

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 7, 2016

**SUBJECT:** Set Public Hearing for Land Development Code (LDC) and Noise Ordinance Text Amendments (TX-2015-01)

**PRESENTER:** Autumn Radcliff, Senior Planner

**ATTACHMENTS:** 1. LDC Draft Text Amendments  
2. Noise Ordinance Draft Text Amendments

### **SUMMARY OF REQUEST:**

With the adoption of the Land Development Code (LDC) on September 19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated. This annual review is intended to prevent the need for a large overhaul of the entire code in the future. Trends and new issues are regularly emerging that require periodic updates to LDC text.

The proposed text amendments included: sign amendments based on recent court rulings, clarifications to the code for boards and committees, creating uniform setbacks, reduce requirements for accessory residential dwellings and amendments identified by the Sheriff's Office which include a new temporary use for special events and amendments to the noise ordinance.

The Henderson County Planning Board has been discussing the draft text amendments for several meetings and voted to send forward a favorable recommendation on the attached draft LDC and Noise Ordinance text amendments (TX-2015-01).

### **BOARD ACTION REQUESTED:**

State law and the LDC require the Board of Commissioners to hold a public hearing prior to acting on a text amendment. Planning Staff requests the Board set a public hearing for Monday, April 4, 2016 at 5:30 p.m.

### **Suggested Motion:**

*I move that the Board set a public hearing on the proposed Land Development Code and Noise Ordinance Text Amendments (TX- 2015-01) for Monday, April 4, 2016 at 5:30 p.m.*

## 2015 LDC Draft Text Amendments (TX-2015-01)

**Recommended changes are highlighted in red.**

### **LDC Text Amendment A: Sign Regulation Amendments.**

**Issue:** In *Reed v. Town of Gilbert*, the Supreme Court held unanimously that Gilbert’s Sign Code, which treats various categories of signs differently based on the information they convey, violates the First Amendment. The Court concluded that the sign categories in this case are based on content because they draw distinctions based on the message a speaker conveys. Temporary directional signs are “no greater an eyesore” and pose no greater threat to public safety than ideological or political signs.

**Recommendation:** Amend the sign regulations to prevent a violation of the First Amendment. Amend applicable section below and reformat section numbering.

Change Monument to Ground Signs in §42-141. Sign Area Determination, Figure 7A. Sign Area Determination.

### **§42-218. Exempt Sign Standards**

The following *signs* are permitted in all districts, **unless otherwise stated**, and shall not require a *sign* permit as long as in conformance with the applicable standards. All exempt *signs* may have one (1) or two (2) faces (unless otherwise indicated). No exempt *sign* shall be internally illuminated in excess of six (6) foot-candles (measured at ground level at any point within the property, and installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways).

#### ~~A. Agricultural Sign.~~

~~(1) Maximum Area. Thirty-two (32) square feet per face.~~

~~(2) Maximum Height. Ten (10) feet.~~

#### ~~B. Commemorative Sign.~~

~~(1) Maximum Area. Eight (8) square feet per face.~~

~~(2) Maximum Height. Eight (8) feet.~~

#### ~~C. Construction Sign.~~

~~(1) Maximum Area. Thirty-two (32) square feet (total square footage for all faces).~~

~~(2) Maximum Height. Ten (10) feet.~~

~~(3) Removal. Such signs shall be removed upon completion of construction.~~

#### ~~D. Directional Sign.~~

~~(1) Maximum Area. Six (6) square feet per face.~~

~~(2) Maximum Height. Three (3) feet.~~

#### E. Flags/Insignia.

~~(1) Maximum Number Permitted. One (1) corporate flag is permitted per lot. Flags or insignia of any nation, state, county, city, organization (religious, civic or fraternal), educational facility or cultural facility are not limited in number.~~

#### ~~F. Governmental Sign.~~

~~G. Home Occupation Sign:~~

- ~~(1) Maximum Number Permitted. One (1) freestanding sign and one (1) attached wall sign at the entrance of the home occupation are permitted.~~
- ~~(2) Maximum Area. Six (6) square feet per face.~~
- ~~(3) Maximum Height. Three (3) feet.~~

