	2.3	.17
R-10	6.0	.300	2.4	1.4	.14
R-5	8.7	.400	1.8	1.1	.13
RM-1 & MRO & TC-R	17.5*	.650	1.1	.7	.11
RM-2	35.0*	1.250	.5	.3	.07

**NOTE:** In a residential planned unit development which is especially designed for the use and occupancy of persons of sixty (60) years of age or older or families with one (1) spouse of that age, maximum permitted densities may be increased up to fifty (50) percent over that shown in the districts indicated.

- (B) Yard requirements for residential planned unit developments are waived and the following minimum controls shall be applied.
- (C) The minimum total outdoor area (including all uncovered outdoor areas, such as streets, parking, lawn, landscaped areas, patios, recreation, as well as usable roofs and uncovered balconies) shall be provided at no less than a minimum ratio of outdoor area per total floor area, as provided herein.
- (D) The minimum total living space (that part of the total outdoor area which includes lawn, landscaping, and recreation areas and excluding streets and parking) shall be provided at no less than a minimum ratio of living space are per total floor area, as provided herein.
- (E) The minimum total recreation area (that part of living space which is any relatively large contiguous area for recreation purposes) shall be provided at no less than a minimum ratio of recreation area per total floor area as provided herein.
- (F) If a residential planned unit development embraces more than one base zoning district requiring different maximum permitted overall densities and floor area ratios and different minimum outdoor area, living space, and recreation area ratios, these values shall be calculated separately for each distinct district, and a weighted average (weighing the area in each zoning district in proportion to its share of the total area of said development in such district) of each of these values shall be applied to said development.
- (G) The maximum permitted overall densities, the maximum permitted floor area ratios and the minimum outdoor area, living space, and recreation area ratios shall vary depending upon the combination of building types. The controls hereinafter stipulated shall be applied to a residential planned unit development.

**8-305.1 Densities and Bulk Regulations for Residential Planed Unit Developments Without Density Bonus**

The maximum permitted overall densities and floor area ratios and the minimum outdoor area, living space, and recreation area ratios for residential planned unit development without density bonus shall be as indicated in Table 8-105.1A, entitled, "Density and Bulk Regulations for Residential Planned Unit Development Without Density Bonus".

**8-305.2 Densities and Bulk Regulations for Residential Planned Unit Developments with Density Bonus**

Within those districts where permitted, whenever the planning commission determines that increased densities in excess of those provided in Subsection 8-305.1, above, would not have a negative impact on the surrounding neighborhood, density bonuses may be granted in accordance with the criteria set out in Table 8-305.2A. In no instance, however, shall the density and bulk permitted be greater than nor the open space less than that required by Table 8-305.2B.

TABLE 8-305.2A (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)

**DENSITY BONUSES FOR RESIDENTIAL PLANNED UNIT DEVELOPMENTS**

<b><u>AMENITY PROVIDED</u></b>	<b><u>ZONE DISTRICT BONUS*(1)</u></b>			
	<b><u>R-10</u></b>	<b><u>R-5</u></b>	<b><u>RM-1, MRO, TC-R</u></b>	<b><u>RM-2</u></b>
Inclusion of Private Outdoor Space for Each Dwelling Unit	.2	.26	.5	1.00
Preparation of a Master Landscape Development and Maintenance Plan(2)	.2	.26	.5	1.00
Provision of Underground or Fully Concealed Parking Areas for All Dwelling Units	.2	.26	.5	1.00
Inclusion of Two (2) or more Housing Types Within an Overall Plan of Development	.2	.26	.5	1.00

- NOTES:**
- (1) Bonus in dwelling units per gross acre.
  - (2) A master landscape development and maintenance plan shall include the following:
    - (a) A detailed plan for the ornamental planting of all open space.
    - (b) A plan of preservation for existing trees located within open space.
    - (c) A coordinated plan for street furniture, signage, etc.
    - (d) A long term maintenance and replacement program for all common open space.
  - (3) To qualify for the bonus under this provision, the plan for development must demonstrate:
    - (a) That any portion of the site subject to flood will only be utilized for open space.
    - (b) That no development, excepting streets, will take place on slopes in excess of fifteen (15) percent.
    - (c) That minimum grading will occur on the site.

**TABLE 8-305.2B (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)**

**DENSITY AND BULK REGULATIONS FOR RESIDENTIAL  
PLANNED UNIT DEVELOPMENT WITH FULL DENSITY BONUS**

<b>Base Zoning District</b>	<b>Maximum Overall Density (Dwelling) Units per Gross Acre)</b>	<b>Maximum Floor Area Ratio (Total Floor Area per Total Area in Development)</b>	<b>Minimum Outdoor Area Ratio (Outdoor Area per Total Floor Area)</b>	<b>Minimum Living Space Ratio (Living Space Area per Total Floor Area)</b>	<b>Minimum Recreation Area Ratio (Recreation Area per Total Floor Area)</b>
AR	X	X	X	X	X
R-40	X	X	X	X	X
R-20	X	X	X	X	X
R-15	X	X	X	X	X
R-10	7.0	.350	2.1	1.3	.14
R-5	10.0	.450	1.8	1.1	.13
RM-1, MRO, TC-R	20.0*	.700	.8	.5	.08
RM-2	40.0*	1.400	.5	.3	.07

\* In a residential planned unit development which is especially designed for the use and occupancy of persons of sixty (60) years of age or older or families with one (1) spouse of that age, maximum permitted densities may be increased up to fifty (50) percent over that shown in the districts indicated.

**8-306 OBSTRUCTION, HEIGHT REGULATIONS, MINIMUM DISTANCE BETWEEN BUILDINGS, COURT REGULATIONS AND MINIMUM DISTANCE BETWEEN WINDOWS AND WALLS OR LOT LINES IN RESIDENTIAL PLANNED UNIT DEVELOPMENT**

Except as provided in Section 8-309, below, all buildings constructed in any planned unit development shall comply with the obstruction prohibition and maximum height stipulated in ARTICLE III, CHAPTER 3.

These standards shall prevail regardless of use, activity, or nature of building in a residential planned unit development.

**8-307 PARKING (AMENDED BY ORDINANCE 2008-05, ADOPTED MAY 27, 2008)**

**8-307.1 Required Accessory Off-Street Parking**

The required accessory off-street parking space and off-street loading requirements contained in ARTICLE VI, CHAPTER 1, shall apply as applicable. Should any contradictions exist in these referred to requirements for the same activity, the greatest requirement shall control. In a residential planned development which is especially designed for the use and occupancy of persons sixty (60) years of age or older or families with one (1) spouse of that age, a minimum of one (1) off-street parking space for two (2) dwelling units shall be required.

In the above noted instance, the Planning Commission may permit a variance from the applicable off-street parking and loading requirements in approving the final development plan of said development .

**8-307.2 Required Parking and Storage of Boats/Trailers/Campers in Multi-Family Developments**

Because of their unique character, multi-family developments located within Planned Unit Developments require additional standards. Each multi-family development located within a Planned Unit Development is required to provide parking and storage for boats, trailers and campers at a rate of one (1) space for each eight (8) dwelling units. This requirement may be waived by the Planning Commission if the developer agrees to prohibit the parking of boats, trailers and campers at any location within the development and a contingency plan is provided for said parking and storage area. In the event that the prohibition is not being enforced, the Planning Commission may require the implementation of the contingency plan.

