

SECTION 4. APPLICATIONS AND APPROVAL PROCESSES

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4.1 PURPOSE

The purpose of this Section is to delineate the scope of applicability, specific procedures and requirements, and approval criteria that are applicable to each zoning application and approval.

4.2 ZONING INTERPRETATION

A. Purpose

This interpretation authority is not intended to add or change the essential content of the Ordinance. The interpretation authority is intended to recognize that the provisions of this Ordinance, though detailed and extensive, cannot, as a practical matter, address every specific zoning issue. Such issues may often be addressed by reference to general circumstances that the specific provision was intended to address.

B. Initiation

Applications for zoning interpretations may be filed by an owner or their authorized agent of any property in the City or Planning Region. In addition, the Board of Mayor and Aldermen or the Planning Commission may request that the Planning Department render an interpretation. Requests initiated by the City require an application, but are exempt from fees. The interpretation must be for the purpose of furthering some actual development.

C. Authority and Execution

The Planning Department shall review and make final decisions on requests for interpretations. Nothing in this Section shall require the Planning Department to make an interpretation if the Department is of the opinion that the exposure to liability for the City on account of the interpretation outweighs the benefit to the applicant.

D. Procedure

All applications for interpretations shall be filed with the Planning Department, in accordance with the requirements in Section 3.2 (Application). Upon receiving a complete application, the Planning Department shall review a request for an interpretation and render the interpretation within a reasonable time. The Planning Department shall have the ability to request additional information prior to rendering an interpretation.

4.3 APPEAL OF A PLANNING DEPARTMENT DETERMINATION

A. Purpose

The zoning appeals process for review of decisions of the Planning Department is intended to provide appropriate checks and balances on administrative authority.

B. Initiation

Applications for appeals may be filed by any owner of any property in the City or Planning Region, their authorized agent or any resident that is directly affected by a decision made under this Ordinance by the Planning Department.

C. Authority and Execution

The Board of Zoning Appeals may review only those determinations of the Planning Department which result from requests made pursuant to this Ordinance. Other decisions and actions of the Planning Department cannot be appealed under this process.

D. Procedure

All applications for appeals shall be filed with the Planning Department, in accordance with the requirements in Section 3.2 (Application). Upon receiving a complete application, the Planning Department shall forward a copy of the application to the Board of Zoning Appeals. The Board of Zoning Appeals shall conduct a public hearing, in accordance with Sections 3.4 (Public Hearing), within sixty (60) days of receipt of a complete application. If, in the Board of Zoning Appeal's judgment, the application does not contain sufficient information to enable the Board to properly discharge its responsibilities, the Board may request additional information from the applicant. In that event, the sixty (60) day period shall be suspended pending receipt of all requested information. Notice shall be given in accordance with Sections 3.3 (Notice). Following the close of the public hearing or within forty-five (45) days, the Board of Zoning Appeals shall decide the appeal. The Board of Zoning Appeals may reverse or affirm or may modify the order, requirement, decision or determination.

E. Limitations on Appeals

A decision may only be appealed if an application to appeal is filed within thirty (30) days of that decision.

4.4 ZONING VARIANCE

A. Purpose

The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this Ordinance that create particular hardships.

B. Initiation

Applications for zoning variances may be filed by an owner of any property in the City or Planning Region, or their authorized agent, for that property.

C. Authority and Execution

Variances may be authorized by the terms of this Ordinance. Variances may be authorized only after a public hearing, where the Board of Zoning Appeals has made findings of fact in accordance with Section 4.4E (Findings of Fact) below, that owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in practical difficulties or particular hardship for the owner of land or a structure.

D. Procedure

All applications shall be filed with the Planning Department in accordance with the requirements in Section 3.2 (Application). Upon receiving a complete application, the Planning Department shall forward a copy of the application to the Board of Zoning Appeals. The Board of Zoning Appeals shall conduct a public hearing, in accordance with Section 3.4 (Public Hearing), within sixty (60) days of receipt of a complete application. If, in the Board of Zoning Appeal's judgment, the application does not contain sufficient information to enable the Board to properly discharge its responsibilities, the Board may request additional information from the applicant. In that event, the sixty (60) day period shall be suspended pending receipt of all requested information. Notice shall be given in accordance with Section 3.3 (Notice). Following the close of the public hearing or within forty-five (45) days, the Board of Appeals shall decide on the request.

