

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** February 5, 2018

**SUBJECT:** Set Public Hearing for Land Development Code (LDC) Text Amendments (TX-2018-01, TX-2018-02, and TX-2018-03)

**PRESENTER:** Autumn Radcliff, Planning Director

**ATTACHMENTS:** 1. Draft Amendments 1 – TX-2018-01  
2. Draft Amendments 2 – TX-2018-02  
3. Draft Amendments 3 – TX-2018-03

### **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19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated.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 include:

- TX-2018-01: As requested by the County Attorney, sign amendments based on recent court rulings and G.S. requirements for Zoning Board of Adjustment (ZBA) procedures.
- TX-2018-02: Amendments related to places of assembly for residential zoning districts.
- TX-2018-03: Amendments related to density standards, multifamily developments and a requirement for neighborhood compatibility meetings for large developments.

The Henderson County Planning Board has been discussing the draft text amendments for several meetings and voted to send forward a favorable recommendation on all the LDC text amendments.

### **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. Staff requests the Board set a public hearing for Monday, March 5, 2018 at 5:30 p.m.

#### **Suggested Motion:**

*I move that the Board set a public hearing on the proposed Land Development Code Text Amendments (TX- 2018-01, TX-2018-02, and TX-2018-03) for Monday, March 5, 2018 at 5:30 p.m.*

**LDC Draft Text Amendments (TX-2018-01)**  
**Amendments to ZBA Procedures and Sign Regulations**  
**(as requested by the County Attorney)**

**Recommended changes are highlighted in red.**

**LDC Text Amendment A: Amend Zoning Board of Adjustment (ZBA) 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 vote for variances and a simple majority vote for all other 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) 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 B: 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. The court stated that 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 and some of the definitions to prevent a violation of the First Amendment. See proposed changes to the definitions below and the attached LDC excerpt, Article VII, Sign Regulations.

Sign, Ground. A freestanding ~~or monument~~ *sign*, flush to the ground, and not elevated upon poles/stanchions or attached to a *building/structure*.

~~Sign, Monument. See ground sign.~~

Sign, Electronic Message. A *sign* which displays changeable information and is composed of a series of lights that may be changed automatically through electronic means, ~~including LED displays~~. All messages shall be visible for a minimum of three (3) seconds ~~and shall not play video~~. These will not be deemed to constitute changeable copy of *animated signs*.

**ARTICLE VII**  
**SIGN REGULATIONS**

**§42-204. General**

The requirements set forth in this Article shall be complied with in addition to any other general or specific requirements of this Chapter. The regulations of this section shall apply to all *signs* and *sign structures* erected, placed and/or maintained within the County, except as otherwise noted. The standards set forth in this Article are established in order to: (1) allow for the legitimate needs for identification of activities and commerce within the County; (2) improve the aesthetic quality of the County; (3) reduce intrusions on adjacent property; (4) protect property values; and (5) minimize undue distraction to motorists. These requirements in no way relieve a *sign* of having to meet all local, state and federal laws pertaining to the erection of that *sign*.

**Subpart A. General Sign Standards**

**§42-205. General**

The *sign* standards of this subpart provide requirements and standards applicable to all other subparts and sections within this Article.

**§42-206. Prohibited Signs**

The following are prohibited *signs*. *Signs*:

- A. Placed in the public *right-of-way* (except as erected for governmental purposes);
- B. Resembling and/or obscuring traffic signals;
- C. Obstructing access to drives, doors, walks, windows, fire escapes or fire escape routes;
- D. Which are *animated* and/or *flashing* (as defined by this Chapter);
- E. On the surface of lake/river water (except those navigational and warning signs);
- F. On *vehicles* parked and located for the purposes of displaying such a *sign*, where such *vehicle* is either a part of the *sign* or *sign structure*; and
- G. *Billboards* (an *outdoor advertising sign* 380 square feet in area or greater).

**§42-207. Permit Requirements**

A sign permit shall be required for all nonexempt *signs* in accordance with the provisions of this Article (See §42-353 (Sign Permits)).

**§42-208. Sign Placement**

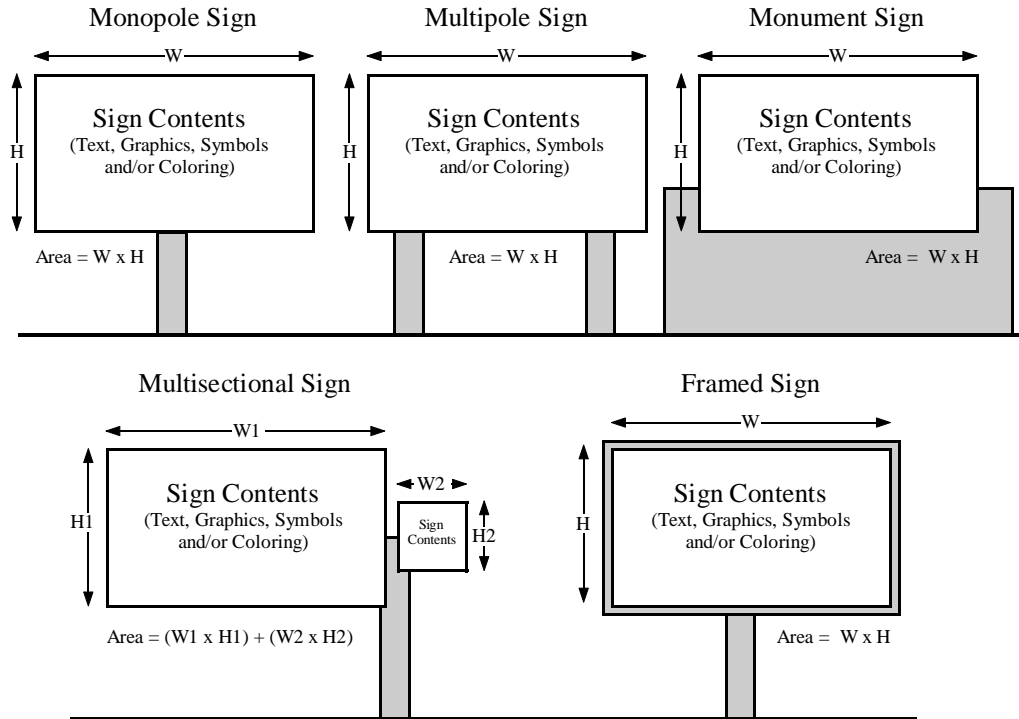
Signs shall be placed a minimum of 15 feet from edge of pavement or from back of curb (as applicable), and shall be located out of the *road right-of-way*. *Signs* are not permitted in a *sight visibility triangle*. *Signs* that are placed in the *road right-of-way* may be removed and disposed of, without notice, by authorized *County* personnel.

**§42-209. Sign Area Determination**

Sign area shall be the product of the maximum vertical distance (from the highest point to the lowest point on the sign face) and the maximum horizontal distance (across the sign face) (see Article XIV (Definition) for the definition of “Sign”). Sign area shall be calculated by the Zoning Administrator in accordance with Figures 7A and 7B.

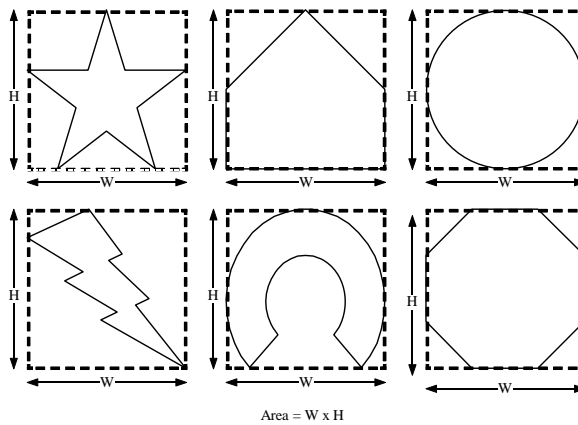
**Figure 7A. Sign Area Determination**

Not to Scale



**Figure 7B. Sign Area Determination for Nonrectangular Signs**

Not to Scale



**§42-210. Lighting Standards**

*Lighting mitigation* shall be required as defined by this Chapter for all *signs*.

**§42-211. Property Address Signs**

A *sign* indicating the address of a property shall be provided as required by and in accordance with Chapter 142 of the Henderson County Code, *Property Addressing*.

**§42-212. Reserved**

**§42-213. Reserved**

**§42-214. Reserved**

**§42-215. Reserved**

**§42-216. Reserved**

**Subpart B. Exempt Sign Standards**

**§42-217. General**

The *sign* standards of this subpart identify exempt *signs* and provide requirements and standards for exemption.

**§42-218. Exempt Sign Standards**

The following *signs* are permitted in all districts (**unless otherwise indicated**), 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).~~ **Lighting of *signs* shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from the adjacent roadway.**

~~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 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.~~

A. Flags/Insignia.

B. Off Premise Sign.

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

C. On Premise Sign in Residential and Local Commercial Zoning Districts.

- (1) Maximum Area. Sixteen (16) square feet per face.
- (2) Maximum Height. Eight (8) feet.

D. On Premise Sign in Commercial, Office Institutional and Industrial Zoning Districts (excluding the local commercial zoning district).

- (1) Maximum Area. Thirty-six (36) square feet.
- (2) Maximum Height. Eight (8) feet.

E. Temporary Sign.

- (1) Maximum Area. Thirty-two (32) square feet per face (residential and local commercial zoning district); 72 square feet per face (nonresidential zoning district excluding the local commercial zoning district).
- (2) Maximum Height. Ten (10) feet (residential and local commercial zoning district); 18 feet (nonresidential zoning district excluding the local commercial 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.



### Subpart C. On-Premise Sign Standards

#### §42-219. General

The *sign* standards of this subpart provide requirements for *signs* based on the general *use district* in which they are located. This subpart provides general standards for all *signs* within a general *use district* as well as *sign* specific standards for certain types of *signs* associated with certain *uses* or types of development. The following standards shall be in effect to provide appropriate signage for *uses*, and compliance therewith is required for the erection of a new *sign*.

#### §42-220. Residential and Local Commercial Zoning Districts

The following *sign* regulations shall apply in *residential and local commercial zoning districts*.

A. Freestanding Signs. Freestanding *signs* are permitted where intended to identify entrances to a community, *single-tenant development*, or *multi-tenant development* and shall adhere to the following standards.

- (1) Sign Type. *Monument or Ground signs* only are permitted.
- (2) Maximum Number by Sign Type.
  - a. Community Identification *Entrance Sign*. One (1) *double-faced* or two (2) single-faced freestanding *signs* is/are permitted per community entrance (but shall be placed at to no more than two (2) entrances).
  - b. Single-Tenant Development Sign. One (1) freestanding *sign* is permitted per *lot*. One (1) additional freestanding *sign* is allowed for corner or *double-fronted lots*.
- (3) Maximum Area. Thirty-two (32) square feet per face.
- (4) Maximum Faces. Two (2) faces per *sign*.
- (5) Maximum Height. Ten (10) feet.
- (6) Illumination. Lighting of *signs* shall ~~not exceed six (6) foot candles, measured at ground level at any point within the property, and shall~~ be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.

B. Attached Signs. ~~Attached signs are permitted where intended to identify nonresidential uses within a community, single-tenant development, or multi-tenant development and~~ shall adhere to the following standards.

- (1) Sign Type. Window, wall, suspended, *awning* and *changeable copy* (as part of a permanent *sign*) *signs* only are permitted.
- (2) Sign Clearance. Any *attached sign* projecting 12 inches from a wall shall have a minimum nine (9) foot clearance over sidewalks and 14 foot clearance over *roads*, drives and *alleys* (no projection is allowed in any *right-of-way*).
- (3) Maximum Area. Ten (10) percent of any wall area fronting a *road* and/or *building facade*, up to a maximum of 250 square feet.
- (4) Illumination. Lighting of *signs* shall ~~not exceed six (6) foot candles, measured at ground level at any point within the property, and shall~~ be installed in such a

manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.

C. Prohibited Signs. *Portable, animated and flashing signs and outdoor advertising signs* are prohibited ~~in residential zoning districts.~~

D. *Electronic Message Sign. Electronic message signs are allowed with a special use permit in the residential and local commercial zoning districts.*

#### §42-221. Office, Institutional, and Commercial Zoning Districts

The following *sign* regulations shall apply in office institutional, commercial, and industrial districts (*excluding the local commercial zoning district*):

##### A. Freestanding Signs.

(1) Sign Type. *Monument or Ground* ~~ground~~ *signs* only are permitted when the *sign height* is 18 feet or less. *Pole, monument* and *ground signs* are permitted when the *sign height* is greater than 18 feet.

(2) Maximum Number by Sign Type.

- a. Single-Tenant Development Sign. One (1) freestanding *sign* is permitted per lot. One (1) additional freestanding *sign* is allowed for corner or *double-fronted lots*.
- b. Multi-Tenant Development Sign. One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per development entrance (but shall be placed at to no more than two (2) entrances).
- c. Office Institutional and Commercial Subdivision **Entrance** Sign. One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per *subdivision* entrance (but shall be placed at to no more than two (2) entrances).

(3) Maximum Area. Seventy-two (72) square feet per face. Where a *sign* is located within 500 feet of the *right-of-way* line of Interstate 26 the maximum area shall be 200 square feet per face.

(4) Maximum Faces. Two (2) faces per *sign*.

(5) Maximum Height. Eighteen (18) feet. Where a *sign* is located within 500 feet of the *right-of-way* line of Interstate 26 the maximum height shall be 75 feet (as measured from the *road* grade of the interstate).

**(6) Illumination. Lighting of signs shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.**

##### B. Attached Signs.

(1) Sign Type. All *attached signs* are permitted.

(2) Sign Clearance. Any *attached sign* projecting 12 inches from a wall shall have a minimum nine (9) foot clearance over sidewalks and 14 foot clearance over *roads, drives and alleys* (no projection is allowed in any *right-of-way*).

(3) Maximum Area. Ten (10) percent of any wall area fronting a *road* and/or *building facade*, up to a maximum of 250 square feet.

(4) **Illumination.** Lighting of *signs* shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.

C. **Prohibited Sign.** *Portable, animated and flashing signs* are prohibited.

D. **Electronic Message Sign.** *Electronic message signs* are allowed.

#### §42-222. Industrial Zoning District

The following *sign* regulations shall apply in Industrial Districts.

##### A. Freestanding Signs.

- (1) **Sign Type.** All freestanding *signs* are permitted.
- (2) **Maximum Number by Sign Type.**
  - a. **Single-Tenant Development Sign.** One (1) freestanding *sign* is permitted per lot. One (1) additional freestanding *sign* is allowed for corner or *double-fronted lots*.
  - b. **Multi-Tenant Development Sign.** One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per development entrance (but shall be placed at to no more than two (2) entrances).
  - c. **Industrial Subdivision Entrance Sign.** One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per *subdivision* entrance (but shall be placed at to no more than two (2) entrances).
- (3) **Maximum Area.** Seventy-two (72) square feet per face.
- (4) **Maximum Faces.** Two (2) faces per *sign*.
- (5) **Maximum Height.** Eighteen (18) feet. Where a *sign* is located within 500 feet of the *right-of-way* of Interstate 26 the maximum height shall be 75 feet (as measured from the *road* grade of the interstate).
- (6) **Illumination.** Lighting of *signs* shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.

##### B. Attached Signs.

- (1) **Sign Type.** All *attached signs* are permitted.
- (2) **Sign Clearance.** Any *attached sign* projecting 12 inches from a wall shall have a minimum nine (9) foot clearance over sidewalks and 14 foot clearance over *roads*, drives and *alleys* (no projection is allowed in any *right-of-way*).
- (3) **Maximum Area.** Ten (10) percent of any wall area fronting a *road* and/or *building facade*, up to a maximum of 250 square feet.
- (4) **Illumination.** Lighting of *signs* shall be installed in such a manner that the source of light (the bulb) is shielded and not visible from adjacent roadways.

C. **Prohibited Sign.** *Portable, animated and flashing signs* are prohibited.

D. **Electronic Message Sign.** *Electronic message signs* are allowed.

**Subpart D. Off-Premise Sign Standards**

**§42-223. General**

The *sign* standards of this subpart identify districts in which *outdoor advertising signs* are permitted and provide requirements and standards therefore. The following standards shall be in effect to provide appropriate outdoor advertising signage (except for those *signs* which are exempt or prohibited by this Article), and compliance therewith is required for the erection of a new *outdoor advertising sign*.

**§42-224. 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 Service Area (USA) 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 (see Table 7.1).

<b>Table 7.1. Outdoor Advertising Sign Requirements</b>				
<b><i>Outdoor Advertising Sign</i></b>	<b>Square Feet Permitted</b>	<b>Maximum Height (ft.)<sup>2</sup></b>	<b>Minimum Setback (ft.)<sup>3</sup></b>	<b>Spacing (linear ft.)</b>
Type A	0 to 72	25	10	1,000
Type B	>72-300	35	20	1,000
Type C	>300-380 <sup>1</sup>	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 the 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 (see Table 7.1). 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, 1986, 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, 1986 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.

**§42-225. Reserved**

**§42-226. Reserved**

**§42-227. Reserved**

### **Subpart E. Sign Maintenance**

#### **§42-228. Sign Maintenance**

Maintenance requirements must be observed for all *signs* visible from any *public road* or highway within the jurisdiction of this Chapter. A *sign* in a state of disrepair shall be considered in *violation* of this Chapter. A *sign* shall be in a state of disrepair and require maintenance where the *sign* and its *structure* are:

- A. More than 20 percent covered with disfigured, cracked, ripped or peeling paint or poster paper (or any combination of these conditions);
- B. More than 15 degrees from the perpendicular as a result of bent/broken *sign* facing or supports, and/or loose appendages/struts;
- C. Obscured from the *road*/highway from which it is to be viewed by weeds, vines or other vegetation growing on it; and/or.
- D. To be illuminated, but are only partially illuminated.

**§42-229. Reserved**

**§42-230. Reserved**

**§42-231. Reserved**

## DRAFT LDC Text Amendment (TX-2018-02) Small Place of Assembly and Site Plan Amendments

**Recommended changes are highlighted in red.**

### **Amendment A: Place of Assembly**

**Issue:** The BOC directed staff to review the residential zoning districts that allow for a small place of assembly, specifically the R2 zoning district. This request was based on a recent special use permit that was issued for an event barn in the R2 zoning district. Special use permits (SUP) are heard by the Zoning Board of Adjustment (ZBA) and require a quasi-judicial proceeding to determine if the proposed use is appropriate on a specific parcel. The ZBA may require specific conditions for the proposed use and must consider if the use will:

- a. Not materially endanger the public health, safety or welfare;
- b. Not substantially injure the value of property or improvements in the area; and
- c. Be in harmony with the surrounding area.

The Planning Board appointed a subcommittee to review the request and the Planning Board spent several meetings discussing and making changes to the draft amendments proposed below.

**Recommendation:** Amend the SR (Supplemental Requirements) for Place of Assembly (Small and Large) and reduce the number of person's threshold allowed for each use.

### **SR 5.16. Place of Assembly, Large**

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- (3) Structure. A *structure* shall be designed to accommodate a minimum of ~~500~~ **251 persons. Persons shall include all event attendees (guests, hired staff, event workers, etc.)**
- (4) Perimeter Setback. ~~Fifty (50)~~ **One hundred (100) feet. No parking shall be allowed within the setback area.**
- (5) Buffer. **A B2 buffer is required per Table 5.2 Buffer Width and Plant Material Requirement.**

### **SR 5.17. Place of Assembly, Small**

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. *Lighting mitigation* required.
- (6) Structure. A *structure* shall be designed to accommodate ~~a minimum of 40 and a maximum of 499~~ **250 persons. Persons shall include all event attendees (guests, hired staff, event workers, etc.)**
- (3) Perimeter Setback. ~~Fifty (50)~~ **One hundred (100) feet. No parking shall be allowed within the setback area.**
- (4) Buffer. **A B2 buffer is required per Table 5.2 Buffer Width and Plant Material Requirement.**

**Recommendation:** The Planning Board reviewed the other uses allowed in the Residential Zoning districts and recommended the following changes to the Table of Permitted and Special Uses.

Amend Table of Permitted and Special Uses as indicated below.

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

USE TYPE	GENERAL USE DISTRICT				
	P=Permitted; S=Special Use Permit				
<b>3. ACCESSORY STRUCTURES</b>	<b>R1</b>	<b>R2</b>	<b>R2R</b>	<b>R3</b>	<b>R4</b>
Heliport (Private Accessory)	<del>S (remove)</del>	S	S	S	S
Wind Mill/Turbine, Accessory > 40 ft height	<del>S (remove)</del>	S	S	S	S
<b>6. BUSINESS, PROFESSIONAL, AND PERSONAL SERVICES</b>	<b>R1</b>	<b>R2</b>	<b>R2R</b>	<b>R3</b>	<b>R4</b>
Urgent Care Clinic	<b>S</b>	<b>S</b>	<b>S</b>	S	S

**Amendment B: Site Plan Amendments**

**Issue:** The Planning Board discussed the need to clarify if changes can be made to a site plan after it has been approved by the TRC or Zoning Board of Adjustment.

**Recommendation:** Add a provision under the major site plan requirements to specify the gross floor calculations and to allow for modifications to an approved site plan. This provision would determine the approved floor area and cap allowed changes to no more than a set percent increase to the overall building footprint and total useable square footage. Any changes greater than this set percent would require the applicant to submit a revised site plan to the approval authority.

For example, the City of Hendersonville allows modifications up to 10%. The event barn on NC 191 that received a special use permit was permitted to construct a 48 x 64 ft. (3072 sq. ft.) barn per the approved site plan. The applicant constructed a 48 x 72 ft. (3456 sq. ft.). Per this example the following percent increase would have been permitted for the event barn on NC 191.

5% - 153.6 sq. ft. increase

10% - 307.2 sq. ft. increase

15% - 460.8 sq. ft. increase

The Planning Board determined that a 10% increase would be acceptable.

**§42-331. Major Site Plan Review**

- B. (4) **Building Dimensions.** The site plan shall show the building footprint dimensions and the total finished square footage of the building. The finished square footage calculation shall include, but not be limited too, basements, outside covered porches, decks, and all interior floor levels including ½ story areas, lofts, and closet or finished storage areas.

- (5) Modifications. Due to, but not limited to, topography and limitations prior and during construction, it may be necessary for an approved site plan to be modified per the approval of the Zoning Administrator. Proposed modifications shall qualify as de minimis if the cumulative effect of such modifications would not increase the established footprint of the structure by more than ten percent (10%). The dimensional requirements for a structure is determined by the height restrictions of the applicable zoning district and both the overall footprint and useable square footage of the building as shown on the approved site plan unless otherwise noted.



## Ad Hoc Subcommittee & Planning Board Recommended Draft Text Amendments

**Recommended changes are highlighted in red.**

### **Text Amendment A: Mixed Use (MU) Zoning District**

**Issue:** A Mixed Use (MU) district is only allowed through the conditional rezoning process. This process requires a site-specific plan and conditions may be imposed on the development. Uses allowed in the MU district would not require a special use permit since it requires a conditional rezoning. Based on recent development proposals, the subcommittee recommended that a recreational vehicle park should be allowed as a permitted use in the MU district.

**Recommendation:** Remove special use permit requirement for all uses in the MU district to be allowed uses and include recreational vehicle park as an allowed in the MU district.

### **Text Amendment B: Permitted Residential Uses**

**Issue:** Clarification is needed for the different types of developments such as single-family developments or subdivisions, multifamily development including apartments and condominiums, and developments that are a mixed of housing types and/or uses.

**Recommendation B-1:** Make the following changes to the 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>1. RESIDENTIAL USES</b>												
<i>Assisted Living Residence</i>	S	S	S	S	S	P	P	P	P	P		1.1
<i>Bed and Breakfast Inn</i>	P	P	P	P	P	P	P	P				1.2
<i>Continuing Care Retirement Community</i>	S	S	S	S	S	P	P	P	P	P		1.3
<del><i>Dwelling, Duplex</i></del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>				<del>1.4</del>
<i>Dwelling, Manufactured Home (multi-section)</i>	P	P	P	P	P			P				<del>1.5</del> <b>1.4</b>
<i>Dwelling, Manufactured Home (singlewide)</i>			P	P	P							<del>1.5</del> <b>1.5</b>
<i>Dwelling, Mobile Home</i>			P	P	P							<del>1.5</del> <b>1.6</b>
<del><i>Dwelling, Multifamily, Five (5) or More Units</i></del>	<del>S</del>					<del>P</del>	<del>P</del>	<del>S</del>	<del>S</del>	<del>S</del>		<del>1.6</del>
<b><i>Dwelling, Multifamily</i></b>	<b>S</b>	<b>S</b>	<b>S</b>			<b>S</b>	<b>P</b>	<b>S</b>	<b>S</b>			<b>1.7</b>
<del><i>Dwelling, Quadruplex</i></del>	<del>S</del>					<del>P</del>	<del>P</del>	<del>S</del>				<del>1.7</del>
<i>Dwelling, Single Family Detached</i>	P	P	P	P	P		P	P				<del>1.8</del> <b>1.8</b>
<b><i>Dwelling, Two Family Attached</i></b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>				<b>1.9</b>
<del><i>Dwelling, Triplex</i></del>	<del>P</del>	<del>P</del>	<del>P</del>			<del>P</del>	<del>P</del>	<del>P</del>				<del>1.9</del>
<i>Family Care Home</i>	P	P	P	P	P	P	P	P				<del>1.10</del> <b>1.10</b>
<i>Fraternity and/or Sorority House</i>	P					P	P					<del>1.11</del> <b>1.11</b>
<i>Hospice Residential Care Facility</i>	S	S	S	S	S	P	P	P	P			<del>1.12</del> <b>1.12</b>
<i>Manufactured Home Park</i>			S	S	S							<del>1.13</del> <b>1.13</b>
<i>Nursing Home</i>	S	S	S	S	S	P	P	P	P	P		<del>1.14</del> <b>1.14</b>
<i>Rooming and Boardinghouse</i>	S	S	S	S	S		P	P	P			<del>1.15</del> <b>1.15</b>

**Recommendation B-2:** Delete, change and/or add the following definitions.

**Dwelling, Duplex.** ~~See two family attached dwelling. Two (2) dwelling units, including modular homes, placed one (1) on top of another or attached side by side and sharing one or more common walls, floors and/or ceilings and placed on one (1) or two (2) separate lot(s).~~

**Dwelling, Two Family Attached.** Two (2) dwelling units, including modular homes, placed one (1) on top of another or attached side by side and sharing one or more common walls, floors. This is commonly referred to as a duplex.

**Dwelling, Multifamily (Five (5) or More Units).** ~~Five (5) or more dwelling units, including modular homes, placed one (1) on top of another and/or side by side and sharing common walls, floors and/or ceilings.~~

**Dwelling, Multifamily.** ~~A residence where one (1) building contains more than one (1) dwelling unit. This includes duplexes, triplexes, quadraplexes and multifamily (five (5) or more units) but shall not include single family homes with an attached garage containing only one (1) garage apartment.~~

**Dwelling, Multifamily.** Any building or set of buildings that contain multiple dwelling units intended to house three (3) or more individual families living independent of each other and sharing common walls. Multifamily dwelling does not apply to a single duplex on an individual parcel of land. Multifamily dwellings may be permitted within an approved subdivision that includes single family units/lots. Multifamily dwelling shall not include single-family homes with an attached garage containing only one (1) garage apartment. Multifamily dwelling includes, but is not limited to, apartment, condominium and townhome which may be under a single ownership or the units may be individually owned.

**Recommendation B-3:** Amend the supplement requirements to reflect the changes in the Permitted and Special Uses Table and add or change the supplemental requirements for the following uses.

***Dwelling, Duplex Two Family Attached***

- (1) Site Plan. Minor *Site Plan* required in accordance with §42-330 (Minor Site Plan Review).
- (2) Multifamily Development. Where more than ~~one (1) duplex~~ two dwelling units is desired, this shall be considered a multifamily development which requires a special use permit. ~~and shall adhere to the standards outlined in SR 1.6 (Dwelling, Multifamily, Five (5) or More Units).~~
- (3) Subdivision. A two family attached dwelling may be allowed as part of a subdivision provided that a special use permit for the multifamily development is approved in conjunction with the required subdivision approval. If part of an approved subdivision, the individual dwelling units must be deeded and recorded.

***Dwelling, Multifamily, Five (5) or More Units***

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Subdivision. Multifamily dwellings may be allowed as part of a subdivision provided that a special use permit for the multifamily development is approved in conjunction

- with the required subdivision approval. If part of an approved subdivision, the individual dwelling units must be deeded and recorded.
- (3) Permitted Units Per Building. In the *Residential 2 Rural (R2R)* and *Residential Two (R2) zoning districts*, no more than three (3) dwelling units shall be contained within a single *building or structure*.
- (4) Multifamily dwellings of five (5) or more units:
- a. May be developed in *phases*.
  - b. Shall have a minimum spacing between *buildings* of 20 feet, with an additional one (1) foot of separation for each one (1) foot of *building* height in excess of 30 feet.
  - c. Shall have a maximum *building* length of 150 feet.
  - d. May increase the building height to 50 feet where a B1 *Buffer* is provided as detailed in §42-168 (Buffer Determination).
  - e. Shall be required pervious pavement for a minimum of 25 percent of all paved surfaces (*roads*, parking areas, drives, sidewalks, etc.).
  - f. Shall adhere to the *road* standards required for a *major subdivision* in accordance with Article III, Subdivision Regulations, and shall be organized:
    1. To provide increased internal mobility;
    2. To provide safe and convenient access;
    3. In intersecting/grid patterns where possible; and
    4. Without cul-de-sacs (except where topographical considerations/restrictions are submitted by the *applicant*).
  - g. Shall have subsurface utilities.
  - h. Shall have a *perimeter setback* of one hundred (100) feet in residential zoning districts including the Local Commercial (LC) zoning district.
- (3) Where a multifamily dwelling of five (5) or more units development is located along any *road* with current public transit access and such public transit authority approves the addition of a stop, such development shall provide a minimum of one (1) public transit access shelter for the *use* of occupants/patrons.
- (4) Solid Waste Collection. Solid waste collection systems must be installed and/or operated to meet all local and state statutes, ordinances and regulations and shall thereafter be certified by the Department of Public Health. Each development shall provide a suitable method of solid waste disposal (in accordance with Chapter 165 of the Henderson County Code, *Solid Waste*) and collection consisting of either private collection from individual *uses* or the *use* of dumpsters. Where dumpsters are used concrete pads shall be designed to drain to a bio-retention area to filter *stormwater* before the water reaches a larger drainage system, and Screen Class One (1), Two (2), or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification).
- (5) Open Space. *Open space* shall be provided in perpetuity (perpetual *easements* or deed restrictions are required) equivalent to **25** ~~20~~ percent of all lands within the development. This designated *open space* area shall not:
- a. Include more than 50 percent in primary conservation areas; and
  - b. Be composed entirely of secondary conservation areas.
- (6) Common Area Requirements. A *common area* shall be provided that is equivalent to 10 percent of the total area. *Common area* shall be accessible for the *use* and enjoyment of the multifamily occupants/patrons, located as to be free of traffic hazards and maintained in good condition by the *applicant*.
- (7) Other Requirements. Due to the comprehensive nature of a multifamily project, there are several sections that must be consulted. Please refer to the following sections for more information on each facet of a multifamily project.

- a. See Article III for ~~information on~~ road design and construction standards, pedestrian facility standards, water and sewer requirements, and *fire protection*.
- b. See Article IV for traffic impact study and emergency services impact report requirements.
- c. See Article V for landscaping and buffering requirements.
- d. See Article VI for off-street parking and loading requirements.
- e. See §42-63 (Supplemental Requirements) for each land *use*.
- f. See Article VII for *sign* requirements.
- g. See Article XI for permitting procedures.

**Recommendation B-4:** Change the reference to the removed multifamily five or more units in each zoning district and reference the new multifamily development use and supplemental requirements and two family attached dwellings.

B. Density and Dimensional Requirements.

(2) Standard *residential density* shall be applied:

- a. On a *lot* existing at the time of the initial adoption of this Chapter, where there is not adequate area to comply with the applicable standard *residential density* requirement;
- b. To single-family residential *uses*; and
- c. To **two family attached dwellings** ~~multifamily residential uses with fewer than five (5) units.~~

(4) Maximum residential density shall be available to applicants proposing **multifamily developments with three (3) or more units** ~~five (5) or more dwellings in any combination of the following unit types (duplexes, triplexes, quadraplexes and multifamily dwellings with five (5) or more units~~ and specifically excluding single-family units) where:

- a. A total of at least five (5) units would be permitted by standard residential density, and
- b. Such dwellings ~~are generally~~ **shall be** served by both: (1) a *municipal water supply system* and (2) a *sewage disposal system* (of the following types: municipal, approved public, or approved community) which meet the requirements of the local or State authorities.

(6) Maximum height may be exceeded in multifamily developments as detailed in §42-63 (Supplemental Requirements) **SR 1.7 Dwelling, Multifamily** ~~SR 1.6. (Dwelling, Multifamily, Five (5) or More Units)~~, provided such developments do not exceed 50 feet in height.

**Recommendation B-5:** Amend the density threshold in the R1 zoning district for the intermediate and maximum allowed density.

<b>Table 2.1. R1 Density and Dimensional Requirements</b>				
(1) Residential Density (units/acre)		(2) Standard	4	
		(3) Intermediate	<del>8</del> <b>6</b>	
		(4) Maximum	<del>16</del> <b>12</b>	
(5) Yard Setbacks (feet)	Front or Right-of-Way (ROW)		<i>Local</i>	15
			<i>Collector</i>	20
			<i>Thoroughfare</i>	35
			<i>Boulevard</i>	50
			<i>Expressway</i>	60
			<i>Freeway</i>	90
			<i>Side</i>	10
		<i>Rear</i>	10	
(6) Maximum Height (feet)			40	

**Text Amendment C: Neighborhood Compatibility Meetings**

**Issue:** Due to number of lots/units proposed for certain types of developments the need to have a neighborhood compatibility meeting would be beneficial to allow adjacent property owners the opportunity to ask questions of the applicant. This would allow for the opportunity to address and resolve issues prior to the meeting of approval authority.

**Recommendation:** Add a neighborhood compatibility meeting requirement for subdivisions and multifamily developments proposing 100 or more units/lots, and proposed mixed use districts. The County would preschedule these meetings each calendar year. The applicant/developer would be required to provide a presentation to the public at this meeting and answer questions related to the development. County staff would attend these meetings to facilitate and record the outcome.

**Add a new subpart under Article X1 Review Processes and Procedures for a neighborhood compatibility meeting process.**

**Subpart I. Neighborhood Compatibility Meeting Process and Standards**

**§42-372. Neighborhood Compatibility Meeting.** Neighborhood compatibility meetings may be required for some uses or review processes to inform adjacent property owners, residents and business owners about a potential development in their community and provide an opportunity for questions to be answered by the applicant or developer.

- A. **Facilitation.** Upon receipt of a completed application, the Planning Director, Zoning Administrator or a designee appointed by the Planning Director or Zoning Administrator will facilitate the neighborhood compatibility meeting as scheduled each calendar year.

- B. Notification of Participants. A mailed notice shall be sent to adjacent property owners within four hundred (400) feet of any property line of the proposed development at least seven (7) days prior to the neighborhood compatibility meeting
- C. Applicant Presentation. The applicant/developer and or the designated agent shall provide a presentation at the meeting on the proposed project and shall address questions about the project which remain unclear.
- D. Discussion Topics. Participants shall be allowed to ask questions of the applicant for clarification but not to question if the site should be developed. A neighborhood compatibility meeting is not a public hearing. There will be an opportunity for public comment about the project during the formal review by the approving authority.
- E. Meeting Results. Upon the applicant addressing all the participants questions, the facilitator will review the points discussed and ask those assembled if the positions represent an accurate consensus of the opinions expressed. The facilitator shall record the opinions in the staff report and it shall become part of the application file.

**Add a requirement for neighborhood compatibility meetings in the following sections.**

**§42-52. Mixed Use District (MU)**

**B. General Provisions.**

(3) Neighborhood Compatibility Meetings. A neighborhood compatibility meeting is required. See §Subpart I. Neighborhood Compatibility Meeting Process and Standards.

**§42-339. Review for Major Subdivisions and Conservation Subdivisions of Thirty-Five (35) to Two Hundred Ninety-Nine (299) Lots**

D. Neighborhood Compatibility Meeting. A neighborhood compatibility meeting is required for subdivisions proposing more than one hundred (100) units/lots. See §Subpart I. Neighborhood Compatibility Meeting Process and Standards.

**§42-340. Review for Major Subdivisions and Conservation Subdivisions of Three Hundred (300) or More Lots**

E. Neighborhood Compatibility Meeting. A neighborhood compatibility meeting is required. See §Subpart I. Neighborhood Compatibility Meeting Process and Standards.

Add to supplemental requirements for multifamily developments.

**Dwelling, Multifamily.**

(8) Neighborhood Compatibility Meeting. A neighborhood compatibility meeting is required when one hundred (100) or more units are proposed. See §Subpart I. Neighborhood Compatibility Meeting Process and Standards.