**8-308 SIGN REGULATIONS IN RESIDENTIAL PLANNED UNIT DEVELOPMENT**

The sign provisions applicable to uses within the base zoning district shall apply to such uses within any residential planned unit development.

**8-309 SPECIAL YARD AND HEIGHT REQUIREMENTS ALONG PERIMETERS ADJOINING CERTAIN DISTRICTS**

Where a residential planned unit development adjoins an AR, R-40, R-20, R-15, or R-10 District, without intervening open space at least one hundred-twenty (120) feet in width serving as a separation between buildable areas, the following provisions shall apply.

**8-309.1 Yards, Fences, Walls or Vegetative Screening at Edges of Residential Planned Unit Development**

Yards, fences, walls or vegetative screening shall be provided at edges of the residential planned unit development where needed to protect residents from undesirable views, lighting, noise, or other off site influences, or to protect residential occupants of other districts from similar adverse influences within the residential planned unit development. In particular, excessive off-street parking areas for loading and unloading other than passenger vehicles, and areas for storage and collection of refuse and garbage shall be screened.

**8-309.2 Height Limitations at Edges of Residential Planned Unit Developments**

In general the height provisions applicable to all base districts which the residential planned unit development overlays shall apply to all buildings and structures located therein. However, along any district boundary where the adjoining district permits less height than the residential planned unit development no building within the residential planned unit development shall project through imaginary planes starting at the maximum height permitted in the adjoining district and leaning inward from district boundaries at an angle representing an increase of one-half (1/2) foot in height for each foot of horizontal distance perpendicular to the boundary.

**8-310 SPACING OF BUILDING OR PORTIONS OF BUILDING CONTAINING DWELLING UNITS**

Requirements and limitations concerning the placement and extent of required yard and the spacing of buildings, or portions of buildings, containing dwelling units shall be as set forth below.

**8-310.1 Adoption of Volumes 2 and 4, of HUD's Minimum Property Standards Series as Supplemental Guides**

Except as generally or specifically modified herein, Volume 2, of the Minimum Property Standards, series, Multi-Family Housing, and Volume 4, Manual of Acceptable Practices, in their current editions, as published by the U.S. Department of Housing and Urban Development, together with related standards and explanatory material, shall be related definitions, measurements, ratios, and requirements. References to Volume 2, of the Minimum Property Standards, series, may be abbreviated herein as MPS; references to Volume 4, as MAP.

For purposes of these regulations, where MPS or MAP indicates that decisions or determinations are to be made by HUD or specified officials thereof, such decisions or determinations shall be made instead by appropriate local government agencies or officials.

**8-310.2 Intent: Application**

Yards, courts, and other open space required herein in relation to structures or portions of structures containing dwelling units are intended to perform a variety of functions. Among these are assuring adequate privacy, desirable outlook, natural light and ventilation; access to and around buildings, off-street parking

and loading space and service areas; space for landscaping, spacing between buildings and portions of buildings for reducing potential adverse effects of noise, odor, glare, or hazards from fire; and recreational space near buildings.

These regulations, supplementing those set forth elsewhere herein with respect to residential planned unit developments shall apply to yards, courts, and open space, and building spacing in such districts and for such uses, and measurements and interpretations with regard thereto.

**8-310.3 Required Yards and Courts Need Not Be at Ground Level; Exceptions**

Except in the case of sized yards required adjacent to streets, required yards and courts relating to residential uses controlled by these regulations need not be a ground level if, and to the extent that, in other locations their functions, nature, orientation, areas, access, and improvements are appropriate to uses within the building and adjoining buildings, and particularly to adjacent uses at the same level of the building and overlooking uses in the same or nearby buildings. These requirements are intended to reduce unnecessary fragmentation of open space around buildings and to encourage provision of such space in locations and dimensions providing broader functional utility, and are not intended to reduce the total amount of such space required.

**8-310.4 Permanent Open Space in Streets, Common Open Space, etc., May Be Included as Part of Building Spacing Requirements; Limitations**

Where lots or building sites adjoin permanent open space in streets, common open space, or other open space intended to remain so for perpetuity (other than space required adjacent to other structures), half of the width of such open space may be included in meeting building spacing requirements, subject to the following limitations and exceptions:

**8-310.401 Primary or Secondary Windows Facing Streets Parking Area**

Where walls containing primary or secondary windows (see Subsection 8-310.7, Definition) at or below the third-story level face streets or parking areas for ten (10) or more cars, the full dimension of the required yard shall be provided outside the boundaries of the street or parking area.

**8-310.402 Primary or Secondary Windows Facing Other Open Space**

Where walls containing primary or secondary windows at or below the third-story level face other permanent off site open space without an intervening street, driveway, or parkway area, the full dimension of the required yard shall be provided outside the boundaries of such off site open space if off site use is likely to be of a nature adversely affecting privacy or parking area.

**8-310.5 Sites to Be Identified Regardless of Ownership**

Where two (2) or more buildings containing dwelling units are to be located on a single lot or tract, building sites pertaining to each shall be identified for determinations concerning compliance with spacing requirements. Open space shall be provided adjacent to lines of the building sites as though they were lot lines.

### **8-310.6 Calculations of Building Spacing Requirements**

Spacing requirements for buildings or portions of buildings containing dwelling units shall be based on horizontal length of walls, number of stories, type of windows in walls involved, and orientation of main exterior entrances to individual units. Distance between walls shall be at least the sum of the depths of the open spaces required for each.

#### **8-310.601 Where Portions of Buildings Contain Different Numbers of Stories**

Where portions of buildings contain different numbers of stories, required clearance from lot or building site lines shall be as established for the portion nearest to the lot or building site line, except where spacing required for portions further from the line is of greater depth, in which case the depth, so established is the required clearance from the line (as projected vertically when space is provided other than at ground level). Lower portions of buildings may extend into clearance distances required for upper portions if roof areas are appropriately improved in relation to views from the same or higher levels, but shall provide clearance to meet their own requirements.

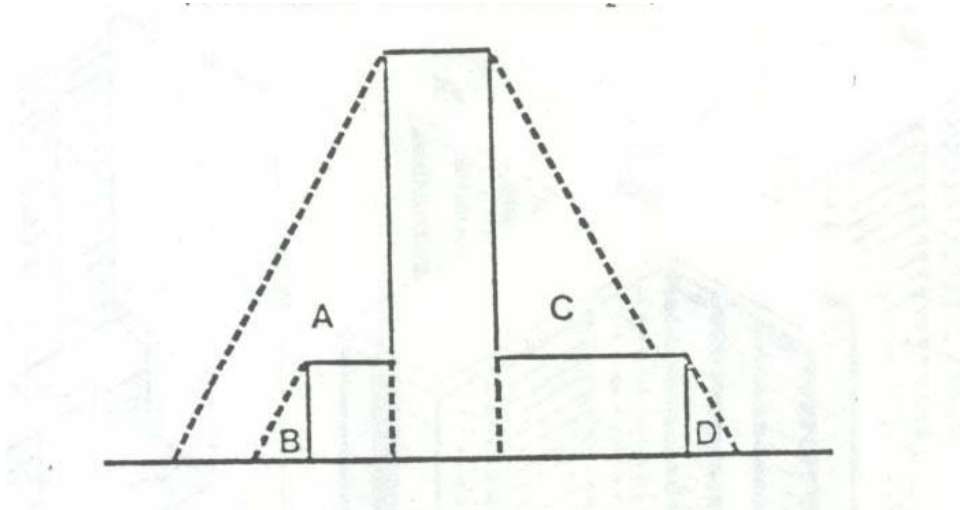
The drawing illustrates these relationships (see FIGURE 8-310.601A). At the left of the building, the lot or building site line would be required to be at or beyond the point at which the diagonal at "A" reaches the ground, since the portion of the building to which it relates requires greater spacing than does "B". To the right of the building, "D" requires greater spacing than does "C" and would therefore determine the requirement.

