

DRAFT
MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
APRIL 24, 2007

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Planning Board Chair Tedd Pearce, Senior Planner Autumn Radcliff, Planners Matt Cable and Matt Card, Communications Officer Pam Brice, and Administrative Assistant to the Fire Marshall Cathy Justus.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance, stating that the purpose of the meeting was a workshop with respect to the Land Development Code.

RESOLUTION

Chairman Moyer requested the addition of an item to the agenda, a resolution requesting a presidential disaster declaration for the agriculture and agri-business industries of Henderson County.

Commissioner Williams stated that in light of the visit received from the governor, it brought into attention the process the Board would need to take. What the Board would like to see is Federal assistance in the form of grant money or Federal Disaster payments rather than loans. In order for this to take place, a catastrophe had to be declared through the office of the President and the request has to come thorough the Governors office. There was no guarantee that this will happen but the Commissioners wanted to make their wishes known and speak out on behalf of what had occurred in the county.

County Attorney Russ Burrell explained that under the Robert G. Stafford Disaster Relief and Emergency Assistance Act that the Federal Statute under which our Federal Disaster Relief flows says that all requests for declaration by the President in a major disaster shall be made by the Governor of the affected state. The kinds of relief that would most effective are only available if the President has declared a major disaster. There are a number of programs that are available that primarily involve either the placement of a very limited number of items such as replacement of housing or loan programs unless there is a declaration of a major disaster.

Commissioner Williams made the motion that the Board adopt the Resolution requesting a Presidential Disaster Declaration for the Agriculture and Agri-business Industries of Henderson County. All voted in favor and the motion carried.

REVIEW OF COMMENTS AND INPUT FROM PREVIOUS LAND DEVELOPMENT CODE
PUBLIC INPUT

DATE APPROVED: _____

Planning Director Anthony Starr stated that Staff and the Board of Commissioners had gone through a series of public input sessions with a wide range of issues discussed. In preparation for the workshop a series of information was provided to the Board including an overview of zoning map options and eight (8) text options for the Board's consideration. After the initial presentation by Planning Staff, direction from the Board was requested as to what changes should be made.

With respect to manufactured homes only, there will be no areas that are being prohibited from manufactured homes except for the small area in R1 immediately around the center of Etowah and a small area above. Everywhere else that currently allows manufactured homes will continue to allow manufactured homes.

MAP OPTION 1: Local Commercial Node at Intersection of NC Highway 191 and Mountain Road
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: Permitted used in LC vs. CC

MAP OPTION 2: Local Commercial Nodes along US Highway 64 East
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: No Commercial Zoning along US Highway 64 East

MAP OPTION 3: Local Commercial Node along US Highway 74 in Gerton Community
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: No Commercial Zoning in Gerton Community

The Board would like to see photos or images to help define 25% - 25% slope and requested additional information from the Planning Department regarding Map Option 3.

Anthony Starr stated that new data had been received from the state on the GIS system that may be helpful. He could provide photos to the Board however pictures make it hard to convey just how steep the property is. He suggested the Board actually go to the site.

MAP OPTION 4: Local Commercial Node along US Highway 74 in Bat Cave Community
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: No Commercial Zoning in Bat Cave Community

MAP OPTION 5: Local Commercial Node at Intersection of Dana Road and Upward/Ridge Road in Dana Community
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: No Commercial Zoning in Dana Community

MAP OPTION 6: Local Commercial Node along Upward Road to Howard Gap Road
Current Draft 8 Proposed Zoning – Local Commercial (LC)
Reason for Proposed Change: Existing Commercial Uses along Upward Road

MAP OPTION 7: Industrial in the Vicinity of Asheville Regional Airport
Current Draft 8 Proposed Zoning – Industrial (I)
Reason for Proposed Change: Asheville Regional Airport Vicinity

MAP OPTION 8: Residential Zoning District Four (R4) in the Vicinity of Pisgah National Forest
Current Draft 8 Proposed Zoning – Residential Four (R4)

Reason for Proposed Change: Conservation of Natural Areas

MAP OPTION 9: Residential Zoning District Four (R4) in the Vicinity of Dupont State Forest

Current Draft 8 Proposed Zoning – Residential Four (R4)

