

CITY OF HENDERSON

ARTICLE 900: ADMINISTRATIVE AND LEGAL PROVISIONS

Section 901: Administration of the Zoning Ordinance.

The Zoning Administrator of the City of Henderson is hereby authorized, and it shall be his duty, to administer and enforce the provisions of this Ordinance. An appeal from the decision of the Zoning Administrator as to

1. the completeness of an application,
2. the location of a district line or boundary,
3. the issuance or denial of a certificate of zoning compliance, or
4. any other decision delegated to him under this Ordinance,

may be made to the Board of Adjustment as provided in Article 800.

Section 902: Certificate of Zoning Compliance Required.

902.1. Change of Use.

No occupied or vacant land, and no existing or new structure shall hereafter be changed in its use in whole or in part until a certificate of zoning compliance shall have been issued by the Zoning Administrator or a Special Use Permit issued by the Board of Adjustment which finds that the proposed use will be in compliance with the requirements of this Ordinance.

902.2. New Development.

No building or structure shall be constructed, erected, repaired, altered, added to, moved onto a lot, in whole or in part, until a certificate of zoning compliance shall have been issued by the Zoning Administrator or a Special Use Permit issued by the Board of Adjustment which finds that the proposed use will be in compliance with the requirements of this Ordinance.

902.3. Building Permit.

No building permit for the extension, erection or alteration of any building shall be issued before an application has been made and a certificate of zoning compliance or a special use permit has been issued permitting the use of the property or the development as required in subsections 902.1 and 902.2 above.

902.4. Certificate of Occupancy.

No building or any portion thereof, shall be occupied unless a certificate of occupancy has been issued. A certificate of occupancy shall not be issued unless a certificate of zoning compliance or special use permit has been issued permitting the use of the property or the development as required in subsections 902.1 and 902.2 above.

Section 903: Application for Certificate of Zoning Compliance.

903.1. Application.

Consistent with the provisions of this subsection, the application for a certificate of zoning compliance shall be on such form and contain such information as the Zoning Administrator shall determine is necessary to determine if the proposed use or structure will comply with the provisions of this Ordinance.

903.2. Site Plan Required.

903.2.1. General Requirement.

Except as provided in this subsection, all developments shall submit a site plan which shows the location and dimension, both proposed and existing of the following: structures (including the number of dwelling units), property lines, setback lines, street or road right-of-way, areas in the floodplain or floodway, parking spaces, points of ingress and egress, utility facilities, recreation space and facilities, storm drainage facilities, easements for such facilities, topographic information, soil erosion measures, screening, plantings, landscaping and any other site aspects required by Zoning Administrator to determine if the design standards and other aspects of this Ordinance will be met.

903.2.2. Single Family Residences and Duplexes.

Single family residences and duplexes shall submit a site plan which shows the location and dimension, both proposed and existing, of the property lines, the setback lines, the street or road right-of-way, and any structures to be located on the lot, utility facilities, easements and such other information as the Zoning Administrator may require to determine if the design standards and other aspects of this Ordinance will be met.

903.3. Complete Application.

When an application is received, the Zoning Administrator will review the application against the requirements of the Ordinance and determine if it is complete. The Zoning Administrator will notify the applicant if he determines that the application is incomplete, and specify any additional information that will be required. Completed applications will be processed as quickly as possible considering the scope of the development and the difficulty in determining whether the Ordinance provisions will be met.

903.4. Copies.

Unless otherwise required by the Zoning Administrator, all applications and site plans shall be filed in duplicate.

903.5. Location of District Lines.

The Zoning Administrator shall determine the location of any zoning district boundary line in the event that the location of such a line is in dispute. Such a determination shall be made consistent with Article 200 of this Ordinance which addresses presumptions concerning the location of such district lines.

903.6. Application Required Upon Change of Structure Ownership or Primary Occupant or Business Operator.

A Certificate of Zoning Compliance shall be required whenever there is a change in the ownership, primary occupant, or business operator of any structure; provided however, that no site plan or additional Special Use Permit shall be required when the prior approved use has not been materially changed and the property has not been vacant within the last 180 days prior to said application. *(Section 903.6 Amended 1/13/2014)*

903.7. Applications and Certificates Shall Be in the Same Legal Entity Name.

All Certificates of Zoning Compliance shall be in the same name as the Business Privilege Licenses (issued pursuant to Section 3.2 of the City Code) by the City of Henderson, the Fire Inspections and any Alcohol Permits issued by the proper governmental authorities. *(Section 903.7 Amended 1/13/2014)*

Section 904: Special Use Permits

904.1. Application.

Application for a Special Use Permit shall be on such form as specified by the Zoning Administrator. The application shall address all information required by the certificate of zoning compliance plus such additional matters as may be necessary to determine whether the proposed development or change of use complies with additional standards for granting a special use permit. All petitions shall be accompanied by a fee as set out below and which shall be sufficient to defray the administrative costs incurred in processing the application, notifying adjacent property owners, and publishing notices of public hearing as required herein.