E. Findings of Fact

1. No variance from the provisions of this Ordinance shall be granted unless the Board of Zoning Appeals makes specific written findings of fact based directly on the standards and conditions imposed by this Section. These standards are as follows:

- a. That by reason of exceptional narrowness, shallowness or shape of a particular piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other exceptional and extraordinary situation or condition of such piece of property, the strict application of any bulk standards contained within this ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.
 - b. The variance is the minimum variance that will relieve such difficulties or hardship and make possible the reasonable use of the land, building or structure.
 - c. The variance will not authorize uses in a zone district other than those permitted by this ordinance.
 - d. Financial considerations shall not be considered as a basis for granting a variance.
2. The Board of Zoning Appeals in making its findings of fact, may inquire into the following evidentiary issues, as well as any others deemed appropriate:
- a. The granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the property is located or a substantial impairment to the intent and purpose of the zoning district where the property is located or the general provisions of the ordinance.
 - b. The proposed variance will not impair an adequate supply of natural light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety or impair property values within the neighborhood.
 - c. The alleged difficulty or hardship has not been knowingly or intentionally created by any person having an interest in the property.
 - d. The proposed variance is consistent with the spirit and intent of this Ordinance and the adopted Land Use and Transportation Plan.

F. Variance Less Than Requested

A variance less than that requested may be granted by the Board of Zoning Appeals when the record supports the applicant's right to some relief, but not to the entire relief requested.

G. Variance Appeals

Any person aggrieved by a decision of the Board of Zoning Appeals on a variance may appeal by certiorari to a court of competent jurisdiction.

The judgment and findings of the Board on all questions of fact that may be involved in any appeal, cause, hearing or proceeding under this Section shall be final and subject to review only for illegality or want of jurisdiction.

4.5 CONDITIONAL USE

A. Purpose

The development and execution of a Zoning Ordinance is based upon the division of the City into districts. Within each district the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are specific uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. Such uses may be either public or private, and are of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

B. Initiation

Applications for conditional uses may be filed by an owner of any property in the City or Planning Region for that property or their authorized agent to use that land for one (1) or more of the conditional uses provided for in this Ordinance within the zoning district in which the land is situated.

C. Authority and Execution

The Board of Zoning Appeals shall take formal action on conditional use requests. In the case of Planned Developments, the Planning Commission shall act as the Board of Zoning Appeals. See Section 8 (Planned Development Districts) for conditional uses in Planned Developments.

D. Procedure

Applications for conditional uses shall be filed with the Planning Department in accordance with the requirements in Section 3.2 (Application). Upon receiving a complete application, the Planning Department shall schedule the application for consideration by the Board of Zoning Appeals.

1. Action by the Board of Zoning Appeals

- a. The Board of Zoning Appeals shall conduct a public hearing on a proposed conditional use in accordance with Section 3.4 (Public Hearing) no more than sixty (60) days after receipt of a complete application. Notice for the public hearing shall be in accordance with Section 3.3 (Public Notice). If, in the Planning and Zoning Commission's judgment, the application does not contain sufficient information to enable the Board of Zoning Appeals to properly discharge its responsibilities, the Board may request additional

information from the applicant. In that event, the sixty (60) day period shall be suspended pending receipt of all requested information.

- b. The Board of Zoning Appeals shall, immediately following or within forty-five (45) days of the close of the public hearing, make the determination as to the granting of the conditional use.

2. Conditions on Conditional Uses

The Board of Zoning Appeals shall confirm that the applicant has shown that they will comply with any use-specific standards as referenced in the tables of permitted and conditional uses as contained in Section 10.3 (Use-Specific Standards). The Board of Zoning Appeals may also impose additional conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as may be deemed necessary for the protection of the public interest.

