

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** 5 July 2005

**SUBJECT:** Flood Damage Prevention Ordinance

**ATTACHMENT(S):** Draft ordinance

**SUMMARY OF REQUEST:**

Attached is a proposed final ordinance incorporating the policy directions given by the Board of Commissioners at its 23 June 2005 meeting.

Notable provisions, with citations to the draft, include:

- 1) Development in the floodway only for water dependent structures, water and sewer lines where no viable alternative exists, and streambank restoration, and with “no-rise” certification (§5.1(A)).
- 2) Fill as of right in the floodway fringe only on parcels which are recorded as of the date of adoption, and then only on 20% of such parcels (§5.1).
- 3) A new section allowing “special fill permits” in the floodway fringe, only if “full compensatory flood storage” and only if the Board of Commissioners finds that the project advances a public or community purpose. (§4.7).

**COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:**

The County manager supports this proposal.

County staff will present further information on this matter.

**FLOOD DAMAGE PREVENTION ORDINANCE**

WHEREAS, the North Carolina General Assembly delegated, in Part 6. of Article 21 of Chapter 143; Parts 3, and 4 of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes, the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, certain areas of Henderson County are subject to periodic flooding, resulting in loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and

WHEREAS, these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards; and

WHEREAS, it is the purpose of the following ordinance to promote the public health, safety, and general welfare, to permit only that development within the floodplain which is appropriate in light of the probability of flood damage and which represents a reasonable social and economic use of land in relation to the hazards involved, and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (A) restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;
- (B) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (C) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (D) control filling, grading, dredging, and all other development which may increase erosion or flood damage; and
- (E) prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands

NOW THEREFORE BE IT ORDAINED that the Flood Damage Prevention Ordinance attached hereto is hereby adopted and ordained for Henderson County.

This the \_\_\_\_ day of \_\_\_\_\_, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: \_\_\_\_\_  
WILLIAM MOYER, Chairman

Attest:

(Seal)

\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

ARTICLE 1 AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1.1 Statutory authorization: The legislature of the State of North Carolina has in Part 6. of Article 21 of Chapter 143; Parts 3, and 4 of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of Henderson County, North Carolina does ordain this Flood Damage Prevention Ordinance.

1.2 Findings:

(A) The flood hazard areas of Henderson County are subject to periodic inundation which may result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

1.3 Objectives: The objectives of this ordinance are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions and disruptions of family life caused by flooding;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas;

(G) To permit and encourage the retention of open land uses which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the community and which will not impede the flow of flood waters;

(H) To prevent victimization by ensuring that potential land, home and business buyers are notified that property is located in an identified flood hazard area; and

(I) To prevent increased flood levels caused by unwise floodplain development.

ARTICLE 2 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. The following specific definitions apply, unless the context clearly indicates otherwise:

*Accessory Structure* means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building. This term expressly includes aircraft hangars.

*Addition* (to an existing building) means an extension or increase in the floor area or height of a building or structure.

*Agriculture* means the use of land for the tilling of soil; the growing of crops or plants, including truck farming, field crops, vegetables, fruit, nut, sod, seed or tree production; other farming practices, including but not limited to plastic culture; pasturage, including pasture for cattle, horse, sheep or goats and other farm animals; forestry (silviculture); other forms of food and fiber grown for human and/or animal consumption; greenhouses, nurseries and ornamental horticulture; the raising, breeding, working and use of farm animals; aquaculture; beekeeping; associated processing and packing of agricultural commodities; the use of waters for stock watering, irrigation and other farm purposes; and, the permitted construction or maintenance of agriculture-related water diversion structures, including dikes, levies and ditches.

*Appeal* means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

*Area of Shallow Flooding* means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

*Area of Special Flood Hazard* means the same as *Special Flood Hazard Area (SFHA)*.

*Basement* means any area of the building having its floor sub-grade (below ground level) on all sides.

*Base Flood* means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

*Base Flood Elevation (BFE)* means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood.

*Building* means the same as *Structure*.

*Chemical Storage Facility* means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

*Development* means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

*Disposal* means the same as "disposal" as defined as in N. C. Gen. Stat. §130A-290(a)(6).