H. Outdoor Off Premise Advertising Sign.

- (1) Maximum Area. Ten (10) square feet per face.
- (2) Maximum Height. Five (5) feet.
- (3) Permitted Districts. Permitted in all districts ~~except residential zoning districts.~~

~~I. Political Sign:~~

- ~~(1) Removal. Such signs shall be removed within the seven (7) day period following of the primary, general or run-off elections or referendum. (Primary election winners or those involved in run-off elections shall be allowed to leave signs up between the primary and the general election or until the run-off is held).~~

~~J. Property Identification Sign:~~

- ~~(1) Maximum Number Permitted. One (1) sign per lot frontage.~~
- ~~(2) Maximum Area. Six (6) square feet per face.~~
- ~~(3) Maximum Height. Three (3) feet.~~

~~K. Real Estate Sign:~~

- ~~(1) Maximum Number Permitted. One (1) sign per lot frontage, on the lot for sale.~~
- ~~(2) Maximum Area. Six (6) square feet (for lots of less than five (5) acres) or 32 square feet (for the sale of subdivision lots where the original tract is greater than five (5) acres).~~
- ~~(3) Removal. Signs placed for the sale of subdivision lots shall be removed when 90 percent or more of the lots have been sold.~~

~~L. Regulatory Sign. (i.e. Warning, Safety, Railroad Signs; regulated by the Manual on Uniform Traffic Control Devices (MUTCD))~~

~~M. Religious Institution Sign:~~

- ~~(1) Maximum Area. Thirty-two (32) square feet per face.~~
- ~~(2) Maximum Height. Ten (10) feet.~~

~~N. Temporary Event Sign:~~

- ~~(1) Maximum Number Permitted. Three (3) per event.~~
- ~~(2) Maximum Area. Six (6) square feet per face.~~
- ~~(3) Maximum Height. Three (3) feet.~~
- ~~(4) Removal. Such signs shall be removed within three (3) days of final event.~~

O. Temporary Sign.

- (1) Maximum Area. Thirty-two (32) square feet per face (*residential zoning district*); 72 square feet per face (*nonresidential zoning district*).

- (2) Maximum Height. Ten (10) feet (*residential zoning district*); 18 feet (*nonresidential zoning district*).
- (3) Removal. Such *signs* shall be temporary in nature, no longer than 30 days per occurrence and only once per calendar year per *lot of record*.

P. Vehicle Sale Sign (Private).

- (1). Maximum Number Permitted. One (1) sign per vehicle and a maximum of two (2) *vehicles* per property, applying only to noncommercial sales.

Q. On-premise Residential Zoning District Sign

- (1) Maximum Area (16) square feet per face
- (2) Maximum height (8) feet

R. On-premise Commercial, Office Institutional and Industrial Zoning District Sign

- (1) Maximum Area (36) square feet per face
- (2) Maximum Height (8) feet

**LDC Text Amendment B: Accessory Structures.**

**Issue:** Accessory structures are not currently permitted in the front yard unless it is attached to the principal structure. Property owners with large parcels who have substantial amounts of front yard acreage cannot utilize this area for accessory structures due to the placement of the principal home, nor can property owners with topography issues or small lot sizes. Several requests have been made by individuals to amend this requirement.

**Recommendation:** Allow accessory structures in the front yard provided it meets the required front yard setbacks. Subdivisions with restrictive covenants would still apply but not be regulated by the County.

Amend applicable sections below.

§ 42-27 B (5), §42-28 B (4), §42-29 B (4), §42-30 B (2), §42-31 B (2), §42-32 B (4), and §42-33 B (5)

*Accessory Structures* shall be located in *side* and *rear* yards and shall be *setback* a minimum of five (5) feet from any property line. **Placement in the front yard is allowed provided it meets the applicable front yard or ROW setback.**

**LDC Text Amendment C: Amend Zoning Board of Adjustment Procedures.**

**Issue:** G.S. 160A-388 requires that quasi-judicial proceedings for variances require a four-fifth vote. All other quasi-judicial proceedings conducted by the Zoning Board of Adjustment (ZBA) require a majority vote. As requested by the County Attorney, this provision should be clarified.