#### **8-310.602 Length of Walls**

Length of walls shall be measured as the horizontal distance from corner to corner. Where walls in continuous general frontage (as in the case of attached dwellings) are offset by angles or setbacks of six (6) feet or more, length of each segment so set off shall be measured separately in establishing pertinent yard depth. Where walls in continuous general frontage enclose portions of buildings varying one (1) story or more in height, as in the illustration, above, length of each segment so varying one (1) story or more in height (as illustrated in FIGURE 8-310.605A), the length of a segment so varying shall be measured separately in computing pertinent yard depth. Length of the wall of a circular building shall be constructed as the diameter of the building.

(See Subsection 8-310.605 and FIGURE 8-310.605A.)

**FIGURE 8-310.601A**  
**PERMITTED OVERLAP OF YARDS**  
**(Vertical Relationships)**



**8-310.603 Height in Stories**

Height in stories shall be computed as the actual number of stories in the wall above ground level, with the following exceptions. Where the wall is along a slope, the number of stories shall be construed as the arithmetic mean number, with half a story or more considered as a full story, less than half a story ignored in computations. When height per story exceeds an average of eleven (11) feet, calculations involved in yards or spacing determinations shall be based on an assumed number of stories derived by dividing building height by ten (10) feet.

Penthouses, roof shelters, and housing for mechanical equipment shall be ignored in computations, except where they are visible from the ground level within the lot or the building site, are ten (10) feet or more in height, and occupy fifty (50) percent or more of the length of the wall at their bases, in which case an additional story shall be included in the computation.

**8-310.604 Yard or Other Open Space Depth, How Measured**

Yard or other open space depth between exterior building walls and adjacent lot or building site lines (projected, vertically where appropriate) shall be measured horizontally in relation to the ground, and perpendicular to straight walls or radially to curved walls. Distance at all points shall be at least equal to minimum requirements set forth herein.

**8-310.605 Permissible Overlap of Yards**

Yard space for two (2) walls may overlap where it does not affect the distance between two (2) buildings. The drawings (see FIGURE 8-310.605A) provide graphic explanation of permissible overlap and

methods for measuring length of walls and depth of yards for a variety of building forms.

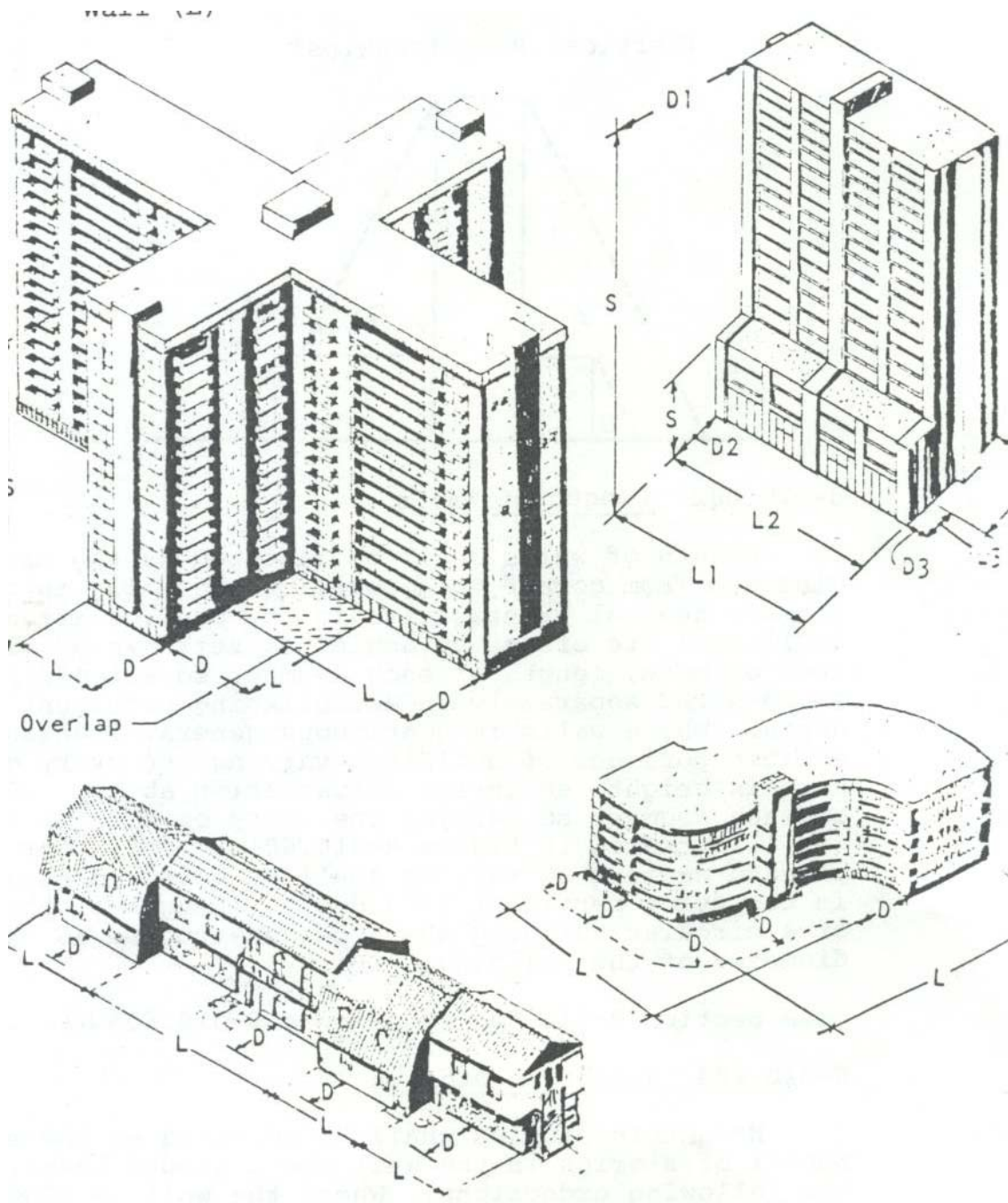
**8-310.7 Definitions and Classifications Relating to Windows and Walls**

For purposes of establishing open space requirements adjacent to walls enclosing dwellings, the following definitions and classifications shall govern.

- (a) **Habitable rooms** are rooms designed and used for living, sleeping, eating, and cooking, or combinations thereof. Bathrooms, toilet compartments, closets, halls, storage rooms, laundry and utility spaces, basement recreation rooms, and similar areas are not considered habitable rooms.
- (b) **Primary windows** are principal windows in habitable rooms, except bedrooms and kitchens.
- (c) **Primary walls** are walls containing primary windows and/or main exterior entrances to individual living quarters when directly facing the primary wall or other living quarters.
- (d) **Secondary windows** are windows of habitable rooms other than primary windows, as defined above.
- (e) **Secondary walls** are walls containing only secondary, or secondary and tertiary windows.
- (f) **Tertiary windows** are windows other than for habitable rooms.
- (g) **Tertiary walls** are windowless walls, or walls containing only tertiary windows.