*Elevated Building* means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*Encroachment* means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*Existing Manufactured Home Park or Manufactured Home Subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is pre-FIRM.

*FEMA* means the Federal Emergency Management Agency of the United States Department of Homeland Security.

*Flood or Flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (A) the overflow of inland or tidal waters; or

(B) the unusual and rapid accumulation of runoff of surface waters from any source.

*Flood Boundary and Floodway Map (FBFM)* means an official map of a community, issued by the Federal Insurance and Mitigation Administration of FEMA, on which the 100-Year flood boundary (also known herein as “Special Flood Hazard Area” and “floodplain”), floodway fringe and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

*Flood Hazard Boundary Map (FHBM)* means an official map of a community, issued by the Federal Insurance and Mitigation Administration of FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

*Flood Insurance* means the insurance coverage provided under the National Flood Insurance Program managed by the Mitigation Division of FEMA.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, issued by the Federal Insurance and Mitigation Administration of FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

*Flood Insurance Study (FIS)* means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

*Floodplain* means any land area susceptible to being inundated by water from any source, as designated on an official FEMA flood map or other official flood map.

*Floodplain Management* means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

*Floodplain Administrator* means the individual appointed to administer and enforce the floodplain management regulations.

*Floodplain Regulations* means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

*Floodproofing* means any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

*Flood Prone Area* means the same as *Floodplain*.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Floodway Fringe* means the floodway fringe as shown on the FBFM.

*Flood Zone* means a geographic area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

*Floor* means the same as Lowest Floor

*Freeboard* means the height added to the Base Flood Elevation (BFE) to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The freeboard plus the Base Flood Elevation establishes the Regulatory Flood Protection Elevation.

*Functionally Dependent Facility* means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

*Hazardous Waste Management Facility* means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

*Highest Adjacent Grade (HAG)* means the highest natural elevation of the ground surface prior to construction, next to the proposed walls of the structure.

*Historic Structure* means any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(C) Individually listed on a State inventory of historic places; or

(D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

(1) By an approved state program as determined by the Secretary of Interior, or

(2) Directly by the Secretary of Interior in states without approved programs; or

(3) By Henderson County.

*Lowest Floor* means the subfloor, top of slab, or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

*Manufactured Home* means a single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act 1974 (which became effective June 15, 1976). For purposes of this chapter, however, the term includes mobile homes. The term "manufactured home" does not include a "recreational vehicle".

*Market Value* means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

*Mean Sea Level* means the National Geodetic Vertical Datum (NCVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

*New Construction* means structures for which the “start of construction” commenced on or after the effective date of the original version of this ordinance and includes any subsequent improvements to such structures.

*Nonconforming Building or Development* means any legally existing building or development which fails to comply with the current provisions of this ordinance.

*Non-Encroachment Area* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

*Obstruction* includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, increase its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

*Post-FIRM* means construction or other development which started on or after January 1, 1975 or on or after the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

*Pre-FIRM* means construction or other development which started before January 1, 1975 or before the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

*Public Safety and/or Public Nuisance* means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, or any navigable lake, river, bay, stream, canal, or basin.

*Recreational Vehicle (RV)* means a vehicular-type unit primarily designed as temporary and mobile living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on and drawn by another vehicle. Such units do not satisfy the dimensional requirements of a manufactured home.

*Reference Level* means the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance of such building. Within Special Flood Hazard Areas the reference level is the top of the lowest floor.

*Regulatory Flood Protection Elevation* means the elevation to which all structures and other development located within the Special Flood Hazard Areas must be elevated or floodproofed. Within areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard, not to exceed a total elevated height of six (6) feet. In areas where no BFE has been established, all structures and other development must be elevated or floodproofed to two (2) feet above the highest adjacent grade, not to exceed six (6) feet total elevated height.

*Remedy a Violation* means to bring the structure or other development into compliance with State or Henderson County floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

*Repetitive Loss* means flood-related damages sustained by a structure on two (2) separate occasions during any 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.

*Retrofitting* means measures, such as floodproofing, elevation, construction of small levees, and other modifications, taken on an existing building or its yard to protect it from flood damage.

*Riverine* means relating to, formed by, or resembling a river (including tributaries) stream, brook, etc.

*Road* means a dedicated public or private right-of-way for vehicular traffic.