904.2. Site Plan.

A site plan which meets the requirements of 903.2 above shall be filed with the application. The site plan shall incorporate such additional matters as may be necessary or desirable to make the use(s) more harmonious with adjacent or nearby uses, and to comply with other requirements for a special use permit.

904.3. Complete Application.

When an application is received, the Zoning Administrator will review the application against the requirements of the Ordinance and determine if it is complete. The Zoning Administrator will notify the applicant if he determines that the application is incomplete, and specify any

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additional information that will be required. Completed applications that are filed with the Zoning Administrator at least ten days prior to the next Board of Adjustment meeting will be scheduled for public hearing at that meeting, unless the Board of Adjustment has already agreed to consider two or more other matters on that date, in which case it may be scheduled for the meeting immediately following that one. Nothing shall preclude the applicant and Zoning Administrator from arranging for matter to be heard at a different time, providing the Chairman of the Board consents.

904.4. Copies.

Unless otherwise required by the Zoning Administrator, all applications and site plans shall be filed in duplicate.

904.5. Notice. The Zoning Administrator shall place a notice of the proposed hearing on the property at least five (5) days prior to the public hearing. A notice of said public hearing shall be given at least five (5) days prior to said public hearing in a newspaper of general circulation in the City of Henderson. In determining the number of days during which the notice has run, the day of publication is not to be included, but the day of the hearing shall be included.

Section 905: Amendments to the Zoning Ordinance and Zoning Map.

The City Council may, on their own motion, on request of the Administration, on recommendation of the Planning Board or Board of Adjustment, or upon petition, after public notice and hearing, amend, supplement, change, modify or repeal the regulations or maps herein or subsequently established, subject to the rules and procedures established by law and set out herein:

905.1. Form of Petitions.

Petitions to amend the text of the Zoning Ordinance or the Zoning Map shall be on such form as the Zoning Administrator and/or Planning Director shall specify and shall include all the information necessary for full review and consideration by the City Council, including but not limited to the text of the proposed Ordinance, a map of the area to be rezoned (where applicable), and a statement explaining the nature of the proposed change, the reasons for the change and the effects anticipated from the change.

Any petition to rezone land shall be signed by all owners of the land proposed to be rezoned, or by their authorized agents. Petitions signed by landowner's agents rather than the landowner shall also include certified and/or notarized documentation of the agent's authorization to sign on behalf of the owner (unless the agent is a hired real estate agent or retained attorney at law or person acting under a signed attached contract). Exempt from providing certified and/or notarized authorization are petitions initiated by the City of Henderson to rezone property due to a comprehensive plan or initial zoning of property due to expansion or adoption of jurisdiction. All petitions shall be accompanied by a fee as set out below and which shall be sufficient to defray the administrative costs incurred in processing the application, notifying adjacent property owners (if and when required), and publishing notices of public hearing as required herein. The

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Zoning Administrator and/or Planning Director shall determine if petition is complete. (Amended January 24, 2000)

905.2. Public Hearing Required.

No regulation or map shall be amended, supplemented, changed, modified or repealed until after a public hearing has been held at which the parties in interest and citizens shall have an opportunity to be heard. A notice of said public hearing shall be given once a week for two consecutive calendar weeks in a newspaper of general circulation in the City of Henderson. The first such publication shall be not less than ten days nor more than twenty-five days before the date fixed for the public hearing; the day of publication is not to be included but the day of the hearing shall be included.

905.2.1 Mailed Notice Required

All rezoning changes and zoning classification actions shall require written first class mail notices to owner of property subject to the change and owner's abutting the property except under the following circumstances:

- (A) The total rezoning of all property within the corporate boundaries of the municipality unless rezoning involves zoning or parcels of land to less or more restrictive uses; in the event any parcels involve rezoning to less intense or restrictive uses, notification to owners of these parcels shall be made by first-class mail;
- (B) The zoning is an initial zoning of the entire zoning jurisdiction area;
- (C) The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;
- (D) The reclassification is an amendment to the zoning text; or
- (E) The City is adopting a water supply watershed protection program as requires by G.S.160A-384(b) (5).