E. Findings of Fact

1. No conditional use shall be approved by the Board of Zoning Appeals unless it has made findings of fact, based upon the evidence presented at the public hearing, to support each of the following conclusions:
 - a. The conditional use is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.
 - b. The conditional use will not adversely affect other property in the area in which it is located.
 - c. The conditional use conforms to all applicable provisions of this Ordinance for the district in which it is to be located.
 - d. The conditional use in the specific location proposed is consistent with the spirit and intent of this Ordinance and the Land Use and Transportation Plan.
2. The Board of Zoning Appeals, in making findings of fact, may inquire into the following evidentiary issues, as well as any others it determines to be appropriate:
 - a. Whether property values in the immediate vicinity of the conditional use will be diminished or impaired.
 - b. Ingress and egress to the subject property and its proposed structures, with particular attention to automotive and pedestrian safety and convenience, traffic flow and control, including access by emergency vehicles.
 - c. Off-street parking and loading areas proposed for the conditional use, with particular attention to the location and adequacy of such facilities.

- d. The operational characteristics of the proposed conditional use and their effects on adjacent properties. Particular attention shall be given to the hours of operation, noise, glare, odor, refuse storage and other relevant environmental factors.
- e. Utilities and storm drainage facilities as proposed, with reference to their location, availability, adequacy and compatibility.
- f. Screening, landscaping and buffering, with specific reference to the type proposed, the dimensions and character, and the effectiveness in shielding adjacent properties.
- g. Signs and proposed exterior lighting with reference to glare, traffic safety and compatibility and harmony with adjacent properties.
- h. The quantity and degree of deviation from the applicable requirements of the district in which the subject property is located, as balanced against the desirability of the conditional use.

F. No Presumption of Approval

The listing of a use as a conditional use within a zoning district does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to all applicable standards of this Ordinance. Such evaluation will determine whether approval of the conditional use is appropriate at the particular location and in the particular manner proposed.

G. Appeal of Denial

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

4.6 PLANNED DEVELOPMENT

See Section 8 (Planned Developments) of this Ordinance for planned development process and requirements.

4.7 SITE PLAN AND DESIGN REVIEW

A. Purpose

The Site Plan and Design Review process is intended to promote orderly development and redevelopment in the City, and to assure that such development or redevelopment occurs in a manner that is harmonious with surrounding properties, is consistent with the Land Use and Transportation Plan, and promotes the general

welfare of the City. This Section provides standards by which to determine and control the physical layout and design to achieve the:

1. Compatibility of land uses, buildings and structures.
2. Protection and enhancement of community property values.
3. Efficient use of land.
4. Minimization of traffic and safety hazards, and efficient parking layout.
5. Minimization of adverse impacts on the environment, including the incorporation of sustainable design and green architecture techniques.

B. Initiation

Applications for site plan and design review approval may be filed by an owner of any property in the City or Planning Region, or their authorized agent.

C. Authority and Execution

1. Site Plan and Design Review approval is required for the following:
 - a. The construction of all new buildings and structures, principal and accessory, including additions, with the exception of single-family and two family dwellings and temporary structures as regulated by Section 10.6 (Temporary Uses and Structures).
 - b. The occupancy of land (without a building or structure) for any activity except single-family or two-family dwellings and temporary uses as regulated by Section 10.6 (Temporary Uses and Structures).
 - c. Construction or establishment of a parking lot or enlargement of an existing lot.
 - d. Construction of a residential subdivision or multi-family development entry way.
2. Design Review (but not Site Plan) approval to confirm compliance with Section 12 (Building Design Standards) is required for the following, excluding single-family dwellings:
 - a. Any external modification where the estimated cost of the modifications and improvements exceeds 20% of the total appraised value of the structures to be improved, as set forth in the most current Sumner County tax records.
 - b. The following shall be subject to design review but for the proposed modification only:
 - i. Changing the color of more than 25% of the exterior of the building.