FIGURE 8-310.605A

Examples Illustrating Permissible Overlap of Yards and Determination of Height in Stories (S), Yard Depth (D), and Length of Wall (L)



SOURCE: Manual of Acceptable Practices to the HUD Minimum Property Standards (MAP) (Washington, D.C.: HUD, 1973).

**8-310.8 Formulas Determining Minimum Open Space Requirements Adjacent to Walls**

Minimum distance from walls to lot lines or building site lines for buildings or portions of buildings containing living quarters shall be computed as follows, where D, is depth in feet, L, is length in feet, and S, is height in stories:

- (a) Primary Walls:  $D = 6 + L/10$
- (b) Secondary Walls:  $D = 2 + S + L/10$
- (c) Tertiary Walls: Only as Required for Fire Protection by Building or Other Applicable Codes.

**8-310.9 Special Requirements and Modifications Concerning Courts**

**8-310.901 Outer Courts**

(1) Width of Outer Courts

Bounded on three (3) sides by building walls or potential building walls, shall be not less than the sum of the required yard distances measured from opposing building walls.

(2) Width Reduction for Shallow Courts

Where depth of a court is less than half the width, minimum width required shall be reduced twenty-five (25) percent.

(3) Depth

The depth of a court shall not be greater than one and one-half (1 1/2) times width.

(4) Where Walls Are Not Parallel to Property or Building Site Lines

The nearest portion to such lines shall be at least the required minimum distance therefrom.

**8-310.902 Inner Courts**

(1) Dimensions

Inner courts formed on four (4) sides by building walls or potential building walls shall have a minimum dimension equal to the sum of the required yards, but not less than ten (10) feet. Their areas shall not be less than one-hundred (100) square feet for one (1) story or one hundred-fifty (150) square feet for two (2) stories or more.

(2) Unobstructed Passageway

An unobstructed passageway shall be provided at the lowest level of each inner court (except in cases of inner courts atriums, or enclosed patios for single dwelling units) with a cross-section not

less than four (4) feet wide by seven (7) feet high. Such passageway shall be continuous from the inner court to unobstructed open space adjacent to the building, and shall be so aligned as to facilitate passage of nonvehicular fire fighting equipment, including ladders.

**8-310.10 Yard, Courts, Open Space, and Building Spacing for Structures or Portions of Structures not Containing Dwellings**

For structures or portions of structures not containing dwelling units, and not otherwise controlled by these regulations, yards, courts, open space and building spacing shall be established with due regard given to the use of the structure, the anticipated timing of vehicular and pedestrian traffic and the exposure of nearby living quarters to such use. Additionally the position of primary and secondary window walls, the separation of residential uses of screening walls, fences or vegetative screening shall also be considered.

**8-311 SPECIAL PROVISIONS FOR MOBILE HOME PARKS**

Mobile home parks may be permitted only as residential planned unit developments in accordance with the general provisions of this chapter and special provisions of this section and its constituent subsections.

**8-311.1 Development Standards**

The provisions of this section shall apply to mobile home parks in the manner indicated.

**8-311.101 Site Conditions**

The mobile home park sites shall conform to the following provisions:

- (1) The park shall be located so as to minimize hazards from objectionable smoke, noxious odors, unusual noise, the possibility of subsidence, the probability of flood or erosion or the probability of insect or rodent infestation.
- (2) The condition of soil, groundwater level, drainage, rock formations, and topography shall be such as not to create hazards to the property or to the health and safety of the occupants.

**8-311.102 Minimum Area**

The minimum area of a mobile home park shall be no less than five (5) acres regardless of the zoning district in which it is located.

**8-311.103 Location**

Mobile home parks may be located within the R-5, Medium-High Density and RM-1, High Density Residential Districts.

**8-311.104 Density**

The maximum overall density of dwellings within mobile home parks shall not exceed eight (8) per gross area.

**8-311.105 Access**

Direct vehicular access to the mobile home park shall be provided by means of an abutting improved public street or way and access to each mobile home stand shall be by a permanently maintained private street or way which is protected by a permanent easement. Sole vehicular access shall not be by an alley.

**8-311.2 Required Services and Facilities**

All of the following services and facilities shall be provided in mobile home parks in accordance with the publication "Minimum Property Standards for Mobile Home Courts", in its current edition, as published by the U.S. Department of Housing and Urban Development.

**8-311.201 Water Supply and Distribution System**

Each mobile home park shall be served by a public water supply of adequate quantity, quality and pressure. Adequate fire protection shall be provided for each mobile home located within the park.

**8-311.202 Sewage Disposal**

Each and every mobile home within a mobile home park shall be served by a central sewage collection and treatment system (as defined by this ordinance).

**8-311.203 Solid Waste Disposal System**

Solid Waste collection stands shall be provided for waste containers. Such stands shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

**8-311.204 Service Buildings**

Service buildings housing sanitation and laundry facilities shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations, and plumbing and sanitation systems.

**8-311.205 Recreation Area**

Adequate recreation facilities for the residents of the project shall be provided in locations easily accessible to the living units and where they do not impair the view and privacy of living units. Attractive outdoor sitting areas shall be provided, appropriate in size, type, and number to the needs of the residents.

Well equipped playgrounds of adequate size and number shall be provided, where it is anticipated that children will occupy the premises.

### **8-311.3 Street Width and Construction, Including Sidewalks**

#### **8-311.301 Streets**

All mobile home developments shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

(1) Pavement Widths

Pavements shall be a minimum of twenty-four (24) feet in width.

(2) Paving Required

All streets shall be paved with an all weather bituminous or concrete surface.

(3) Visibility at Intersections

Visibility at intersections of streets shall be as set forth in Subsection 3-306.4, of this ordinance.

#### **8-311.302 Walks**

All mobile home developments shall be provided with safe, convenient, all season pedestrian accesses of adequate width for intended use. Sudden changes in alignment and gradient shall be avoided.

(1) Common Walk System

A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks shall have a minimum width of three (3) feet.

(2) Individual Walks

All mobile home stands shall be connected to common walks, streets, driveways and parking spaces by individual walks. Such individual walks shall have a minimum width of two (2) feet.

### **8-311.4 Yards**

Along the entire periphery of a mobile home park yards meeting the basic requirement for the zoning district in which the park is located shall be provided. Within the interior portion of a mobile home park, no yards, except as required to meet other provisions of this section are required.

### **8-311.5 Spacing of Mobile Homes and Site Coverage**

- (a) Mobile homes shall be so harbored on each space that there shall be at least twenty-five (25) foot clearance between mobile homes; for mobile homes parked end-to-end, the end-to-end clearance may be less than twenty-five (25) feet, but not less than fifteen (15) feet.
- (b) There shall be a minimum distance of ten (10) feet between the nearest edge of any mobile home stand and an abutting interior street.
- (c) Mobile home stands shall not occupy an area in excess of twenty-five (25) percent of the respective lot area. The total area occupied by the mobile home and its accessory structures shall not exceed fifty (50) percent of the respective lot area.