**Recommendation:** Clarify the required four-fifths verse simple majority vote for quasi-judicial proceedings.

### § 42-305. Henderson County Zoning Board of Adjustment

- B. Membership. Five (5) regular members and five (5) alternate members appointed by the Board of Commissioners. Members shall be citizens of Henderson County and shall serve without pay. Alternative members may serve on individual matters based on a regular member's temporary disqualification. Vacant seats and disqualified members are not considered in calculating a 4/5 vote or majority vote if there are no qualified alternates.
- H. Decisions. ~~The concurring vote of four-fifths (4/5) of the members of the Zoning Board of Adjustment shall be necessary to reverse any order, requirement or determination of the approving official or agency, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter, or to affect any variation of this Chapter.~~ The concurring vote of at least four of the five members (or four-fifths) of the panel of the Zoning Board of Adjustment (ZBA) actually hearing the matter shall be necessary to grant a variance. A majority of the panel of ZBA shall be required to decide any other quasi-judicial matter which it is required to pass under this Chapter. On all *appeals*, applications and other matters brought before the ~~ZBA Zoning Board of Adjustment~~, said Board shall inform those making *appeal* or application of its decisions and the reasons therefore. Such notification shall be in writing.

### § 42-306. Henderson County Water Quality Board

- E. Decisions. The concurring vote of ~~the majority four-fifths (4/5)~~ of the members of the Water Quality Board shall be necessary to reverse any order, requirement or decision of the *Water Quality Administrator*. The same ~~majority four-fifths (4/5)~~ vote shall be necessary to decide in favor of the *applicant* on any matter upon which the Water Quality Board is required to pass under any sections of this Chapter which relate to *water supply watershed* protection or to affect any variation of those sections of this Chapter which relate to *water supply watershed* protection. On all *appeals*, applications and other matters brought before the Water Quality Board, said board shall inform in writing all parties involved of its decisions and the reasons therefore.

### § 42-307. Henderson County Flood Damage Prevention Board

- E. Decisions. The concurring vote of ~~the majority four-fifths (4/5)~~ of the members of the Flood Damage Prevention Board shall be necessary to reverse any order, requirement or decision of the *Floodplain Administrator*. The same ~~majority four-fifths (4/5)~~ vote shall be necessary to decide in favor of the *applicant* on any matter upon which the Flood Damage Prevention Board is required to pass under any sections of this Chapter which relate to flood damage prevention or to affect any variation of any sections of this Chapter which relate to flood damage prevention. On all *appeals*, applications and other matters brought before the Flood Damage Prevention Board, said board shall inform in writing all parties involved of its decisions and the reasons therefore.

### § 42-356. Special Use Permits

- A. H. Quasi-judicial Proceeding. The concurring vote of ~~the majority a four-fifths (4/5)~~ of the members of the ZBA shall be necessary to grant the permit. Vacant seats and disqualified members are not counted in computing the simple majority. Any approval or denial of the request must be in writing and be permanently filed with the office of the ZBA and with the *Zoning Administrator* as a public record.

**LDC Text Amendment D: Reduce Front Yard Setbacks for OI Zoning District.**

**Issue:** The front yard setbacks for the Office Institutional (OI) zoning district is more restrictive than the front yard setbacks of other commercial zoning districts. The Board reduced the front setbacks in commercial zoning district with a previous round of amendments, but the OI zoning district was not included.

**Recommendation:** Reduce the current front yard or ROW setback for each road classification in the OI zoning district to the same standards as commercial zoning districts.

**§42-32 Office Institutional District (OI)**

Table 2.6. OI Density and Dimensional Requirements			
(1) Residential Density (units/acre)	(2) Standard	4	
	(3) Maximum	16	
Maximum Impervious Surface (%)		80	
(4) Yard Setbacks (feet)	Front or ROW	Local	<del>20</del> 10
		Collector	<del>25</del> 10
		Thoroughfare	<del>35</del> 20
		Boulevard	<del>45</del> 30
		Expressway	<del>55</del> 40
		Freeway	<del>60</del> 45
	Side	10	
	Rear	10	
Maximum Height (feet)		50	

**LDC Text Amendment E: Add a Temporary Use for Special Events.**

**Issue:** The LDC does not currently have a temporary use category for special events. These events typically occur over a weekend period and occur once or twice a year depending on the event. Since these events directly impact fire, safety and EMS, particularly if alcohol is served, the Sheriff’s office requested that staff consider a specific permitting process that would address these concerns.

**Recommendation:** Add a temporary use type for Special Events based on size with specific supplemental requirements comparable with similar uses in the LDC.

**§42-62 Subpart E. Table of Permitted and Special Uses**

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											
	R1	R2	R2R	R3	R4	OI	MU	LC	CC	RC	I	SR
<b>11. TEMPORARY USES</b>												
Special Events between 250 and 499 persons	P	P	P	P	P	P	P	P	P	P	P	TBD
Special Events greater than 500 persons	P	P	P	P	P	P	P	P	P	P	P	TBD

## §42-63. Supplemental Requirements to the Table of Permitted and Special Uses

### Special Events between 250 and 499 persons

- (1) Application. A special event application shall be submitted to the Zoning Administrator thirty (30) days prior to the event.
- (2) Separation Requirements. The *use* shall not be placed within 50 feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
- (3) Solid Waste Collection System Requirements. Arrangements shall be made for suitable garbage disposal and site clean-up.
- (4) Site Plan. Minor *Site Plan* required in accordance with §42-330 (Minor Site Plan Review).
- (5) Approval Authority. The Zoning Administrator shall approve the temporary use permit.
- (6) Accessibility. County staff acting in their official duties may inspect the event for compliance with the temporary use permit seventy-two (72) hours prior to the start of the event.
- (7) Applicable Permits. The applicant shall apply for required permits from local and State governments and agencies including but not limited to food service, sanitation, and water supply. The applicant shall apply with the N.C. Alcoholic Beverage Control (ABC) Commission when alcohol is being served or sold.
- (8) Prohibited Activities. All unlawful activities are prohibited.

### Special Events greater than 500 persons

- (1) Application. A special event application shall be submitted to the Zoning Administrator sixty (60) days prior to the event.
- (2) Separation Requirements. The *use* shall not be placed within 50 feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
- (3) Solid Waste Collection System Requirements. Arrangements shall be made for suitable garbage disposal and site clean-up.
- (4) Site Plan. Minor *Site Plan* required in accordance with §42-330 (Minor Site Plan Review). Applicants with a previously approved site plan may resubmit or amend the site plan for multiple events. The Zoning Administrator may require a new site plan submittal if the event venue, location or layout is substantially different.
- (5) Emergency Action Plan. Emergency action plan addressing security, emergency medical services, evacuation protocol and access of emergency service responders, fire, and law enforcement is required to be on file with the Zoning Administrator. Applicants with a previously approved emergency action plan may resubmit for multiple events.
- (6) Approval Authority. The TRC shall approve the temporary use permit.
- (7) Applicable Permits. The applicant shall apply for required permits from local and State governments and agencies including but not limited to food service, sanitation, and water supply. The applicant shall apply with the N.C. Alcoholic Beverage Control (ABC) Commission when alcohol is being served or sold.
- (9) Accessibility. County staff acting in their official duties may inspect the event for compliance with the temporary use permit seventy-two (72) hours prior to the start of the event.
- (8) Prohibited Activities. All unlawful activities are prohibited.

**LDC Text Amendment F: Reduce Requirements for Accessory Residential Dwellings:**

**Issue:** Currently the LDC has specific requirements regulating the size, accessibility and location of accessory dwellings. These are dwellings that are allowed on lots with an existing principal dwelling unit. Accessory residential dwellings may consist of guest units, cabins, garage apartments or mother-in-law suites. The existing regulations are too restrictive for large lots that can accommodate accessory units in the side or rear yard, for property owners that request to build an apartment over an existing or new garage or barn, if the principal dwelling has a small footprint, or if the accessory dwelling has an alternative access from the primary driveway.