- ii. Adding or replacing awnings, except replacing with the same size, style and color.
 - iii. Modifying the roof, except replacing with the same roof type.
 - iv. Adding or changing any dormer, cupola, pergola, or other architectural feature.
- c. Placing neon tubing and strings of LED and similar lighting on a site or building or within the windows or doors of a building if visible from outside the building. Exception: Traditional holiday lighting displayed for not more than two 30-day periods per calendar year, which periods may run consecutively.
- d. Any other external modification which the Planning Department determines to possess design characteristics which merits review to achieve the purpose of this Ordinance. Reasons for the Planning Department's determination shall be clearly stated in writing. Appeals from the Department's determination shall be filed with the Planning Commission within fifteen (15) days thereof and resolved by the Planning Commission within 45 days of the filing of the appeal.

D. Procedure

Applications for site plan and design review shall be filed with the Planning Department in accordance with the requirements in Section 3.2 (Application). Once it is determined that the application is complete, the application shall be forwarded to the Planning Commission, unless such application is eligible for administrative site plan and design review.

1. Applications for Administrative Site Plan and Design Review

a. Applications Eligible for Administrative Site Plan and Design Review

The following activities require site plan and design review approval by the Planning Department only. The Planning Department has the authority to require that the Planning Commission review an application intended for administrative site plan review if the Planning Department determines such is appropriate because of the nature of the request.

- i. New construction and modifications to existing ham radio antennas and equipment, subject to Section 10.4C (Amateur HAM Radio Equipment).
- ii. Modifications to existing cell towers and antenna support structures.
- iii. Addition to an existing building or structure which measures up to 25% of the area of the existing building.
- iv. Addition of accessory building(s) measuring up to 25% of the area of the existing principal building(s) on the site. The addition of solar panel canopies is not eligible for administrative approval.

- v. Construction or establishment of a new parking lot with not more than twenty-five (25) parking spaces.
- vi. The addition of up to twenty-five (25) parking spaces or less than 25% additional parking spaces to an existing parking lot, whichever is greater.
- vii. Any decrease in square footage for structures, parking or paved areas.
- viii. External modifications as stated in Section 4.7C2b, c and d.
- ix. Residential subdivision or multi-family development entry way.

b. Procedure for Administrative Site Plan and Design Review

- i. A decision on an administrative site plan and design review application shall be rendered by the Planning Department within thirty (30) days of receipt of a complete application.
- ii. If, in the Planning Department's judgment, the site plan and design review application does not contain sufficient information to enable the Planning Department to properly discharge its responsibilities, the Planning Department may request additional information from the applicant. In that event, the thirty (30) day period shall be suspended pending receipt of all requested information.
- iii. The Planning Department may approve, approve with conditions or reject the site plan and design review application. Within fifteen (15) days of the decision, the Planning Department shall notify the applicant of the action taken. The Planning Department shall evaluate the site plan and design review application pursuant to the standards in Section 4.7E (Standards for Site Plan and Design Review).
- iv. If the Planning Department rejects a site plan and design review application, the applicant may resubmit the application to the Planning Commission, in accordance with the procedures in Section 4.7D2 (Planning Commission Site Plan and Design Review) below.

2. Planning Commission Site Plan and Design Review

a. Applications Requiring Site Plan and Design Review by Planning Commission

All activities requiring site plan and design review, except those set forth in Section 4.7D1a (Applications Eligible for Administrative Site Plan and Design Review), shall be reviewed by the Planning Commission.

b. Procedure for Site Plan and Design Review by Planning Commission

- i. A decision on a completed application for site plan and design review by the Planning Commission shall be rendered within sixty (60) days of the date the complete application is received by the Planning Department.
- ii. If, in the Planning Commission's judgment, the site plan and design review application does not contain sufficient information to enable the Commission to properly discharge its responsibilities, the Commission may request additional information from the applicant. In that event, the sixty (60) day period shall be suspended pending receipt of all requested information.
- iii. The Planning Commission shall approve, approve with conditions or deny the site plan within sixty (60) days. The vote on every decision of the Planning Commission, with respect to site plan and design review shall be included in the Commission's minutes. The Planning Commission shall evaluate the site plan and design review application pursuant to the applicable standards in Section 4.7E (Standards for Site Plan and Design Review) below. Planning Commission approval or denial of a site plan shall be considered a final administrative decision.