Reason for Proposed Change: Conservation of Natural Areas

MAP OPTION 10: Residential Zoning District Four (R4) in the Vicinity of the Green River Gamelands

Current Draft 8 Proposed Zoning – Residential Four (R4)

Reason for Proposed Change: Conservation of Natural Areas

TEXT OPTION 1: Transitioning R-40 to R2

Issue: The current draft LDC proposes that Residential Two (R2) zoning will replace existing residential zoning districts including R-40, R-30, R-20, R-15 and R-10 among others. The concern expressed by the public has been that Residential Two (R2) zoning is less restrictive than the current Estate Residential (R-40) Zoning District. This concern is primarily a result of the setbacks recommended for R2, which are less than those required by R-30, and the permitting of duplexes and triplexes in R-2, which are not permitted in R-40 (which permits only single-family residential uses).

Potential Solution 1: Increase the proposed front yard setbacks to meet those of the R-40 district. The R-40 district requires front yard setbacks of 60 feet from the center line of streets and 75 feet from the center line of major streets. Under the proposed LDC setbacks are measured from the edge of right-of-way. The standard right-of-way for state-maintained roads is 50 feet (25 feet of right-of-way on either side of the centerline). The differences measuring from “center line” and measuring from “edge of right-of-way” will make LDC setbacks appear reduced even when corrected to meet R-40 standards.

Potential Solution 2: Allow duplexes and/or triplexes to remain as permitted uses in the R2 district but remove the maximum residential density option which currently applies in the district.

- 1) Residential density shall be calculated utilizing the entire acreage of a tract of land. Under this scenario, residential density shall be determined based on the following formula:

Lot size x allowable units per acre = permitted dwelling units

The following example assumes a 5 acre tract with an allowable density of 4 units/acres:

5 acres x 4 units per acres = 20 permitted dwelling units

Residential density shall be applied:

- a) On a lot existing at the time of the initial adoption of this Chapter, where there in not adequate area to comply with the applicable standard residential density requirement;
 - b) To single-family residential uses; and
 - c) To multifamily residential uses with fewer than five (5) units.
- 2) Residential accessory structures shall be located in side or rear yards and shall be setback a minimum of ten (10) feet from any property line.
 - 3) Maximum height may be exceeded in multifamily developments as detailed in §200A-60 (Supplemental Requirements) SR 1.6 (Dwelling, Multifamily, Five (5) or More Units), provided such developments do not exceed 50 feet in height.

Potential Solution 3: Eliminate duplexes and/or triplexes as permitted uses from the R2 zoning district or permit them only special uses.

Potential Solution 4: Develop an overlay district with a minimum lot size requirement of 2/3 of an acre (in order to prevent creating numerous nonconforming lots) and apply this overlay district to large contiguous parcels which are currently zoned R-30 and R-40.

Tedd Pearce felt that the best solution to the R-40 and R-30 zoning problem was to try to mirror the rights with a suburban overlay on land that is presently zoned R-30 or R-40.

Planning Staff would look at other possibilities and bring them back to the Board.

TEXT OPTION 2: Special Subdivisions

Issue: The public had expressed concerns that the elimination of family subdivisions will create a hardship for people who create small subdivisions for family members or for sale.

Potential Solution 1: Change the existing minor subdivision standards so that all minor subdivisions with five (5) or fewer lots will be exempt from building roads or other infrastructure. Currently, minor subdivisions with four (4) or fewer lots are proposed to be exempt from building roads and other infrastructure. However, there are no exemptions for minor subdivisions from zoning regulations proposed in the draft Land Development Code. With this option all subdivisions must meet the applicable density requirement for zoning.

Potential Solution 2: The special subdivision option could be used to replace regulations for 1 to 4-lot minor subdivisions or as a stand alone option to replace family subdivisions. This option provides for the creation of five (5) lots over five (5) years. Special subdivisions would be required to meet the density requirements of zoning or have a minimum lot size of ½ acre in size, whichever is less. As with 1 to 4-lot minor subdivisions, road standards do not apply with this option. Revisions to other subdivisions regulations will be required if the special subdivision option is used. See language below for special subdivision.