“Owners” (as used in this and in the succeeding section) shall mean owners as shown on the Vance County Tax Listing and mailings shall be to such owner at the last addresses listed for such owners on the Vance County tax abstracts.

The person or persons mailing any notices requires (by this or the succeeding section) shall certify that fact to the City Council, and such certificate shall be conclusive on the absence of fraud.

905.2.2 Substitute Notice

A rezoning change or zoning classification action that is excused from providing notice by mail by one of the above exemptions listed in 905.2.1 (a)-(e) must provide a substitute from of notice, which includes following:

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- (a) A published notice of the proposed action in the newspaper once a week for four consecutive weeks. The notice must include a map no less than one-half newspaper page in size. The map must show the boundaries of the area affected by the proposed ordinance or amendments;
- (b) One or more prominent signs must be posted immediately adjacent to the subject area. The signs must be of a type and of a size that they are reasonably expected to provide adequate notice of the proposal to the public; and
- (c) If any property owner resides outside the City's zoning jurisdiction or outside the general circulation area of the newspaper in which the notice is published, the property owner must be notified by mail of the proposed action. The notice is requires to be sent to the address listed on the most recent property tax listing.

905.3. Consideration by Appointer Boards

Whenever a public hearing is required as required by 905.2 above, the City Council shall determine whether a public hearing shall be scheduled, and shall refer the matter to such appointed boards as it deems appropriate, or as may be required by statute, for a full consideration and recommendation. Except as provided below, the City Council shall not take final action on a proposal to amend this ordinance until the designated appointed board has had an opportunity to review the matter. In the event that an appointed Board, to which a matter has been referred by the City Council for a recommendation does not submit a recommendation to the City Council within thirty (30) days after the matter was first referred by the City Council, the City Council may take action. In the event that the City Council fails to indicate an appointed board to review the matter, the Planning board shall be deemed to be the designated appointed Board.

905.4. Protest Petitions

In the case of a protest against a proposed change or amendment of the Zoning Ordinance or Zoning Map signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet there from, or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the City Council. Provided, however, that this subsection shall not apply to not any amendment which initially zones property added to the territorial coverage of the ordinance as a result or annexation or otherwise.

No protest against any change or amendment to the Zoning Ordinance or Zoning Map shall be valid unless it is in the form of a written petition actually bearing the signature of the requisite number of the property owner and stating that the signer do protest the proposed change, and unless it shall have been received by City Clerk in sufficient time to allow the City at least two normal work days, excluding Saturday, Sundays and legal holidays, before the date established

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for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

905.5. Effect of Denial

No such proposed change in the Zoning Ordinance or Zoning Map, if denied by the City Council, may be resubmitted within a period of one year from the date of denial by the City Council, unless the City Council shall first determine in a separate resolution that the circumstances relate to a determination of the proper zoning for a specific area to have so substantially changed from the date of the City Council's previous consideration that a petition for rezoning should be accepted.

Section 906: Validity.

Any permit issued pursuant to this ordinance, including any Certificate of Zoning Compliance, Special Use Permit or Variance, shall expire automatically, if within two years after the issuance of such permits:

- (a) In those cases not involving substantial construction, excavation, demolition, alteration or similar work, the use authorized by such permits has not commenced ;or,
- (b) In those cases involving substantial construction, excavation, demolition, alteration or similar work, less than 10% of the total cost of all construction, excavations, demolitions, alterations, or similar work authorized by such permits has been completed on the site.

Furthermore, if at any time more than one year after the issuance of any such permit, work in furtherance of the permit is discontinued for a period of one year, then said permit shall immediately expire.

Time spent in litigating a matter directly related to the issuance of said permit shall not be counted in determining any time period set above.

For purposes of this section, a permit is issued by a board when the board votes to approve the permit and by the Administrator when the Administrator signs the permit.

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Section 907: Fees.

Prior to processing any application for any of the following permits or certificates, the following fee shall be paid in full. An application is not complete unless and until the fee is paid. Provided, however, that the City will waive all permit fees for code compliant handicap ramps constructed at the residence of low income or disabled persons by a nonprofit organization receiving no significant profit for said construction. Nonprofit organizations (as used herein) is defined to be a nonprofit for federal income tax purposes who presents such a certificate of nonprofit organization to the Zoning Administrator. (Amended 4/24/2014)

<u>PERMIT OR CERTIFICATE</u>	<u>FEE</u>
Certificate of Zoning Compliance	\$50.00
Special Use Permit	\$350.00
Variances	\$350.00
Zoning Text Amendment, change affecting only one subsection of the ordinance	\$100.00
Zoning Text Amendment, other than above	\$350.00
Zoning Map Amendment, to Residential District	\$350.00, plus \$50.00 acre, or part thereof
Zoning Map Amendment, other	\$350.00, plus \$100.00 acre, or part thereof
Zoning Permits (not otherwise specified)	\$100.00
Name Changes and ownership changes	\$100.00
Home Occupation Permit	\$100.00
Plats	Major: \$250.00 plus \$10.00 per lot Minor: \$150.00 Minor Residential: \$100.00 Exempt: \$60.00
Technical Review Committee	\$200.00

(Amended 6/27/2013)

** See Section 403.5 relative to initial sign permit fees.*

Section 908: Interpretation.