E. Standards for Site Plan and Design Review

Each site plan and design review application submitted for review shall include the following details: the location of principal and accessory structures, infrastructure, open space, landscaping, exterior lighting, traffic movement and flow, number of parking spaces, design of parking lots, and location of landscaping and screening and all other elements of the site and building as regulated by Sections 11 (Site Development Standards) and 12 (Building Design Standards) and as specified on the Site Plan and Design Review Checklist as prepared by the Planning Department.

In reviewing site plans, the relationship of the site plan to the following shall be considered:

- 1. Compatibility with the goals and objectives of the Land Use and Transportation Plan.
- 2. Conformity with this Ordinance, including in particular the following tables and sections:
 - a. Table 2 (Lot and Building Bulk Standards Residential Districts) as contained in Section 6.3 (Lot and Building Bulk Standards).
 - b. Table 4 (Lot and Building Bulk Standards Commercial Districts) as contained in Section 7.4 (Lot and Building Bulk Standards).

- c. Any applicable use-specific standards as contained in Section 10.3 (Use-Specific Standards).
 - d. Section 11 (Site Development Standards) which includes standards for off-street parking and loading, outdoor lighting, landscaping, screening and tree preservation, residential subdivision and multi-family development entry ways, walls and fencing, street and other required improvements, and utility service.
 - e. Section 12 (Building Design Standards) which includes building design standards for residential, commercial and industrial buildings. Design standards for buildings within the Old Town Commercial (OT-C) District are also included.
 - f. Section 13 (Sign Standards).
3. Conformity with the Hendersonville Subdivision Regulations. In particular, if land is to be subdivided in conjunction with the proposed site development, the lot involved shall first be approved in accordance with the subdivision regulations. The lot as shown on the submitted site plan shall be identical to the lot as shown on the recorded subdivision plat in regard to size, dimensions, adjacent right-of-way, easements and all other matters. If additional right-of-way and/or easements must be dedicated as per Section 11.7 (Street and Other Required Improvements), such will require the submittal, approval and recording of a revised subdivision plat unless other methods of dedication are approved by the Planning Department.
4. Degree of conformity with all other applicable City codes and regulations.

F. Amendments to Approved Site Plan Reviews

1. Application

An application for an amendment to an approved site plan shall be submitted to the Planning Department. Amendment applications shall include a written description of the proposed change, including the reason for such change, and a notation of the location on the approved site plan.

2. Determination of Type of Change

Upon receipt of a complete application and using the following criteria, the Planning Department shall determine within five (5) days whether the proposed amendment constitutes a minor or major change to an approved site plan. Major changes to an approved site plan shall include, but are not limited to:

- a. An increase in the gross floor area greater than 10%.
- b. A change in building height greater than 15%.

- c. An increase in the number of dwelling units greater than 2%.
- d. A reduction in pervious area greater than 10%.
- e. An increase in the number of parking spaces of more than four (4) parking spaces or 25%, whichever is greater.
- f. A change to the landscape plan that results in a reduction in the net amount of plant material.

A minor change is considered any change that is not a major change, as defined above. No change shall be approved to the extent such change would result in less than the minimums required or greater than the maximums allowed by this ordinance.

3. Approved Site Plan and Design Review Minor Change Procedure

- a. The Planning Department shall approve or disapprove minor changes to approved site plans within thirty (30) days of receipt of the complete application. The thirty (30) day time frame shall commence after the determination that the change is a minor change in accordance with Section 4.7F2 (Determination of Type of Change) above. If, in the Planning Department's judgment, the application does not contain sufficient information to enable the Planning Department to properly discharge its responsibilities, the Planning Department may request additional information from the applicant. In that event, the thirty (30) day period shall be suspended pending receipt of all requested information.
- b. The Planning Department may also, at its discretion, determine that a proposed change to an approved site plan constitutes a major change and, as such, must be submitted to the Planning Commission in accordance with the procedures for a major change.
- c. If the Planning Department does not approve the minor change, the application may be submitted to the Planning Commission in accordance with the procedures for a major change.

4. Approved Site Plan and Design Review Major Change Procedure

- a. Once reviewed for completeness, the Planning Department shall forward the complete application to the Planning Commission for approval.
- b. If, in the Planning Commission's judgment, the application does not contain sufficient information to enable the Commission to properly discharge its responsibilities, the Commission may request additional information from the applicant.

- c. Once a complete application has been submitted, the application shall follow the process of a new application as specified in Section 4.7 (Site Plan and Design Review). The Planning Commission shall provide its decision in writing, along with reasons for approval or denial. In the event that the Planning Commission does not render a decision within the prescribed time period, the amendment application shall be deemed to be approved.
- d. The Planning Commission may decide that the proposed change or changes to the approved site plan is such a significant change that it constitutes a new application and is subject to the complete site plan review provisions of this Section.

5. Submittal of Revised Site Plan

The Planning Department or Planning Commission may determine that a proposed amendment to an approved site plan requires submittal of a revised site plan for proper evaluation. Such revised site plan shall only include those components of the site plan submittal package impacted by the proposed change. Until such revised site plan is submitted, the application shall not be considered complete.

Nothing within this Section shall prevent an applicant from submitting a revised site plan with the amendment application at the time of initial submission.

G. Modifications Prohibited

Building and site improvements, the design of which is regulated by this ordinance or the Hendersonville Design Review manual adopted November 27, 1990, shall not be modified except in conformance with this Section. The design of said improvements and all features thereof shall be maintained as originally approved.

H. Expiration and Extensions

Site Plan and Design Review approval is valid for a period of one (1) year from the date of Planning Commission approval. The owner may apply for, and the Planning Commission may grant, extensions of one (1) year at a time.

4.8 ZONING AMENDMENT

A. Purpose

The regulations imposed and the districts created by this Ordinance may be amended from time to time in accordance with this Section. This process for amending the Zoning Ordinance text or the Zoning Map is intended to permit modifications in response to changed conditions or changes in City policy. Amendments are not intended to relieve particular hardships or confer special privileges or rights upon any person or party.

B. Initiation

Applications for zoning amendments (text or map amendments) may be filed by the City or by an owner of any property that is in the City or Planning Region, or by their authorized agent.

C. Procedure

Applications shall be filed with the Planning Department, in accordance with the requirements of Section 3.2 (Application). Upon receiving a complete application, the Planning Department shall schedule the application for consideration by the Planning Commission. Amendments initiated by the City also require an application, but are exempt from fees. (See Appendix A: Zoning Map Amendment and Planned Development Process).

1. Action by the Planning Commission

- a. The Planning Commission shall conduct a public hearing on a proposed zoning amendment, in accordance with Section 3.4 (Public Hearing) no more than sixty (60) days after receipt of a complete application. Notice for the public hearing shall be in accordance with Section 3.3 (Notice). If, in the Planning Commission's judgment, the application does not contain sufficient information to enable the Commission to properly discharge its responsibilities, the Commission may request additional information from the applicant. In that event, the sixty (60) day period shall be suspended pending receipt of all requested information.
- b. The Planning Commission shall make findings of fact, based upon the evidence presented at the public hearing, pursuant to each of the applicable standards in Section 4.8D (Findings of Fact for Zoning Amendments) below.
- c. Within forty-five (45) days of the close of the public hearing, the Planning Commission shall forward to the Board of Mayor and Aldermen its recommendation, together with the Commission's findings of fact. The Commission recommendation may take the form of approval or denial. If the requested amendment is a text amendment, the recommendation shall include the Commission's proposed language.

2. Action by the Board of Mayor and Aldermen

- a. Consideration of the Planning Commission recommendation shall be placed on a Board of Mayor and Aldermen agenda within thirty (30) days. The Board of Mayor and Aldermen may take action in the form of approval or denial. In the case of text amendments, the Board of Mayor and Aldermen shall not be bound by the precise language of the Commission recommendations. The Board of Mayor and Aldermen may also refer the application back to the Commission for further consideration.

- b. Amendments to both the text and zoning map require the approval of the Board of Mayor and Aldermen at two (2) separate readings by a simple majority vote. A public hearing is required at the 2nd reading.

D. Findings of Fact for Zoning Amendments

- 1. The Planning Commission in its review and recommendation and the Board of Mayor and Aldermen in its deliberations shall make specific findings with regard to the following grounds for an amendment:
 - a. The amendment is in agreement with the Land Use plan for the area.
 - b. There will be no adverse effect upon adjoining property owners, unless such effect can be justified by the overwhelming public good or welfare.
 - c. No property owner or small group of property owners will benefit materially from the change to the detriment of the general public.
 - d. Conditions affecting the area have changed to a sufficient extent to warrant an amendment to the area's Land Use Plan and subsequently, the zoning map.

4.9 ZONING PERMIT

A. Purpose

The purpose of this Section is to verify that a proposed development activity conforms to this Ordinance and other related City codes and ordinances before building and other construction related activity occurs.

B. Applicability

The requirements of this Section apply to the construction or placement of any building or structure, including residential, institutional, commercial, or otherwise. This section also applies to accessory buildings and structures.

C. Zoning Permit Required

Before any building permit is issued by the Hendersonville Codes Department, and before construction or placement commences even if a building permit is not required, written verification from the Planning Department shall be secured in the form of a Zoning Permit to confirm that the proposed activity conforms to this Ordinance.

D. Expiration of Zoning Permit

Zoning Permits shall expire one (1) year after the date of issuance unless construction has commenced.

4.10 USE AND OCCUPANCY PERMIT

A. Purpose

The purpose of a use and occupancy permit is to promote Ordinance compliance by establishing a procedure for the City to certify that the proposed use and occupancy of building or land complies with all standards of the Ordinance.

B. Applicability

No new building or structure, other than one- and two-family dwellings and their accessory structures, shall be occupied, nor shall any existing building or structure, other than one- and two-family dwellings and their accessory structures, be re-occupied even by a new user for the prior use, nor shall any land be occupied for purposes regulated by this Ordinance unless a use and occupancy permit shall first have been issued by the Planning Department certifying that the proposed structure or use complies with all the provisions of this Ordinance.

C. Procedure

The Planning Department shall be responsible for issuing use and occupancy permits. All applications for use and occupancy permits shall be made to the Planning Department.

D. Certification

Any application for use and occupancy permit involving any development for which site plan and/or design review approval is required by the provisions of Section 4.7 (Site Plan and Design Review), except staff approved projects, shall be accompanied by a completed final site certification prepared by a licensed engineer engaged in the practice of civil engineering and a licensed landscape architect certifying that the development is in substantial compliance with the plan approved by the Hendersonville Regional Planning Commission. To be included are all aspects of the development project to include, but not be limited to:

1. Location and dimensions of all buildings, parking areas, and other site features;
2. Location and sizes of all utilities and storm drainage facilities as established on the site; and
3. Location and material (to include plant names and height where specified) of all landscaping and site plantings.

E. Initial Occupancy of New Buildings

No new building shall be occupied nor any use of the land commenced before a use and occupancy permit has been issued. No use and occupancy permit shall be issued for any use until a final development review has been conducted and the development has been found to be in full compliance with the provisions of this Ordinance, the applicable construction codes, the fire code and requirements of the Hendersonville Utility District (if applicable).

F. Occupancy of Existing Buildings

Use and occupancy permits are required and may be issued for existing buildings, structures or parts thereof, if, after inspection, it is found that such buildings, structures or parts thereof, and such use of land, are in conformity with the provisions of this ordinance, the applicable construction codes, the fire code and requirements of the Hendersonville Utility District (if applicable). This applies to a change of use or occupant.