*Salvage Yard* means any non-residential property used for the storage, collection, and/or recycling of any type of equipment and including but not limited to vehicles, appliances and related machinery.

*Special Fill Permit* means a permit granted pursuant to the procedures set out in this Ordinance to fill an area of the floodway fringe greater than the area of floodway fringe permitted by Section 5.1 of this Ordinance.

*Special Flood Hazard Area (SFHA)* means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year as determined in Article 3, Section 2 of this ordinance.

*Solid Waste Disposal Facility* means:

1. Land, personnel and equipment used in the management of solid waste. Incinerators and drop-off recycling centers are specifically excluded from this definition. Solid waste management facilities include the following:

- a. Transfer station;
- b. Landfill, or
- c. Materials recovery facility.

2. Specifically excluded from this definition and any regulation under this chapter are those solid waste management facilities that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those solid waste management facilities not operating as a hazardous waste disposal facility or radioactive waste disposal facility (which are prohibited in all zones).

*Solid Waste Disposal Site* means the same as “solid waste disposal site” as defined as in NCGS 130A-290(a)(36)

*Start of Construction* includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

*Structure* means anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having permanent location on the ground; however, anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of buildings), site stabilization, on-site utilities and lighting or property fencing shall not be considered a structure for the purposes of this chapter.

*Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Improvements, modification, and additions to existing buildings are counted cumulatively for a minimum of five years.

*Substantial Improvement* means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the start of



construction of the improvement, or when an existing building is structurally altered such that the first floor area is increased by more than 20 percent. Improvements, modifications, and additions to existing buildings are counted cumulatively for a minimum of five years. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(A) any correction of existing violations of State or Henderson County health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(B) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Variance* means a grant of relief from the requirements of this ordinance.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

*Watercourse* means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

*Water Dependent Structure* means any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose such as boat ramps, boathouses, docks, and bulkheads. Ancillary facilities, such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas, are not water dependent structures.

*Water Surface Elevation (WSE)* means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

## ARTICLE 3 GENERAL PROVISIONS

### 3.1 Lands to Which this Ordinance Applies:

The provisions of this ordinance shall apply to all Special Flood Hazard Areas within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any city or town, and (2) the incorporated areas and extraterritorial jurisdiction of any city or town specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners, both in accordance with the Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Henderson County dated March 1, 1982, and subsequent amendments thereto. (In making such a request, the city or town must comply with the requirements of N.C. Gen. Stat. §160A-360). Unless otherwise provided herein, in no instance shall this ordinance apply to any area which is not duly established and identified as a Special Flood Hazard Area, either by the methods listed in Section 3.2(A), or as shown on with the Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Henderson County dated March 1, 1982. Said map and all explanatory matter thereon accompanies and is hereby made a part of this chapter. The chapter and map shall be on file in the office of Henderson County Development and Enforcement Services.

### 3.2 Basis for Establishing the Special Flood Hazard Areas:

(A) The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Henderson County dated March 1, 1982, which with accompanying supporting data, and any revision thereto,

including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this ordinance. The current FIRMs for Henderson County as published by FEMA in March 1, 1982 are: Community Panels 370125 0001-0015, 0020, 0050, 0075, 0080, 0085, 0090, 0095, 0105, 0125, 0135 and 0150. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to:

- (1) Detailed flood data generated as a requirement of Sections 4.3(K) and 4.3(L) of this Ordinance;
- (2) Preliminary FIRMs where more stringent than the effective FIRM; or
- (3) Post-disaster Flood Recovery Maps

NOTE: If detailed topographic mapping or surveying shows that a building site adjacent to a Special Flood Hazard Area is below the Base Flood Elevation, it must be regulated as being within the Special Flood Hazard Area, even if not shown within the boundaries of the Special Flood Hazard Area shown in the FIRM or any accompanying maps. For regulatory purposes, flood elevations are the ruling guideline.

(B) Delineation of floodway: For the purposes of delineating the floodway and evaluating the possibility of flood damages, the Floodplain Administrator may:

- (1) Request technical assistance from the competent federal agencies, including the US Army Corps of Engineers, the Soil Conservation Service, and the US Geological Survey, or successor agencies, and
- (2) Utilize reports and data supplied by federal and State agencies in delineating floodways and evaluating the possibilities of flood damages.