908.1. Conflict with Other Laws and Agreements

In interpreting and applying the provisions of this ordinance such provisions shall be held to the minimum requirement for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises, or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinance, rules, regulations, or by easements, covenants, or agreements, the provisions of this ordinance shall be govern.

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908.2. Separability

Should any article, section, subsection, paragraph, sentence, clause, phrase or district boundary of this Zoning Ordinance or the Zoning Map which is a part of this Ordinance herein or hereafter adopted be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of these regulations and the Zoning Map, as a whole or any part thereof other than the part so decided to be unconstitutional or invalid. The City Council hereby declares that it would have adopted this ordinance and Zoning Map, irrespective of the fact that any one or more articles, sections, subsection, paragraphs, sentences, clauses, phrases or district boundaries be declared unconstitutional or invalid.

909: Remedies.

909.1. Criminal and Penalties.

Any person, firm or corporation who violates any provision of this Ordinance, whether through ownership, use or construction, shall upon conviction, be guilty of a misdemeanor and shall be fined not more than \$50 nor imprisoned more than 30 days. Each day that a violation exists in excess of 30 days after receipt of a notice of violation shall be considered a separate offense.

909.2. Civil Action.

Any person, firm or corporation who violates and provision of this ordinance, whether through ownership, use or construction, may be subject to an administrative fine of \$50 to be determined after due notice and a hearing before the Zoning Administrator. Any party aggrieved shall have the right to appeal to the Board of Adjustment upon giving five (5) days written notice of appeal following the mailing to said aggrieved party to the decision of the Zoning Administrator. Each day that violation exists in excess of 30 days after receipt of a notice of violation shall be considered a separate offense.

Any violator of any provision of this Zoning Code who fails to comply with any order of the Zoning Enforcement Officer shall also be subject to a civil penalty of Fifty Dollars (\$50.00) which can be assessed seven (7) days following the date of said order, and further be subject to an additional civil penalty of Ten Dollars (\$10.00) for each additional day that said violation continues thereafter, up to a maximum aggregate civil penalty hereunder of Two Thousand Five Hundred Dollars (\$2,500.00). Notwithstanding the above provisions, in the event of a second violation by any person or entity relative to the same property within any 12 calendar month period after a prior violation of the ordinance (or a similar ordinance), the Zoning Enforcement Officer may levy an additional civil penalty in an amount of an additional Five Hundred Dollars (\$500.00). Subject to the provisions of Section 1-6 (b) of the City Code, the civil penalty can be recovered by the City in a civil action in the nature of a debt if the violator does not pay the same. Any imposition of any civil penalty shall be additional to any enforcement remedies, civil or criminal, that may be otherwise available for enforcement of this Code. (Amended 2/16/06)

In addition to any other remedy allow by law, the City may institute any appropriate action, or proceedings which can prevent the unlawful erection, construction, reconstruction, alteration,

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repair, conversion, maintenance or use, to restrain, correct, or abate the violation, to prevent the occupancy of the building, structure or land, of to prevent any illegal act, conduct, business or use in or about the premises, or to seek enforcement by an appropriate equitable remedy issuing from a Court of competent jurisdiction.

Section 910: Effective Date.

This ordinance, including the Zoning Map, shall take effect from and after the date of its adoption by the City Council

Section 911: Rights and Liabilities under Prior Ordinance.

This ordinance in part carries forward by enactment some of the provisions of the Zoning Ordinance of the City of Henderson adopted on August 23, 1948, as subsequently amended. It is not the intention of the City Council, by this Ordinance to repeal the entire prior Ordinance as amended, but rather to re-enact and continue in force without interruption certain existing provisions, so that all rights and liabilities which have accrued there under shall be preserved and may be enforced. The enactment of this Ordinance shall not affect any action, suit, or proceeding instituted or pending at this time under the Zoning Ordinance of 1948, as amended. All provisions of the Zoning Ordinance of the City of Henderson enacted in 1948, as amended, and which are not re-enacted herein, are hereby repealed.

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(RESERVED)