G. Temporary Use and Occupancy Permits

A temporary use and occupancy permit may be issued prior to completion of all construction and prior to completion of all requirements of this Ordinance, the construction codes, the fire code and requirements of the Hendersonville Utility District (if applicable) provided the Planning Department, construction codes inspectors, fire marshal and utility district have inspected the premises and determined that the project is sufficiently complete to allow for occupancy of the premises and have authorized such occupancy in writing in a manner set forth by the Planning Department. Reasonable terms may be imposed as a condition of allowing occupancy. In particular, a time limit shall be imposed for completion of the remaining improvements. The temporary use and occupancy permit shall expire upon expiration of the time limit. The time limit shall be set by the City based on the amount of time the City determines is necessary and appropriate. In the case of the time allowed to complete landscaping, sufficient time shall be given to avoid planting during dry, hot weather or freezing weather. The time limit shall not exceed six (6) months. Up to three (3), six (6) month extensions may be granted. Furthermore, a surety shall be provided to guarantee the completion of all remaining required improvements such as, but not limited to, landscaping, irrigation, final grading and drainage. The surety shall be in the amount specified by the Planning Department and City Engineer. The surety shall be in the form of a letter of credit as included in Appendix B (Letter of Credit). A cashiers' check or certified check will also be accepted and shall be deposited immediately into the City's bank account. This surety shall be returned to the issuer upon the issuance of a permanent use and occupancy permit. The Planning Department and City Engineer may agree to a reduction in the surety amount as portions of the work are completed.

Where surety has been posted, and required improvements have not been installed within the terms of the surety and temporary use and occupancy permit, then the Planning Department and/or Mayor may declare the surety to be in default and authorize the calling of the surety and the completion of the improvements under the supervision of the City departments.

H. Expiration of Use and Occupancy Permits

Permanent Use and Occupancy Permits expire one (1) year after date of issuance unless the business or entity for which the permit has been issued has moved into and occupied the location for which the permit was issued.

4.11 SIGN PERMIT

A. Applicability

No sign, except those identified in Section 13 (Signs) as being exempt or not requiring a permit, shall be erected, constructed, altered or relocated without first obtaining a sign permit. Application for the permit shall be in accordance with Section 3.2 (Application).

B. Authority and Execution

The Planning Department shall be responsible for determining compliance with this Ordinance. The Planning Department shall be responsible for issuing a sign permit.

C. Permit Issuance

Upon the filing of an application for a permit for erection, alteration or relocation of a sign, the Planning Department shall, within 5 working days, determine whether the application is complete. If the application is not complete, the Planning Department shall notify the applicant of any deficiencies, and shall take no steps to process the application until the deficiencies are remedied. Once it is determined that the application is complete, the Planning Department shall:

1. Examine the plans and specifications and the premises upon which the proposed sign is to be erected, altered or relocated.
2. Within five (5) working days of receiving a complete and correct application, issue a permit if the sign complies with the requirements of this Ordinance and all other ordinances of the City. If the work authorized under a sign permit is not completed within six (6) months after the date of issuance, the permit becomes null and void.

D. Approval of Electrified Signs

The application for a sign permit for the erection of a sign in which electrical wiring and connections are to be used shall be submitted to the Planning Department.

A permit will not be issued by the Planning Department until a State Electrical Permit is presented to the Planning Department by the applicant.

E. Inspection

The Planning Department may inspect, at such times as deemed appropriate, each sign or other advertising structure regulated by this Ordinance. The purpose of the inspection is to ascertain whether the structure is secure or insecure, whether in need of repair or removal, or not in conformance with the permit application or otherwise in violation of the provisions of this Section.

F. Revocation of Permit

All rights and privileges acquired under the provisions of this Section are mere licenses revocable at any time by the Planning Department. Upon the termination or revocation of the sign permit, the applicant shall remove the sign or other advertising structure without cost or expense of any kind to the City. In the event of the failure, neglect or refusal on the part of the applicant to do so, the City may proceed to remove the same and charge the expense to the applicant or property owner.

4.12 VIOLATIONS

Violation of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor and shall be punished as provided by law. Each day such violation exists shall be deemed a separate offense.

Planning Department staff may remove temporary signs which are in violation of this Ordinance.