200A-75. Special Subdivisions

- A. Special subdivisions shall comply with the standards outlined below.
 - 1. Special subdivisions shall consist of a total of five (5) or few lots.
 - 2. Special subdivisions may be phased but no more than 5 lots within a five year period shall be allowed within the boundaries of the tract that was the subject of the original special subdivision application.
 - 3. Special subdivisions are exempt from road requirements in §200A-77 subsection C (Roads) when private roads are proposed.
 - 4. Special subdivisions shall adhere to the road requirements in §200A-77 subsection C (Roads) when public roads are proposed.
 - 5. Special subdivisions must comply with the requirements of the following subsections of this Article: §200A-77 subsections E, F, G, H, I, J, K, and M. Final plats for special subdivisions shall adhere to the final plat requirements for minor subdivisions.
- B. Review of Special Subdivisions. A special subdivision application may be approved by the Subdivision Administrator under the provisions of this subsection and under the provisions of §200A-246 (Review for Minor, Special and Nonstandard Subdivisions). The Subdivision Administrator may, for good reason, refer a special subdivision to the Planning Board for review. The Planning Board shall review the subdivision under the provisions of the subsection and §200A-246 (Review for Minor, Special and Nonstandard Subdivisions).

- C. Zoning Requirements for Special Subdivisions. Lots created in a special subdivision must meet the minimum residential density requirements for the applicable zoning district or each lot created must have a minimum lot size of at least ½ acre (21,780 square feet) in size, whichever is less.
- D. Expansion of Special Subdivisions. If a special subdivision is ever expanded (more than five (5) lots are created within the five (5) year period) then the applicant must, depending on the number of lots created, comply with the procedures for minor subdivision (§200A-75) or major subdivisions (§200A-77). If expansion occurs the applicant will be required to reapply under the applicable minor or major subdivision provisions. Expansions of special subdivisions shall comply with the following requirements.
 - 1. The applicant will be required to build all infrastructure required by §200-A75 (Minor Subdivisions) or §200A-77 (Major Subdivisions).
 - 2. The subdivision must meet all applicable zoning district regulations found in Article II (Zoning District Regulations).
 - 3. The reviewing agency may require the upgrading of improvements, including road paving, utility upgrading and additional right-of-way dedication.
 - 4. All lots created by a special subdivision will count toward the total number of lots for any minor or major subdivision densities.
 - 5. Final plats for special subdivision must have the following certificate, signed by the property owner, provided on the face of the plat:

Certificate of Understanding

I (we) hereby certify that I am (we are) the owner (s) of the property located within the subdivision-regulation jurisdiction of Henderson County as shown and described hereon, and that I (we) hereby adopt this plan of subdivision. I (we) understand that expansion of this subdivision may result in the upgrading of road infrastructure, utilities and additional right-of-way dedication and other applicable requirements as required by the Subdivision Regulations (Article III) of the Land Development Code (Chapter 200 of the Henderson County Code).

DATE

OWNER (S)

- E. Special Subdivisions, Minor and Major Subdivisions. The special subdivision procedure may not be used in conjunction with an application for a major subdivision or minor subdivision. In the event that a person is found to have used the special subdivision provisions of this Article to create parcels of land for commercial, office institutional, industrial and/or mixed use development, then such person shall be required to comply with any and all requirements for a major subdivision and shall be required to rerecord a plat. In addition, abuse of this subsection will be deemed a violation of this Chapter and may subject the violator to any and all applicable penalties.

County Manager Steve Wyatt suggested following up on emergency access for the residences as a public safety issue. Mr. Wyatt asked Mr. Starr to get with the Fire Marshal for advice.

TEXT OPTION 3: Development in areas of Steep Slope & Floodplain

Issue: The current draft LDC provides the same residential density for area containing steep slopes or floodplain areas as other more buildable areas of land. The concern expressed by the public had been that

some protection of these areas should be provided and that developers should not receive the same density credit for these areas. The County cannot impose a rule that would not allow any development of these areas as that would be a regulatory taking under the constitution and would require “just compensation.”