3.3 Establishment of Floodplain Development Permit: A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Section 3.2.

3.4 Compliance: No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

3.5 Abrogation and Greater Restrictions:

(A) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(B) The following may impose additional regulations for land uses and structures located in any portion of a floodplain and are hereby adopted and incorporated into this ordinance by reference as though they were copied herein fully. However, where this ordinance and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

- (1) The International Building Code, as adopted by the Building Code Council and enforced by State and local code enforcement officials, and including all volumes.
- (2) The Southern Building Code Congress International "SBCCI Standard for Floodplain Management" SSTD 4-89,
- (3) The US Army Corps of Engineers "Flood Proofing Regulations" – EPI 1651-2-314, December 15, 1995.
- (4) Federal Emergency Management Agency "Managing Floodplain Development in Approximate Zone A Areas," April, 1995.

3.6 Other Approval Required:

(A) The granting of a permit under the provisions of this Ordinance shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(B) No permit for the construction of any structure to be located within a floodplain shall be granted unless the applicant has first obtained the permit required by this ordinance.

3.7 Interpretation: In the interpretation and application of this ordinance, all provisions shall be:

(A) considered as minimum requirements;

(B) liberally construed in favor of the governing body; and

(C) deemed neither to limit nor repeal any other powers granted under State statutes.

3.8 Warning and Disclaimer of Liability:

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Henderson County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

3.9 Penalties for Violation:

Any person violating any provision of this chapter shall be subject to the penalties set forth in Chapter 1, General Provisions, Article II of the Henderson County Code.

ARTICLE 4 ADMINISTRATION

4.1 Designation of Floodplain Administrator: The Zoning Administrator, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of this ordinance.

4.2 Floodplain Development Permit Application Requirements:

(A) Plans and Application Requirements. A Floodplain Development Permit shall be required for any development in a SFHA. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities proposed to be located within Special Flood Hazard Areas. The following items/information shall be presented to the Floodplain Administrator to apply for a Floodplain Development Permit.

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;

(ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section 2, or a statement that the entire lot is within the Special Flood Hazard Area;

- (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 3.2;
  - (iv) The boundary of the floodway fringe area, if any, as set out in the FBFM;
  - (v) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 3.2;
  - (vi) The Base Flood Elevation (BFE), where provided, as set forth in Sections 3.2, 4.3(K), 4.3(L), 5.4 and/or 5.5;
  - (vii) Certification of the plot plan by or under the direct supervision of a professional land surveyor or registered professional engineer and certified by same.
- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed; and,
  - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- (3) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in this Ordinance.
- (4) A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (i) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers); and,
  - (ii) Details of sufficient openings to facilitate the unimpeded movements of floodwaters should solid foundation perimeter walls be used in floodplains, in accordance with this Ordinance;
- (5) Usage details of any enclosed space below the regulatory flood protection elevation.
- (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (7) Copies of all other Local, State and Federal permits required prior to Floodplain Development Permit issuance (e.g. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
- (8) Documentation for placement of Temporary Structures to ensure Section 5.2(F) of this ordinance are met.
- (9) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least five (5) feet above the highest adjacent grade.
- (10) A Floodplain Development Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of this ordinance or any regulations included by reference. Issuance of a permit shall not prevent the Floodplain Administrator or Inspection

Department personnel from thereafter requiring correction of errors in plans or construction, or violations of this ordinance.

(B) The Floodplain Development Permit shall include, but not be limited to:

- (1) A description of the development to be permitted under the Floodplain Development Permit issuance.
- (2) The Special Flood Hazard Area determination for the proposed development per available data specified in Section 3.2.
- (3) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (4) The regulatory flood protection elevation required for the protection of all public utilities.
- (5) All certification submittal requirements with timelines.
- (6) A statement that no fill materials shall encroach into the floodway, non-encroachment area, or the Floodway fringe of any watercourse, if applicable, except as permitted in Section 5.1, or pursuant to a Special Fill Permit issued pursuant to Section 4.7 hereof.
- (7) If in a floodway, non-encroachment area, or Floodway fringe, a specification of the location of the minimum foundation opening requirements.
- (8) A statement of limitations of below BFE enclosure uses (if applicable), including but not limited to parking, building access and limited storage only.

(C) Certification Requirements:

(1) Elevation Certificates:

(i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level or highest adjacent grade. Elevation certification shall be prepared by, or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit.

(ii) An Elevation Certificate FEMA (Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level or highest adjacent grade. Elevation certification shall be prepared by or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(iii) A Final As-Built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the

elevation or floodproofed elevation of the reference level and all attendant utilities. Said elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(2) If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Said floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(3) If a manufactured home is placed within a floodway, non-encroachment area, or Floodway fringe and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Section 5.2(B).

(4) Certification Exemptions. The following structures, if located within a floodway, non-encroachment area, or Floodway fringe, are exempt from the elevation/floodproofing certification requirements specified in item (C) above:

(i) Temporary Structures meeting requirements of Section 5.2(F); and

(ii) Accessory Structures less than 150 square feet meeting requirements of Section 5.2(G).

4.3 Duties and Responsibilities of the Floodplain Administrator: Duties of the Floodplain Administrator shall include, but not be limited to performing the following:

(A) Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of this ordinance have been satisfied.

(B) Advise any permittee that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit.

(C) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

(D) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(E) Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 5.1(A) are met.

(F) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with this Ordinance.

(G) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with this Ordinance.

(H) Obtain actual elevation (in relation to mean sea level) of all new public utilities, in accordance with this Ordinance.

(I) Obtain certifications from a registered professional engineer or architect in accordance with this Ordinance, when floodproofing is utilized for a particular structure.

(J) Interpret, as needed, the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.

(K) Obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to this Ordinance, when BFE data has not been provided in accordance with Section 3.2, in order to administer the provisions of this ordinance.

(L) Obtain, review and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source, when BFE data is provided but no floodway nor non-encroachment area data has been provided, in accordance with Section 3.2 in order to administer the provisions of this ordinance.

(M) Maintain, in the Floodplain Development Permit file, a copy of all Letters of Map Amendment (LOMAs) issued from FEMA.

(N) Maintain, permanently, all records that pertain to the administration of this ordinance and make these records available for public inspection.

(O) Make on-site inspections of work in progress, or of any location for which a permit under this ordinance has been either been applied or granted. As the work pursuant to a Floodplain Development Permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary in order to attempt to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.

(P) Issue certificates of compliance for permitted projects once as-built certifications have been received and approved and once final inspections have been completed.

(Q) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed.

(R) Revoke Floodplain Development Permits as required. The Floodplain Administrator may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any Floodplain Development Permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(S) Investigate and inspect, as reasonably deemed necessary to carry out the duties as prescribed in this Ordinance, and for this purpose and in compliance with applicable law to enter at reasonable times upon any

property, public or private, within the jurisdiction of Henderson County, the sites of any complaints or alleged violations of this Ordinance.

(T) Require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

(U) Follow through with corrective procedures of Section 4.5.

(V) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under this ordinance, including any revisions thereto including LOMA, issued by State and/or FEMA. Notify State and FEMA of mapping needs.

(W) Consider the effects of a proposed artificial obstruction in a floodplain in creating danger to life and property, prior to the issuance of any permit:

- (1) By water which may be backed up or diverted by such obstruction;
- (2) By the danger that the obstruction will be swept downstream to the injury of others; and
- (3) By the injury or damage to the site of the obstruction itself.

For this purpose, the Floodplain Administrator may take into account anticipated development in the foreseeable future which may be adversely affected by the obstruction, as well as existing development.

4.4 Fees: The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, variances, appeals and other matters pertaining to this Ordinance. No application for a permit, certificate, or variance, shall be processed unless or until such fees as established and all estimated expenses have been paid in full, nor shall any action be taken on appeals before the Henderson County Flood Damage Prevention Ordinance Appeal Board unless and until any fees and estimated expenses have been paid in full.

4.5 Corrective Procedures:

(A) When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

(B) If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- (1) that the building or property is in violation of the Flood Damage Prevention Ordinance;
- (2) that an informal hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
- (3) that following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(C) If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, s/he may order that corrective action be taken in such lesser period as may be feasible.



(D) Any owner who has received an order to take corrective action may appeal the order to the Henderson County Flood Damage Prevention Ordinance Appeal Board by giving notice of appeal in writing to the Floodplain Administrator within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Henderson County Flood Damage Prevention Ordinance Appeal Board shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(E) If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been made, or fails to comply with an order of the Board of Commissioners following an appeal, he shall be guilty of a misdemeanor and shall be punished at the discretion a court of competent jurisdiction.

4.6 Variance and Appeal Procedures:

(A) The Zoning Board of Adjustment as established by Henderson County, shall be hereinafter referred to as the Henderson County Flood Damage Prevention Ordinance Appeal Board "appeal board", and shall hear and decide requests for variances from the requirements of this ordinance, and appeals of the Floodplain Administrator's decisions.

(B) Any person aggrieved by the decision of the appeal board may appeal such decision to a court of competent jurisdiction, as provided in Chapter 7A of the North Carolina General Statutes.

(C) Variances may be issued for:

- (1) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
- (2) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance; or
- (3) any other type of development, provided it meets the requirements stated in this section,
- (4) but not for special fill permits, pursuant to Section 4.7 herein.

(D) In determining whether to grant or deny variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) A written report addressing each of the above factors shall be submitted by the applicant with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(G) Other considerations to be considered by the appeal board in determining to grant or deny a variance:

(1) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

(2) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship; and

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(H) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

(I) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to FEMA and the State of North Carolina upon request.

#### 4.7 Special Fill Permit Procedures:

(A) The Board of County Commissioners shall have the power to grant, in particular cases meeting specific community need and subject to appropriate conditions and safeguards, permits for special fill in the floodway fringe.

(B) Application:

(1) The application for the permit shall be on a form provided by the Henderson County Development and Enforcement Services Department, and shall be submitted prior to any fill activity requiring a special fill permit.

(2) The application shall include the following:

- (i) Certification, on a form as published by FEMA, or acceptable alternative form approved by FEMA, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; or
  - (ii) Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
  - (iii) An alternative method currently approved by FEMA for use in the revision process for FEMA flood maps. In this case, the engineer shall provide a letter from FEMA indicating that the method used is acceptable; and,
  - (iv) Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of this chapter are met.
- (3) The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the permit, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
- (4) The application shall include information demonstrating compliance with the Henderson County 2020 Comprehensive Plan, and demonstrating the substantial public or community purpose(s) which the permit, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the permit, if granted, which must be demonstrated include:
- (i) Advancing a governmental purpose.
  - (ii) Meeting public infrastructure needs.
  - (iii) Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
  - (iv) Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
- (5) A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the fill permit is proposed.

(C) Procedure

- (1) Applications shall be made to the Henderson County Planning Department, and shall be accompanied by any fee therefore as set by the Board of Commissioners and all estimated costs to the County as determined by the Planning Department staff. Planning Department staff shall review the application for compliance with this Ordinance and transmit the application to Federal, State and local agencies for review and comment. Planning Department staff shall place the application on the agenda of the first regular Planning Board meeting after at least thirty (30) days from the receipt of a complete application.
- (2) Neither the review by the Planning Board nor the hearing before the Board of Commissioners shall be quasi-judicial in nature.
- (3) The Board of County Commissioners may establish and maintain a fee schedule for special fill applications. Such fee, plus the estimated cost of all notices to be given for hearings for a special fill permit application, shall be paid by the applicant before a special fill application is processed.
- (4) Review and recommendation by the Henderson County Planning Board.

(i) Notice of the review by the Planning Board, including notification of adjoining property owners, shall be substantially identical in type and scope as that provided for special uses under Chapter 200 of the Henderson County Code, or any successor land development ordinance.

(ii) At such review, the Planning Board shall hear a summary and review of the application by Planning Department staff, evidence as presented by the applicant, and such other evidence as the Planning Board may find useful.

(iii) The Planning Board shall, within sixty (60) days of the date the application is first considered by the Planning Board, issue its recommendation to the Board of Commissioners as to the grant or denial of the application.

(5) Public hearing by the Board of Commissioners.

(i) Notice of the public hearing before the Board of Commissioners, including notification of adjoining property owners, shall be identical to that provided for special uses under Chapter 200 of the Henderson County Code, or any successor land development ordinance.

(ii) The Board of Commissioners shall consider a summary of the proposed project from the Planning Department staff, evidence in support of the project and concerning the issues upon which proof must be submitted under this Ordinance from the applicant, evidence from adjacent property owners, and such other evidence as the Board of Commissioners finds useful.

(iii) At the conclusion of the public hearing, the Board of Commissioners shall issue its decision within the time limits established in its Rule 47 of the Board's Rules of Procedure.

(D) Standards for grant or denial of application. In order to grant a special fill permit, the Board of Commissioners must conclude:

(1) That the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; and,

(2) That the permit, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,

(3) That the proposed encroachment will not violate any other Federal, State or Henderson County laws, rules ordinances, or regulations; and,

(4) That the permit, if granted, will comply with the Henderson County 2020 Comprehensive Plan, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the permit.

(E) Any grant of a special fill permit by the Board of Commissioners may include conditions, which must be satisfied by the applicant. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

## ARTICLE 5 FLOOD HAZARD REDUCTION

### 5.1 General Standards: In all Special Flood Hazard Areas the following provisions are required.

(A) No encroachment, construction or fill shall be permitted in the floodway or non-encroachment area within the Special Flood Hazard Areas, except water dependent structures, excluding enclosed buildings, new water and sewer lines provided no viable alternative exists, and streambank restoration projects, provided the requirements of Section 5.2 are met. Notwithstanding, no encroachment, construction or fill shall be permitted in the floodway or non-encroachment area within the Special Flood Hazard Areas without the parcel owner first having obtained and submitted to Floodplain Administrator an acceptable certification by a registered professional engineer

proving that the anticipated encroachment(s) shall not result in any increase in the elevation of the regulatory flood during an occurrence of the base flood. The Floodplain Administrator shall require documentation of the certification which shall include either:

- (1) a completed "engineering no-rise" certification form as published by FEMA, or acceptable alternative form approved by FEMA;
  - (2) technical documentation in the form of detailed site and construction plans, showing that all requirements of this chapter are met;
  - (3) technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
  - (4) an alternative method currently approved by FEMA for use in the revision process for FEMA flood maps. In this case, the engineer shall provide a letter from FEMA indicating that the method used is acceptable.
- (B) In the floodway fringe area as indicated on the FBFM, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the date of adoption of this Ordinance, and then only upon no more than twenty percent (20%) of the total of the floodway fringe area contained in each such parcel, except that additional fill may be permitted in the floodway fringe pursuant to a special fill permit granted pursuant to Section 4.7 of this Ordinance.
- (C) All new and substantially improved structures shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (D) All new and substantially improved structures shall be constructed with materials and utility equipment resistant to flood damage.
- (E) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (F) All new utility equipment, substations, lines and other materials used in the provision of services to the public such as telephone, electricity, natural gas, and cable television shall be located outside a floodplain, unless no viable alternative exists.
- (G) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e. washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- (H) All new and replacement water supply systems shall be located outside the Special Flood Hazard Area, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the system, and also to meet all other applicable state and local requirements.
- (I) All new and replacement sanitary sewage and on-site waste disposal systems shall be located outside the Special Flood Hazard Area, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and also to meet all other applicable state and local requirements. On-site waste disposal systems constructed near or adjoining Special Flood Hazard Areas shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(J) No new private wells shall be located within the Special Flood Hazard Area unless no viable alternative exists and that such wells meet all other applicable state and local requirements. Private wells constructed near or adjoining Special Flood Hazard Areas shall be located and constructed to minimize or eliminate infiltration of flood water into the system.

(K) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.

(L) Any fill material on which a structure is located:

- (1) Shall be extended to grade ten (10) feet beyond the limits of the structure foundation; and
- (2) Shall be graded to drain; and
- (3) Shall be protected against erosion; and
- (4) Shall have a side slope no steeper than two (2) feet horizontal to one (1) foot vertical; and
- (5) Shall not contain any contaminated, toxic or hazardous materials; and
- (6) Shall be approved before placement

(M) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

(N) The following are permitted uses for the floodway fringe: all uses otherwise permitted by the applicable land use regulations, so long as such uses are in compliance with the terms of this Ordinance.

(O) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas, except by variance as specified in this Ordinance. A structure or tank for chemical or fuel storage incidental to an allowed use, including but not limited to agriculture, or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 4.2(C) of this Ordinance.

(P) All development proposals shall be consistent with the need to minimize flood damage.

(Q) All development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(R) All development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

5.2 Specific Standards: In all Special Flood Hazard Areas where BFE data has been provided, as set forth in this Ordinance, the following provisions in addition to those required in Section 5.1 are required:

(A) Residential Construction. New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.

Non-Residential Construction. New construction or substantial improvement of any non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection

elevation. Structures located in floodway fringe may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 4.2(C).

(B) **Manufactured Homes.** No manufactured homes shall be permitted except replacement manufactured homes in an existing manufactured home park, existing manufactured home subdivision, or replacement manufactured homes on an individual parcel, provided the following conditions are met:

- (1) Manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation.
- (2) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to N.C. Gen. Stat. §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (3) All foundation enclosures or skirting shall be in accordance with this Ordinance.
- (4) An evacuation plan must be developed for evacuation of all residents of all substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management coordinator.

(C) **Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:**

- (1) Shall not be designed to be used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door). Or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;
- (2) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
- (3) Shall include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must be certified by a professional engineer or architect on the elevation certification form and meet the following minimum design criteria:
  - (i) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
  - (ii) The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.
  - (iii) If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
  - (iv) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;and,

(v) Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood skirting, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(D) Additions/Improvements.

(1) Additions and/or improvements to pre-FIRM structures where the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

(ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(2) Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.

(3) Additions and/or improvements to post-FIRM structures where the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

(ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(E) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(F) Temporary Non-Residential Structures. Prior to the issuance of a Floodplain Development Permit for a temporary structure, the following requirements must be met:

(1) Applicants must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

(i) A specified time period for which the temporary use will be permitted;

(ii) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(iii) The time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(iv) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(v) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the Floodplain Administrator for review and written approval.



(G) When accessory structures are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (1) Accessory structures shall be designed to have low flood damage potential;
- (2) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (3) Accessory structures shall be firmly anchored in accordance with Section 5.1(C);
- (4) All service facilities such as electrical and heating equipment shall be installed in accordance with Section 5.1(D);
- (5) Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with Section 5.2(C)(3).
- (6) An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate (a Floodplain Development Permit is still required). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 4.2(C).

5.3 Subdivisions, Manufactured Home Parks, Manufactured Home Subdivisions, And Other Residential Development: No new manufactured home parks or manufactured home subdivisions shall be allowed within a Special Flood Hazard Area (except that where real estate located within a Special Flood Hazard Area which is a part of such park or subdivision and upon which no development has occurred can be considered as "open space" within such park or subdivision). In addition, manufactured home parks and manufactured home subdivisions existing on the date of original enactment of this ordinance may not be expanded. All other subdivisions or other residential development located wholly or in part within a Special Flood Hazard Area shall:

- (A) be consistent with the need to minimize flood damage;
- (B) have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (C) have adequate drainage provided to reduce exposure to flood hazards; and,
- (D) have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots. Such Base Flood Elevation (BFE) data shall be adopted by reference in accord with Section 3.2 in implementing this Ordinance.

5.4 Standards for Floodplains Without Established Base Flood Elevations: Within the Special Flood Hazard Areas established in Section 3.2, where no BFE data has been provided by FEMA, the following provisions, in addition to Section 5.1, shall apply:

- (A) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet from each side of the stream measured from the top of the bank or five (5) times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood.
- (B) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
  - (1) If BFE data is available from other sources, such as Federal, State or other, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in this Ordinance.

(2) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated above the highest adjacent grade as required in the regulatory flood protection elevation definition.

5.5 Standards for Riverine Floodplains With BFE Data but Without Established Floodways or Non-Encroachment Areas: Along rivers and streams where BFE data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, the following requirements shall apply to all development within such areas:

(A) Standards outlined in ARTICLE 5; and

(B) No encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

## ARTICLE 6 LEGAL STATUS

6.1 Reserved.

6.2 Effect on Outstanding Building Permits: Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a Building Permit has been granted by the Building Codes Administrator or his authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this ordinance or any revision thereto, construction or use shall be in conformity with the provisions of this ordinance.

6.3 Effective Date: This ordinance shall become effective 15 July 2005.