**Recommendation:** Amend the supplemental requirements for accessory residential dwellings to remove the size, accessibility and location requirements.

**SR 3.6. Dwelling, Accessory Residential**

- (1) Maximum Number Permitted Per Lot. No more than one (1) *accessory dwelling* shall be permitted on a single deeded *lot* in conjunction with the principal *dwelling unit*.
- (2) Structure Requirements.
  - a. An *accessory dwelling* may be attached, within, or separate from the principal dwelling.
  - b. The *principal use* of the *lot* shall be a detached or attached dwelling, built to the standard of the Henderson County Housing Code. *Manufactured homes* are permitted as *accessory dwellings* where such are permitted as a *principal use* in the general use zoning district. *Mobile homes, park model homes and recreational vehicles* shall not be used as *accessory dwellings*.
- ~~(3) Size. A detached *accessory dwelling* shall be housed in a *building* not exceeding 50 percent of the *gross floor area* of the principal dwelling or 1,200 square feet, whichever is greater; the structure may be a dwelling only or may combine a dwelling with a *garage, workshop, studio or similar use*.~~
- ~~(4) Accessibility. The *accessory dwelling* shall not be served by a *driveway* separate from that serving the principal dwelling unless the *accessory dwelling* is accessed from a *rear alley or side road* and the principal dwelling is accessed from a *road*.~~
- ~~(5) Location. A detached *accessory dwelling* shall be located in the established *rear yard* and shall meet the standards for the applicable *building and lot type*.~~

**LDC Text Amendment G: Add a Definition for Separation Setbacks:**

**Issue:** The supplemental requirements have separation setbacks for specific uses. The LDC has no definition for what is meant by a separation requirement or measurement for these uses. Staff proposes adding a definition to clarify the county’s existing policy for interpretation of how the separation requirement is determined.

**Recommendation:** Add a definition for separation setbacks for clarification.

**Separation.** A separation setback is measured from the boundary area identified on a site specific plan denoting where the permitted use will occur. The separation setback is not measured from the parcel boundary unless the permitted use utilizes the entire parcel. The



separation setback shall apply to the *use* and any *structures* associated with the *use* (this shall not include parking areas).

**LDC Text Amendment H: Clarify Requirements for Home Schools:**

**Issue:** Home schools are permitted in all districts and must be qualified in accordance with NCGS §115C, Article 39. Home schools typically occur in residential dwellings, but can occur in multiple locations or structures (churches, community centers, etc.). Home schools are treated as residential dwellings and the LDC needs to clarify this interpretation.

**Recommendation:** Clarify the definition of home schools.

**School (Home).** A nonpublic school in which one or more children of not more than two (2) families or households receive academic instruction from parents or legal guardians or a member of either household. Such schools must be qualified in accordance with NCGS §115C, Article 39, Part 3 (or its successor). **For the purpose of this chapter, a home school shall be considered the same as a residential dwelling and shall meet all separation requirements as such.**

## Noise Ordinance Text Amendments

**Recommended changes are highlighted in red.**

**Issue:** The Sheriff's Office has identified needed amendments to the noise ordinance. These amendments consist of clarifications, enforcement requirements and amendments to allow noise associated with events that have a valid permit.

**Recommendation:** Amend the following sections.

§18-3. Loud And Disturbing Noise Prohibited.

- C. (3) The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud, disturbing noise continuously ~~or incessantly~~ for a period of 10 minutes **in the presence of a law enforcement officer, or with a signed witness statement alleging the disturbing noise has been intermittent for thirty minutes or more** ~~or intermittently for a period of 30 minutes or more, thereby causing a noise disturbance.~~ See also Henderson County Code Chapter 16, Animals.

§18-4. Exceptions.

- A. (8) Noise associated with the chimes, ~~or~~ bells, **audible phone or paging system** of businesses, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.
- (11) **Noise associated with special events that have a valid permit issued by Henderson County between the hours of 7:00 am -11:00 pm.**