Potential Solution 1: The County can provide rules that set a much lower density for areas that contain steep slope or floodplain. Each residential zoning district could be amended to indicate that area with slope greater than 25% or within the 100-year floodplain. Language for such a provision could be as follows:

“The maximum residential density for areas with slope greater than 25.0% or within the Special Flood Hazard Area shall be one (1) dwelling unit per five (5) acres.”

This language would appear in Article II of the LDC below each dimensional requirements table. This language would provide a more appropriate density for these areas and should not encourage overdevelopment.

TEXT OPTION 4: Off-site Access

Issue: Concern that our current regulations are not restrictive enough regarding development of properties that have inadequate off-site access or frontage on a public or private road. Table 3.2 of the proposed subdivision regulations in the Land Development Code shows a maximum number of lots allowed for properties that have inadequate off-site access (less than 30-foot right-of-way) or inadequate frontage (less than 30 feet of frontage). This provision allows 1 lot per acre. This is the same provision as in our current Subdivision Ordinance.

Potential Solution 1: One solution is to limit development on these properties to a maximum of 1 lot per 2 acres.

Potential Solution 2: Another solution is to limit the total amount of units that would be allowed.

The overall consensus was to limit development on these properties to a maximum of 1 lot per acre with a maximum of 25 lots and the Board would look further into it before making a final decision.

TEXT OPTION 5: Commercial Uses in R-3

Issue: Concerns were raised regarding the limited amount of commercial and business uses allowed in the R-3 residential zoning district.

Potential Solution 1: One solution is to allow more commercial and business uses in the R-3 zoning district as a special use permit. Provided below is a list of uses the Board of Commissioners may want to consider adding to the Table of Permitted and Special Uses as a special use permit in R-3:

Accessory Uses:

- Childcare Facility (as an accessory for a principle business)
- Drive-Thru Window
- Fuel Pumps
- Loading Bay

Recreation Uses:

- Shooting Ranges, Indoor
- Shooting Ranges, Outdoor

Educational and Institutional Uses:
Place of Assembly, Small

Business, Professional, and Personal Services:
Automobile and Equipment Service
Exterminating and Pest Control
Office: Business, Professional and Public
Tire Recapping
Urgent Care Clinic

Transportation, Warehousing and Utilities:
Septic Tank and Related Services

Manufacturing & Industrial Uses:
Chip Mill
*Machining and Assembly Operations, Limited
**Manufacturing and Production Operations, Limited

*Machining and Assembly Operations, Limited is a new type of use. If added to the Table of Permitted and Special Uses, it would allow an establishment of a limited size to engage in the assembly, fabrication and/or modification of products. Staff suggests that these establishments to limited to a maximum of 10,000 square feet in the R-3 zoning district.

** Manufacturing and Production Operations, Limited is a new type of use. If added to the Table of Permitted and Special Uses, it would allow an establishment of limited size to engage in the mechanical, physical or chemical transformation of raw materials, substances or components into new products. Staff suggests that these establishments be limited to a maximum of 10,000 square feet in the R-3 zoning districts.

Commissioner McGrady requested that the Planning Department look back at the uses allowed in R-3 and reconsider if they should or should not be allowed. It may be that standards or restrictions need to be added.

TEXT OPTION 6: Board of Commissioner Approval for Referred Subdivisions

Issue: Concern that the Board of Commissioners should review larger subdivisions.

Potential Solution 1: Provide a provision in the Subdivision Regulations (Article III) of the Land Development Code that would allow the Planning Board to refer any major subdivision to the Board of Commissioners for review and approval. See language below.

§200A-248, D 4 - Referral to Board of Commissioners

The Planning Board may, for good cause, refer any subdivision included under §200A-248 to the Board of Commissioner for review after giving due notice to the applicant. Good cause in this provision may include but is not limited to size of development, location within the County, impact on local community and infrastructure, or particular environmental features that make this subdivision substantially unique from other proposed subdivisions.

County Attorney Russ Burrell stated that if the Board is going to use standards, an audit checklist, for subdivisions, they will have to hear evidence and make finding based on whatever those standards are as in a quasi-judicial hearing. Neither the current subdivision ordinance nor subdivision portion of the Land Development Code are set up with standards that would be necessary for the Board to make a determination based on what the effect is on the community as opposed to; Does this subdivision meet all the requirements to be subdivided? This portion of the LDC will need a significant reworking.