### **8-311.6 Individual Mobile Home Site**

#### (a) General

The limits of each mobile home lot shall be marked on the ground by suitable means. Location of lot limits on the ground shall be the same as shown on accepted plans.

#### (b) Mobile Home Stands

The mobile home stands shall be improved to provide adequate support for the placement and tie-down of the mobile home. The stand shall not heave, shift, or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration, wind, or addition. Such stand shall comply with the publication "Minimum Property Standards for Mobile Home Parks", in its current edition, as published by the U.S. Department of Housing and Urban Development.

#### (c) Outdoor Living Area

Each mobile home lot shall be provided with an outdoor living and service area. Such area shall be improved as necessary to assure reasonable privacy and comfort. The minimum area shall not be less than three hundred (300) square feet with a minimum dimension of fifteen (15) feet.

### **8-311.7 Buffer and Screening**

A landscape buffer shall be provided along the perimeter of the site boundaries not less than fifteen (15) feet in width, except that a minimum buffer area from any public street shall be no less than twenty (20) feet.

Within the landscaped buffer, a continuous fence six (6) feet to eight (8) feet high or landscaped screen shall be provided. Such fence shall be opaque and such screening shall be a year-round evergreen four (4) feet wide and at least four (4) feet high at the time of planting and expected to achieve a height of six (6) feet within three (3) years. No landscaped screen or fence shall be provided within fifteen (15) feet of any vehicular entrance and/or exit to the park.

## **CHAPTER 4. COMMERCIAL PLANNED UNIT DEVELOPMENT**

### **8-401 INTENT**

These districts are designed to accomplish the following:

- (A) To encourage the clustering of commercial activities within areas specifically designed to accommodate the activities and to discourage the proliferation of commercial uses along major thoroughfares and noncommercial areas.
- (B) To provide for the orderly development of commercial activities so that any adverse impact on surrounding uses and on the general flow of traffic can be ameliorated.
- (C) To encourage an orderly and systematic development design providing the rational placement of activities, parking and auto circulation, pedestrian circulation, ingress and egress, loading, landscaping, and buffer strips.
- (D) To encourage commercial development which is consistent with the Long-Range General Plan for Hendersonville.

This chapter shall only be used for commercial planned unit developments upon a determination by the Planning Commission that the proposed development is in harmony with the purpose and intent as stipulated in this section.

### **8-402 TYPES AND PURPOSES OF COMMERCIAL PLANNED UNIT DEVELOPMENT**

#### **8-402.1 Types of Commercial Planned Unit Development (AMENDED BY ORDINANCE 2006-58, JANUARY 9, 2007)**

The types of commercial planned unit developments and the districts within which they are permitted shall be as shown below:

<b><u>Commercial PUD Type</u></b>	<b><u>Base District(s) Within Which Permitted</u></b>
<b>Retail/Service-Neighborhood Commercial-General</b>	<b>Neighborhood Convenience Service (NCS) General Commercial Service (GCS) Town Center-Commercial (TC-C)</b>
<b>Commercial-Tourism Commercial Enterprise-General</b>	<b>Highway Service Districts (HSD) Multiple Residential/Office (MRO)</b>
<b>Commercial Enterprise-Limited</b>	<b>Mixed Use Commercial Districts (MCD) Office-Professional Services Districts (OPS)</b>

#### **8-402.2 General Purpose of Commercial Planned Unit Developments**

The section sets out the intended functions for each of the various types of commercial planned unit development.

**8-402.201 Retail/Service Neighborhood Commercial**

This commercial planned unit development type is intended to provide a means of introducing convenience retail and service activities within residential neighborhoods. It is intended that where such districts are permitted they shall be strictly limited in the scope of goods and services offered to those of a convenience nature only. Moreover, it is intended that such centers shall remain small in size and that the overall bulk and appearance of buildings as well as open space and landscaping requirements shall assure continuing compatibility with surrounding residential property.

**8-402.202 Commercial-General**

This commercial planned unit development is intended to provide overall guidance for development of large scale retail/service complexes such as shopping centers. It is intended that developments approved under this provision shall be so located in relation to major streets and surrounding land uses as to assure adequate traffic carrying capacity and a high level of compatibility with and protection for surrounding activities.

**8-402.203 Commercial-Tourism**

This commercial planned unit development type is intended to encourage development of a high quality environment for tourism within Hendersonville. It is intended that developments approved under this provision shall be at the time of development and shall remain throughout their life, oriented toward their economic function as centers of tourism. Toward that end, it is expressly intended that all uses permitted within developments approved under this provision shall contribute to the basic function of entertaining and serving the needs of tourists. Specific limitations upon the type facilities or the nature of uses permitted may be required as a condition of approval in order to assure that all developments of this type function according to this limited purpose.

**8-402.204 Commercial Enterprise-General**

This commercial planned unit development is intended as a mechanism for encouraging the coordinated development of relatively large tracts into employment centers focused upon business and office related activities. In addition, certain retail and service functions are permitted which are intended to support the overall focus as a center for business and business related services. It is expressly intended that developments of this type shall not become principally oriented toward retailing or personal, (as opposed to business) services.

**8-402.205 Commercial Enterprise-Limited**

This commercial planned unit development is intended to perform much the same function of providing business services as is the commercial enterprise-general. However, the scope of activities as well as the permitted building bulk, required open space and landscaping provisions

are intended to assure the maintenance of a quality environment limited as to its potential for retailing activity. Developments of this type are intended to occur along major streets and to buffer residential areas from possible encroachment by retail trade activities.

**8-403 LOCATION AND REQUIRED AREA OF COMMERCIAL PLANNED UNIT DEVELOPMENT**

**8-403.1 Review of Adopted Long-Range General Plan Required**

In no event shall the location, composition, and extent of a proposed commercial planned unit development be approved, unless such proposed development is consistent with the actions and policies regarding land development adopted by the Planning Commission.

**8-403.2 Market Analysis for Commercial Planned Unit Development**

The Planning Commission may require a market analysis for any proposed commercial planned unit development. The market analysis will be utilized, among other things, to determine the impact of the proposed development on the long-range development of the commercial land use in the Hendersonville area, to determine the timing of any proposed development, to limit the extent of planned unit development-convenience serving a particular residential area; to ascertain the effects of a proposed development upon lands used or zoned for commercial purposes; to form a basis for evaluating the estimated effects on traffic, and other purposes which assist in an understanding of the public interest pertinent in the evaluation of a proposed development. The market analysis, if required, shall be provided by the landholder and the landholder shall provide any other economic data or analysis as may be reasonably requested by the Planning Commission or Board of Commissioners [Board of Mayor and Aldermen].

**8-403.3 Minimum Required Site**

Minimum site required for the various types of commercial planned unit developments shall be as shown below:

<u>Commercial PUD Type</u>	<u>Minimum Required Site in Square Feet</u>
Retail/Service-Neighborhood	20,000
Commercial-General	40,000
Commercial-Tourism	40,000
Commercial Enterprise-General	40,000
Commercial Enterprise-Limited	20,000

**8-404 ACTIVITIES PERMITTED WITHIN A COMMERCIAL PLANNED UNIT DEVELOPMENTS**

The provisions of this section shall apply to all uses and activities permitted within any commercial planned unit development.

#### **8-404.1 General**

In general, the uses and activities permitted within any commercial planned unit development shall be governed by the provisions applicable to the base district within which the particular type development may be permitted. In the instance of a development located in more than one (1) base zoning district, the provisions applicable to each base district shall apply to all portions of the commercial planned unit development located within it.

#### **8-404.2 Finding of Appropriateness**

Due to the unique ability of the planned unit development process to tailor individual developments so as to achieve balanced and reasonable use of the land while maintaining an assured measure of protection for surrounding owners, it is necessary that limited discretion be afforded the Planning Commission and Board of Commissioners [Board of Mayor and Aldermen] in the process of selecting uses appropriate within particular developments. In this regard, it is necessary that the uses permitted within a particular development not detract from the overall intent of each type district as established in Section 8-402. To this end, the selection of uses permitted within each individual commercial planned unit development will be guided by:

- (a) The use provisions established for the base districts.
- (b) The appropriateness of each use given the intended function of each type commercial planned unit development.
- (c) The unique nature of the property surrounding each development.

This process may result in limitations, restrictions or the prohibition of particular uses permitted within a base zoning district from a commercial planned unit development which overlays that district.

#### **8-404.3 Prohibited Uses (REVISED BY ORDINANCE 2005-6, ADOPTED FEB. 22, 2005)**

No approval granted to any commercial planned unit development shall result in any use being permitted which would otherwise not be permitted within the base zoning district which the commercial planned unit development overlays, except that the city may approve one-family, two-family and multi-family dwellings as a permitted use in commercial planned unit developments even if such use is not permitted in the base district. Such approval is strictly at the discretion of the City. Such multi-family residential use shall clearly be accessory, incidental and subordinate to the commercial use in the development. Such residential use may include apartments or condominiums above retail or office uses. In no event shall the residential building area exceed twenty-five (25) percent of the non-residential building area. The provisions applicable to RM-1 districts shall apply.

#### **8-405 BULK, BUILDING HEIGHT AND REQUIREMENTS APPLICABLE TO COMMERCIAL PLANNED UNIT DEVELOPMENTS**

Within commercial planned unit developments, the bulk and building height requirements set forth herein shall apply.

### **8-405.1 Floor Area Ratio**

The maximum floor area for commercial planned unit development shall be in terms of a ratio of floor area per total area within said development, as provided herein.

<u>Commercial PUD Type</u>	<u>Permissible Floor Area Ratio</u>						
	<u>NCS</u>	<u>CBD</u>	<u>GCS</u>	<u>MCD</u>	<u>MRO</u>	<u>OPS</u>	<u>HSD</u>
Retail/Service-Neighborhood	.5	N/A	N/A	N/A	N/A	N/A	N/A
Commercial-General	N/A	N/A	2.0	N/A	N/A	N/A	N/A
Commercial-Tourism	N/A	N/A	N/A	N/A	N/A	N/A	1.5
Commercial Enterprise-General	N/A	5	N/A	3	4.5	N/A	N/A
Commercial Enterprise-Limited	N/A	N/A	N/A	N/A	N/A	1.5	N/A

N/A - Not Applicable

### **8-405.2 Building Height**

The height of buildings permitted within commercial planned unit developments shall be controlled as provided herein.

#### **8-405.201 General**

Except as provided in Subsection 8-405.202, the height of buildings permitted within commercial planned unit developments shall be as established for the base zoning district(s) wherein the commercial planned unit development is to be located.

#### **8-405.202 Special Provision Applicable Along District Boundaries**

Along any district boundary where the adjoining district permits less height than the commercial planned unit development, no building within the commercial planned unit development shall project through imaginary planes leaning inward from district boundaries at an angle representing an increase of one-half (1/2) foot in height for each foot of horizontal distance perpendicular to the boundary.

## **8-406 OPEN SPACE REQUIREMENTS**

The following open space requirements shall be applied to the various types of commercial planned unit developments.

### **8-406.1 Provisions Applicable to Commercial Planned Unit Development-Convenience**

#### **8-406.101 Minimum Yard Requirements**

A front yard twenty (20) feet in depth shall be provided, and where the lot adjoins a street on more than one side, a yard twenty (20) feet in depth shall be provided adjacent to all streets. Side yards shall be ten (10) feet

in width adjacent to residential lots, but where the side of the lot is adjacent to a lot on which another convenience establishment is located, or is being constructed, or is definitely to be constructed, no side yard need be provided if the structures involved are to have a common or party wall, or are to have no space between their walls. If there is to be space between the walls of adjacent structures housing convenience establishments or their accessory uses, such space shall be at least five (5) feet in width. Rear yards shall be twenty-five (25) feet in depth.

**8-406.102 Landscaping Requirements; Buffering; Control of Appearances**

As minimum requirements: except for drives and walkways, any yard adjacent to a street shall be landscaped and maintained in a manner appropriate to a residential neighborhood for a distance of ten (10) feet from the lot line adjacent to the street, except for portions which adjoin lots in residential use, which shall be so landscaped and maintained for the full width or depth of the required yards within twenty-five (25) feet of adjoining lot lines. Side yards adjacent to lots in residential use shall be similarly landscaped and maintained for their full required minimum width. No such required landscaped area shall be used for off-street parking or loading. No landscaping adjacent to a street shall be of a nature which impairs visibility of or from approaching traffic, or creates potential hazards for pedestrians.

Where the site plan indicates potential adverse effects of parking or other characteristics of a use on the lot on which the convenience facilities are to be located, a wall, fence, or appropriate vegetative screening shall be required to be erected and maintained in such a manner as to eliminate such effects or reduce them to an acceptable level. Such buffering shall at a minimum prevent lights from automobiles parked or maneuvering incidental to parking from shining across adjacent residential property below a height of five (5) feet at the residential lot line, or from shining into any residential windows, if there is to be parking on the premises after dark.

**8-406.2 Provisions Applicable to Commercial Enterprise-General Commercial Planned Unit Developments**

All open spaces within all commercial enterprise-general districts shall be as established on the master plan of the development taking into account required building spacing, adequate light and air for affected streets, pedestrian ways and requirements for movement at street level.

**8-406.3 Provisions Applicable to all Other Types of Commercial Planned Unit Developments**

All commercial planned unit developments, excepting those subject to the provisions of Subsections 8-406.1 and 8-406.2, above, shall provide the following minimum width of open space from the site boundary to the nearest building line within the planned unit development:

<u>Location of Open Space</u>	<u>Width (in Lineal Feet)</u>
(1) Side of building where vehicular access and/or egress is from a public street and where vehicles stand or park in open space.	60
(2) Side and rear abutting residential district with no intervening street.	60
(3) Front and all other side and rear locations.	15

**8-407 PROVISIONS GOVERNING OFF-STREET PARKING AND LOADING**

**8-407.1 Approval of Vehicular Circulation Plan**

Portions of the plan relating to location and design of ingress and egress, traffic control, arrangement of off-street parking and loading facilities, and internal circulation shall be referred to the city engineer for study, and no commercial planned unit development shall be approved by the Planning Commission without the city engineer's written approval of the plan as submitted or if his approval is conditional, the inclusion of the conditions in the approval by the Planning Commission. Additional conditions and safeguards on such matters may be included by the Planning Commission or Board of Commissioners [Board of Mayor and Aldermen].

**8-407.2 General Provisions**

The number of parking and loading spaces provided, the design of parking areas and the surfacing of those areas shall be in accordance with the provisions of ARTICLE VI, CHAPTER 1. Where practicable, off-street parking facilities for groups of establishments shall be combined, but the total number of spaces required in such combination shall equal the sum of the numbers required for each of the individual establishments or uses. Spaces for the patrons or employees of individual establishments need not be marked as so reserved, but the site plan shall show spaces as related to uses in such a way that it can be determined at any time that individual responsibility for provision of space has been met and maintained.

**8-407.3 Landscaping Within Parking Areas**

Landscaping shall be provided within parking areas located within commercial planned unit developments in the amount and manner required by ARTICLE VI, Subsection 6-103.7.

**8-407.4 Lighting of Parking Areas**

Parking areas and pedestrian ways on the premises shall be lighted to an intensity of at least 0.5 foot candle. No such lighting shall be directed in a manner which illuminates adjoining residential premises and no source of incandescent or mercury vapor illumination shall be directly visible from any residential property.

#### **8-407.5 Vehicular Access Locations**

Vehicular access locations shall be provided so that vehicles entering or departing a commercial planned unit development site shall do so only at such locations.

Elsewhere along the property lines of said commercial planned unit development a physical separation between the said site and public rights-of-way shall be provided. A vehicular access location shall consist of such entrance and exit driveway openings so designed and located so as to minimize hazardous vehicular turning movements and traffic congestion. No vehicular access location serving a commercial planned unit development site shall be within one-hundred (100) feet of the intersection of street right-of-way lines, bounding, in part, the same commercial planned unit development site.

#### **8-408 LANDSCAPING AND DESIGN PROVISIONS**

To assist in preventing the transmission of light and noise from within a commercial planned unit development into any abutting residential district, screening shall be required where a commercial planned unit development abuts or is contiguous to any residential district. Without an intervening public street, but with or without an intervening alley or other public way, there shall be provided within the commercial planned unit development, but not within a public street or alley, continuous screening along the extent of the contiguity of the said districts. Such screening shall be of opaque or translucent materials resistant to deterioration by natural causes, or it shall be of such plant materials as will provide a year-round evergreen screening. Screening, as provided herein, shall be not less than six (6) feet in height, shall be provided from the grade of the property upward, and shall be permanently maintained.

#### **8-410 MISCELLANEOUS PROVISIONS APPLICABLE TO RETAIL/SERVICES-NEIGHBORHOOD COMMERCIAL PLANNED UNIT DEVELOPMENTS**

##### **8-410.1 Distance to Alternate Facilities or Locations**

No convenience establishment shall be permitted closer than one thousand (1,000) feet to the boundary of any district where similar facilities are generally permitted, nor shall any new establishment of a specific kind be located within one thousand (1,000) feet of an active establishment of the same nature found suitable for supplying the same needs for the general area involved, provided, however, that medical and dental offices may include groups or combinations of physicians and dentists. Measurement of distance indicated shall be along usual routes of pedestrian travel.

##### **8-410.2 Group of Convenience Establishments**

Strong preference shall be given to location of complementary additions in the immediate vicinity of existing convenience establishments of other types in patterns which facilitate easy pedestrian circulation from the surrounding area and from one establishment to another, and to arrangements which encourage joint use of parking areas and automotive entrances and exits. In cases where a proposed location is suitable for later addition of other permitted convenience facilities, an isolated food service or general personal service activity may be permitted. Separate medical service activities (other than professional offices conducted as accessory uses in residences of such physicians and dentists)

shall also be so located unless substantial public advantage can be demonstrated for other locations.

### **8-410.3 Maximum Size of Establishments**

In the environment in which convenience establishments are intended to be permitted, it is the intent of this chapter that no such establishment or group of establishments shall be of such size or character as to create the impression of general commercial development. Therefore, in addition to other limitations designed to achieve these ends, no individual convenience establishment shall have a gross floor area exceeding five thousand (5,000) square feet.

### **8-410.4 Hours of Operation**

Except for emergency activities at the offices of physicians and dentists, no convenience establishment shall be open for business between the hours of 11:00 p.m. and 6:00 a.m.

### **8-410.5 Conduct of Operations**

All sales, services, or displays in connection with convenience establishments shall be within completely enclosed buildings, and there shall be no display, service, or storage outside such buildings. No public address systems or other devices for reproducing or amplifying voices or music shall be mounted outside such buildings or be audible beyond any line of the lot on which the building is situated.

### **8-410.6 Exterior Storage**

Exterior storage of goods or materials of any kind is prohibited. The placement of waste disposal facilities is permitted in the rear of the commercial operation only and shall not be located in any required yard. Such facilities shall be totally screened using similar exterior materials from which the outside walls of the principal building is constructed and shall be maintained in a clean and orderly manner.

## **CHAPTER 5. INDUSTRIAL PLANNED UNIT DEVELOPMENT**

### **8-501 INTENT**

These districts are designed to accomplish the following:

- (A) To provide sufficient opportunity and flexibility for manufacturing activities to take place at feasible locations without an adverse impact upon surrounding nonmanufacturing areas.
- (B) To permit a broad group of manufacturing activities under controlled conditions.
- (C) To encourage the application of sound planning and design principles in the orderly development of manufacturing activities.
- (D) To provide for the integration of manufacturing activities into large scale developments which incorporate residential and commercial as well as industrial activities.
- (E) To maximize manufacturing potentialities within the community without adversely affecting its living environment.

This chapter shall only be used for industrial planned unit developments upon a determination that the proposed development is in harmony with the purpose and intent as stipulated in this section.

### **8-502 LOCATION AND SITE OF INDUSTRIAL PLANNED UNIT DEVELOPMENT**

The location and required area of industrial planned unit development districts shall be as follows:

#### **8-502.1 Location**

An industrial planned unit development may be developed independently or as part of a combined planned unit development as set forth in Section 8-106, provided:

- (a) The location, composition and extent of any proposed industrial planned unit development is consistent with the adopted long-range general plan.
- (b) The site of the proposed development possesses manufacturing locational attributes such as proximity and immediate access to major thoroughfares, rail service, adequate utilities and fire protection.
- (c) The proposed development of the site will not have an adverse impact on the surrounding area, such as the generation of high volumes of traffic or truck traffic through future or existing residential areas.

#### **8-502.2 Minimum Required Area**

The required minimum area within an industrial planned unit development district shall be as follows:

- (a) For an industrial planned unit development located within or contiguous to an existing industrial district three (3) acres.
- (b) For an industrial planned unit development located within any area which is not within or contiguous to an existing industrial district ten (10) acres.

**8-503 USES AND STRUCTURES**

**8-503.1 Principal Permitted Uses and Structures**

Within the industrial planned unit development district, the following activities as described in ARTICLE I, CHAPTER 3, may be permitted only when such activities are deemed appropriate by the Planning Commission and Board of Commissioners [Board of Mayor and Aldermen].

(a) Community Facility Activities

Administrative Services  
Essential Public Transport, Communication and Utility  
Extensive Impact Facilities

(b) Commercial Activities

Animal Care and Veterinarian Services  
Automotive Parking  
Automotive Service and Repair  
Building Materials and Farm Equipment Sales  
Contract Construction Services  
Convenience Retail Sales and Services  
Equipment Repair Services  
Food and Beverage Service  
Food Services Take-Out  
General Business and Communications Service  
Professional Services - Nonmedical  
Warehousing, Goods Transport, and Storage  
Vehicular, Marine Craft, Aircraft and Related Equipment Sales, Rental and Delivery  
Wholesale Sales

(c) Manufacturing, Warehousing, Transport and Storage Activities

Manufacturing - Limited  
Manufacturing - Intermediate  
Manufacturing - Extensive

**8-503.2 Permitted Accessory Uses and Structures**

- (a) Signs complying with the regulations established in the Hendersonville Sign Ordinance.
- (b) Incidental services, such as food and beverage dispensing and sales facilities, to serve employees and guests of an occupant of the district

when conducted as an integral part of a principal use and having no exterior display or advertising.

- (c) Accessory facilities and buildings customarily incidental and appurtenant to a permitted use provided that such accessory facilities and buildings are not otherwise prohibited.
- (d) Accessory off-street parking and loading areas as required in ARTICLE VI, CHAPTER 1.

### **8-503.3 Temporary Uses**

The temporary uses and structures specified in ARTICLE XI, Subsection 11-203.402, as permissible within industrial districts may be permitted within industrial planned unit developments for the limited time periods specified for each such use or activity.

### **8-503.4 Prohibited Uses**

Any use or structures not of a nature specifically permitted herein.

## **8-504 BULK REGULATIONS FOR INDUSTRIAL PLANNED UNIT DEVELOPMENT**

The following building, site and yard requirements shall be applied in industrial planned unit development districts.

### **8-504.1 Floor Area Ratios**

The maximum floor area ratio for an industrial planned unit development shall be as follows:

- (a) For an industrial planned unit development located within or contiguous to an existing industrial district: **FAR = 2.00.**
- (b) For an industrial planned unit development located within any area which is not within or contiguous to an existing industrial district: **FAR = .75.**

### **8-504.2 Building Height Limitation**

The maximum height of buildings or structures within an industrial planned unit development shall be as follows:

- (a) For an industrial planned unit development located within or contiguous to an existing industrial district: sixty-five feet (65) feet.\*

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\* Any building exceeding thirty-five (35) feet in height shall be approved by the fire department prior to the issuance of a building permit. The fire department may stipulate special fire protection measures as condition of approval of any such structure. In such instance the stipulations made by the fire department shall be required.

- (b) For an industrial planned unit development located within any area which is not within or contiguous to an existing industrial district: thirty-five (35) feet.

**8-504.3 MINIMUM BUILDING SITE AREA REQUIREMENTS**

No establishment shall be located on a site unless the site contains the following minimum area:

- (a) For an industrial planned unit development located within or contiguous to an existing industrial district: one (1) acre.
- (b) For an industrial planned unit development located within any area which is not within or contiguous to an existing industrial district: three (3) acres.

**8-504.4 Minimum Open Space, Setback and Boundary Requirements**

Within an industrial planned unit development district, the following open space, setback and boundary requirements shall apply.

**8-504.401 Open Space Requirements**

The ratio of all open space to floor area shall not be less than the following minimums:

- (1) For an industrial planned unit development located or contiguous to an existing industrial zone: one-half (1/2) square foot of open space per square foot of gross floor area.
- (2) For an industrial planned unit development not within or contiguous to an existing industrial district: two (2) square feet open space per square foot of gross floor area.

**8-504.402 Setback Requirements**

The distance from any structure to any street shall not be less than the following minimums:

- (1) For an industrial planned unit development located within or contiguous to an existing industrial zone: fifty (50) feet.
- (2) For an industrial planned unit development located within any area which is not within or contiguous to an existing industrial district: seventy-five (75) feet.

**8-504.403 Boundary Requirements**

No building, other structure, off-street parking or loading area located within an industrial planned unit development shall be closer than seventy-five (75) feet to the boundary of any residential district.

#### **8-504.404 Permitted Obstructions**

The only permitted obstruction in the open spaces provided shall be those permitted by Subsection 5-304.2, within industrial districts.

#### **8-505 SCREENING REQUIREMENTS**

To assist in the prevention of the transmission of light and noise from within an industrial planned unit development into abutting agricultural or residential districts, screening shall be required in an industrial planned unit development as follows:

- (A) Where an industrial planned unit development abuts or is contiguous to any residential district, without an intervening public street, but with or without an intervening alley or other public way, there shall be provided within the industrial planned unit development, but not within a public street or alley, continuous screening along with the extent of the contiguity of the said developments. Such screening shall be of opaque or translucent materials resistant to deterioration by natural causes, or it shall be of such plant materials as will provide a year-round evergreen screening. Screening, as required herein, shall not be less than six (6) feet in height, shall be provided from the grade of the property upward, and shall be permanently maintained.
- (B) Screening, as required herein, may be located within open areas as are required in this section, provided that no screening shall be located within the outer limits of any required automotive visibility area.

#### **8-506 STREET LAYOUT REQUIRED OFF-STREET PARKING AND LOADING**

Within industrial planned unit developments, the following principles of street layout and minimum standards for required off-street parking and loading shall be applicable.

##### **8-506.1 Street Layout**

In order to encourage the sound development of major thoroughfares and to reduce the intrusion of industrial traffic into nonmanufacturing areas, the following principles shall be followed.

- (a) The vehicular access to an industrial planned unit development shall be principally from an arterial or collector street as shown on the adopted Major Route Plan for Hendersonville, Tennessee.
- (b) Each building or group of buildings and their parking and service areas in an industrial planned unit development shall be physically separated from any major street, identified as above, by a curb, planting strip or other suitable barrier against unchanneled vehicular access, except for access ways as permitted by paragraph (c), below.
- (c) Access ways to an industrial planned unit development shall be designed so as to minimize traffic conflicts. In no event shall an access point be closer than one hundred (100) feet from any intersection of street right-of-way lines.

- (d) All industrial planned unit developments shall be designed so as to reduce to an absolute minimum the flow of traffic moving to and from industrial areas through residential areas.

### **8-507 REQUIRED ACCESSORY OFF-STREET PARKING AND LOADING AREAS**

Accessory parking and loading areas shall be provided in accordance with the provisions set forth in ARTICLE VI, CHAPTER 1, except as provided in Subsection 8-507.1, below. The design, lighting provisions, etc., contained in ARTICLE VI, CHAPTER 1, are fully applicable to all industrial planned unit developments.

#### **8-507.1 Off-Site Parking in Industrial Planned Unit Developments**

Off-site parking spaces accessory to any permitted use in an industrial planned unit development may be located on a zone lot other than the same zone lot as such use to which the spaces are accessory, provided that:

- (a) Such spaces are located within the area encompassed by the industrial planned unit development.
- (b) There is no way to arrange such spaces on the same zone lot as such use.
- (c) Such spaces are located to draw an absolute minimum of vehicular traffic to and through streets having predominantly residential frontage.
- (d) Such spaces are located no further than six hundred (600) feet from the nearest boundary of the zone lot to which they are accessory.
- (e) Such spaces are in the same ownership as the use to which they are accessory and necessary instruments are executed to ensure the required number of spaces will remain available throughout the life of such use.
- (f) Such spaces conform to all applicable regulations of the industrial planned unit development of which they are a part.

### **8-508 PERMITTED SIGNS**

Applicable provisions of the Hendersonville Sign Ordinance will apply within all industrial planned unit developments.