TEXT OPTION 7: Sign Regulations – Freestanding Signs

Issue: The issue of freestanding sign heights had been raised by some of the Commissioners. Staff seeks directions as to what the appropriate height should be for commercial districts. Currently, the proposed maximum height is 18 feet.

Potential Solution 1: Lower sign height to 12 feet for Office, Institutional and Commercial Districts.

Potential Solution 2: Leave the current proposed height of 18 feet for signs in Office, Institutional and Commercial Districts.

Potential Solution 3: Increase sign height for Office, Institutional and Commercial Districts as specified by the Board.

The Board decided to stay with solution number 2.

TEXT OPTION 8: Sign Regulations – Outdoor Advertising Signs (Billboards)

Issue: The issue outdoor advertising signs, commonly referred to as billboards, had been brought to the attention of planning staff. The current regulations require that such signs be placed at 1000 feet from other outdoor advertising signs and residences. The draft LDC only provides a 300-500 space requirement between signs with no spacing requirement from residences. The draft LDC language could allow new outdoor advertising signs in area that no additional signs are currently permitted.

Potential Solution 1: Leave the current proposed LDC language in place.

Potential Solution 2: Increase the proposed spacing requirement to 1,000 feet form other outdoor advertising signs and residences. See the proposed language below.

200A-164 Commercial and Industrial Districts, Urban Service Area

Outdoor advertising signs are permitted only in commercial and industrial districts where they are located in the Urban Services Area as identified by the Comprehensive Plan. Outdoor advertising signs shall be classified based on size and include: Outdoor Advertising Signs Type A, B and C.

Outdoor Advertising Sign	Square Feet Permitted	Maximum Height (ft.) ²	Minimum Setback (ft.) ³	Spacing (linear ft.)
Type A	0 to 72	25	10	1,000
Type B	>72-300	35	20	1,000
Type C	>300-380 ¹	35	20	1,000

¹ Signs greater than 380 square feet are considered billboards and are not permitted in the County.

² Maximum height shall be measured from the existing road grade to the uppermost point on the sign structure.

³ Minimum setback shall be measured horizontally from the adjacent edge of right-of-way to the nearest edge of the sign structure, provided that no part of the sign or sign structure shall encroach upon a public right-of-way. Where property abuts more than one (1) road, signs shall be set back an equivalent distance from each road no less than a minimum setback required.

Outdoor advertising signs shall be spaced so that such outdoor advertising sign (or its structure) is placed no closer to the next outdoor advertising sign (or its structure) or any existing adjacent residence than the minimum spacing distance required. Spacing shall apply to outdoor advertising signs located on either side of a road. The minimum distance between signs or between a sign and a residence shall be measured horizontally between the nearest points on either structure. If, because of terrain, vegetation or practical difficulties, a point-to-point accurate measurement cannot be obtained, the Zoning Administrator may extend any point of measurement to a logical corresponding location and measure from this point. Using the extended measuring method a variation of five (5) percent is acceptable for the purpose of this Article.

The minimum distance between a sign structure and a residence shall not be less than 1,000 feet, except:

- A. Where the adjacent residence is a nonconforming use;
- B. Where the sign was erected after the original effective date of this article (May 21, 2986, as amended) and predates a residence, the sign shall not be nonconforming because of distance from the residence;
- C. Where the sign was erected prior to the effective date of this article (May 21, 2986 as amended) and duly registered, the sign shall not be nonconforming because of distance from another sign or a residence; or
- D. Where the topography obscures the sign from sight by the residents of the dwelling.

The spacing requirement may be reduced by up to 25 percent where the topography obscures the sign from sight by the residents of the dwelling.

Tedd Pearce stated that the Planning Board recommended allowing some industrial uses in commercial use and some commercial uses in industrial use.

Planning Director Anthony Starr stated that not every industrial use was compatible in commercial use areas.

Steve Wyatt instructed the Planning Staff to develop some specifics; generally a less intensive use but with the traffic aspects.

The Board of Commissioners would like for the Planning Board to review this item and bring it back before the Board.

Direction only was given to staff and no decisions were made.

ADJOURN

Commissioner Messer made the motion for the Board to adjourn at 9:23 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman