

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 17, 2021

SUBJECT: Public Hearing for Revised 2020 Annual Land Development Code (LDC) Text Amendments (TX-2020-01) (Special Fill Permits, Permeable Surface Requirements, Accessory Structures and Home Schools)

PRESENTER: Autumn Radcliff, Planning Director

ATTACHMENTS:

1. LDC Draft Text Amendments
2. Certification of Notice of Public Hearing
3. Resolution of Consistency
4. PowerPoint Presentation

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19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated.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

On October 5th, the Board of Commissioners held a public hearing on the draft text amendments. Following the public hearing and discussion by the Commissioners, the Board voted to send the amendments to the Planning Board requesting revisions based on the discussion by the Board.

The Planning Board discussed the Board's concerns at its meeting on November 19th and December 17th. On December 17th, the Planning Board voted unanimously to send forward a favorable recommendation on the proposed amendments as revised. The draft amendments included:

- Requiring special fill permits to be approved by the Board of Commissioners as a conditional rezoning request
- Removing permeable surface requirement for multi-family developments
- Allowing accessory structures in the front yard
- Home School Clarification

Proposed amendments to conditional rezoning resubmittals and separation setback require further discussion by the Planning Board and will be processed at a later date.

PUBLIC NOTICE:

The required public notice of this hearing was published in the Hendersonville Lightning on February 3rd, 2021 and February 10th, 2021 (See attachment 2, Certification of Notice of Public Hearing).

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 and adopt a written statement of consistency with the County Comprehensive Plan.

Suggested Motion:

I move that the Board adopt the attached resolution regarding the consistency with the CCP, and

I move that the Board adopt the proposed Land Development Code text amendments.

Revised 2020 Annual LDC Text Amendments (TX-2020-01)
Revised and Recommended by Planning Board 12-17-20

Recommended changes are highlighted in red.

Special Fill Permits

Summary: Currently, special fill permits may be granted by the Zoning Board of Adjustment. This amendment would require the Board of Commissioners approve special fill permits as part of a conditional rezoning request under the current LDC guidelines and requirements for special fill permits.

ARTICLE X – DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES

§42-303. Henderson County Board of Commissioners (add the following power and duty)

Special Fill Permits. To grant special fill permits as authorized by this Chapter.

§42-307. Henderson County Flood Damage Prevention Board (remove the following power and duty)

~~(7) Special Fill Permits. To grant special fill permits as authorized by this Chapter.~~

ARTICLE XI – REVIEW PROCESSES AND PROCEDURES

§42-356. Special Fill Permits

A. Purpose. *Special Fill Permits* in the *flood fringe* may be granted by the ~~Flood Damage Prevention Board~~ **Board of Commissioners only** in **Conditional Zoning Districts** where particular cases meeting specific community need and subject to appropriate conditions and safeguards.

- (1) Proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; and,
- (2) *Special Fill Permit*, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
- (3) Proposed *encroachment* will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
- (4) *Special Fill Permit*, if granted, will comply with the *Comprehensive Plan*, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the *Special Fill Permit*.

Any grant of a *Special Fill Permit* by the ~~Flood Damage Prevention Board~~ **Board of Commissioners** may include conditions, which must be satisfied by the *applicant*. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

B. Permit Issuance. The ~~Flood Damage Prevention Board~~ **Board of Commissioners** shall have the power to grant permits for special fill in the *flood fringe*. In order to grant a *Special Fill*

Permit, the ~~Flood Damage Prevention Board~~ Board of Commissioners must conclude that the:

C. Application.

- (1) Application. The application for the permit shall be on a form provided by the *Floodplain Administrator*, and shall be submitted prior to any fill activity requiring a *Special Fill Permit*. The application shall include the following:
 - a. Certification, on a form as published by *FEMA*, or acceptable alternative form approved by *FEMA*, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; or
 - b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
 - c. An alternative method currently approved by *FEMA* for use in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; and,
 - d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.
 - e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the *Special Fill Permit*, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
 - f. The application shall include information demonstrating compliance with the *Comprehensive Plan* and demonstrating the substantial public or community purpose(s) which the *Special Fill Permit*, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the *Special Fill Permit*, if granted, which must be demonstrated include:
 1. Advancing a governmental purpose, which includes promoting and preserving *use* of land for *agriculture*.
 2. Meeting public infrastructure needs.
 3. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
 4. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
 - g. A complete listing of the names and mailing addresses of all *owners* of real property adjacent to the parcel upon which the *Special Fill Permit* is proposed.
- (2) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources)

Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, ~~nor shall any action be taken on appeals before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.~~

D. Staff Review. The *Floodplain Administrator* shall review the application for compliance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. The *Floodplain Administrator* shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.

E. Formal Review.

(1) Henderson County Planning Board Review and Recommendation. The review by the Planning Board shall ~~not be quasi-judicial legislative~~ in nature.

- a. Public notification of the Planning Board meeting shall comply with the provisions of §42-~~371~~ 370 (~~Quasi-Judicial Process Standards Legislative Process Standards~~). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Planning Board shall hear a summary and review of the application by the *Floodplain Administrator*, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
- c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the ~~Flood Damage Prevention Board~~ Board of Commissioners as to the grant or denial of the application.

(2) ~~Flood Damage Prevention Board~~ Board of Commissioners Public Hearing. The ~~Flood Damage Prevention Board~~ Board of Commissioners shall hold a ~~quasi-judicial legislative~~ public hearing that complies with the provisions of §42-3710 (~~Quasi-Judicial Legislative~~ Process Standards).

- a. Public notification of the ~~Flood Damage Prevention Board~~ Board of Commissioners meeting shall comply with the provisions of §42-3710 (~~Quasi-Judicial Legislative~~ Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The ~~Flood Damage Prevention Board~~ Board of Commissioners shall consider a summary of the proposed project from the *Floodplain Administrator*, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the *applicant*, evidence from adjacent property *owners*, and such other evidence as the ~~Flood Damage Prevention Board~~ Board of Commissioners finds useful.
- c. The ~~Flood Damage Prevention Board~~ Board of Commissioners shall reach a decision within 45 days of the conclusion of the ~~quasi-judicial legislative~~ hearing.

Permeable Surface Requirements for Multi-Family

Summary: Due to the ongoing maintenance issues, remove the permeable pavement requirement for multi-family developments.

Article II – Zoning District Regulations

Subpart E. Supplemental Requirements to the Table of Permitted and Special Uses

SR 1.5 Dwelling, Multifamily

- (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.).~~
 - e. 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*).
 - f. Shall have subsurface utilities.
 - g. Shall have a *perimeter setback* of one hundred (100) feet in residential zoning districts including the *Local Commercial (LC) zoning district*.

Accessory Structures in the Front Yard

Summary: The placement of accessory structures is not allowed in the front yard. This has been an issue on unusual shaped tracts and in the rural parts of the County where a property owner has a several acers and the placement of the structure is in front of the principal dwelling unit. This amendment would allow on option for accessory structures to be placed in the front yard with a special use permit so that individual sites can be evaluated on a case by case basis.

Article II – Zoning District Regulations (add the following accessory language for each zoning district)

Accessory structures shall may be located in *side* or *rear* yards and *shall may* be *setback* a minimum of five (5) feet from any property line. *A special use permit is required to locate an accessory structure in the front yard.*

Clarify Definition of a Home School

Summary: Home schools are an accessory use and setback requirements for schools do not apply to home schools. This amendment would clarify the definition of a home school and put it as an accessory use in the table of permitted and special uses.

School (Home). A nonpublic school **as defined and** ~~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). **Zoning setbacks and separations setback requirements do not apply to home schools.**


Amend the Table of Permitted and Special Uses to add home schools under the list of permitted accessory uses.

Certification of Notice of Public Hearing

In accordance with NCGS 153A-323 and 153A-343 the Planning Department certifies notices of the February 17th, 2021 hearing regarding the proposed Henderson County Land Development Code Text Amendments (TX-2020-01)), were:

1. Submitted to the Hendersonville Lightning on January 27, 2021 to be published on February 3, 2021 and February 10, 2021 by Matt Champion;

The signatures herein below indicate that such notices were made as indicated herein above:

1. 

STATE OF North Carolina

COUNTY OF Henderson

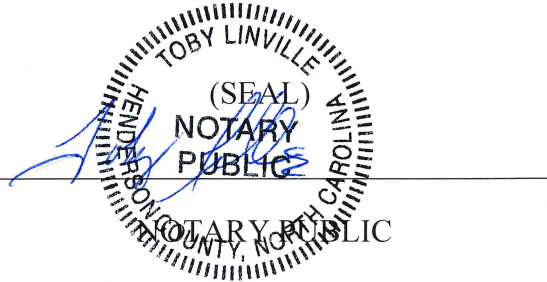
I, Toby Linville, a Notary Public, in and for the above County and State, do hereby certify that Matt Champion

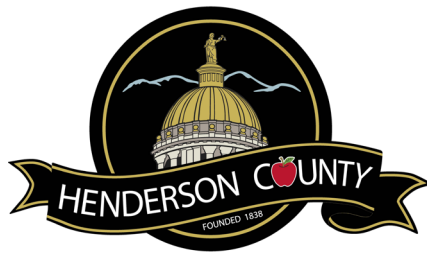
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 3rd day of February, 2020.

My commission expires:

5/25/21





RESOLUTION OF CONSISTENCY WITH THE COUNTY COMPREHENSIVE PLAN

WHEREAS, pursuant to N.C. General Statute §153, Article 18, the Henderson County Board of Commissioners exercises regulations relating to development within the County’s jurisdiction; and

WHEREAS, the Henderson County Board of Commissioners (Board) adopted the Land Development Code (LDC) on September 19, 2007 and has amended the LDC to address new and changing issues;

WHEREAS, the Board desires to update and revise the regulations of the LDC; and

WHEREAS, the Planning Department and Planning Board provided recommendations regarding the proposed text amendments with case TX-2020-01 as revised; and

WHEREAS, pursuant to N.C. General Statute §153-323, the Planning Department provided the prescribed public notice and the Board held the required public hearing on February 17, 2021; and

WHEREAS, N.C. General Statute §153-341 requires the Board to adopt a statement of consistency with the County Comprehensive Plan (CCP); and

NOW THEREFORE, BE IT RESOLVED by the Henderson County Board of Commissioners as follows:

1. That the Board reviewed the proposed text amendment (TX-2020-01-Revised Land Development Code Amendments) and finds that it reasonable, in the public interest and it is consistent with the principles and goals of County Comprehensive Plan and the Growth Management Strategy located therein; and
2. That the Board determines that the proposed text amendment provides for the sound administration of the LDC while balancing property rights and promoting reasonable growth within the County; and
3. That this Resolution shall be retained in the Office of the Clerk to the Board of Commissioners.

THIS the 17th day of February, 2021.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
WILLIAM LAPSLEY, Chairman
Henderson County Board of Commissioners

ATTEST:

TERESA L. WILSON
Clerk to the Board of Commissioners

[COUNTY SEAL]

2020 Land Development Code Text Amendments

(Special Fill Permits, Permeable Surface Requirements, Accessory Structures, Home School Clarification)

Public Hearing
Board of Commissioners Meeting
February 17, 2021
Presentation By: Autumn Radcliff, Planning Director

Henderson County Planning Department

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Overview

- BOC held public hearing on October 5th, 2020
- BOC requested the Planning Board revise the proposed amendments based on the Board discussion during the public hearing
- Planning Board discussed the revisions at its meeting on November 19th and December 17th
- Planning Board voted to recommend the following amendments (amendments related to the conditional rezoning submittals and separation setback definition require further discussion by the Planning Board and will be processed at a later date)

Henderson County Planning Department

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Public Hearing Requirements

- Notices of the public hearing were published in the Hendersonville Lightning on February 3rd and February 10th

Henderson County Planning Department

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LDC Amendment: Special Fill Permits

Text Amendment A: Special Fill Permits

Summary: Amend the approval process and granting board on special fill permits.

Currently, special fill permits may be granted by the Zoning Board of Adjustment. This amendment would require the Board of Commissioners approve special fill permits as part of a conditional rezoning request under the current LDC guidelines and requirements for special fill permits.

Henderson County Planning Department

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LDC Amendment: Permeable Pavement Requirement

Text Amendment B: Remove the Permeable Surface Requirements

Summary: Due to the ongoing maintenance issues, remove the permeable pavement requirement for multi-family developments.

Henderson County Planning Department

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LDC Amendment: Accessory Structures Location

Text Amendment C: Accessory Structures in the Front Yard

Summary: This amendment would allow on option for accessory structures to be placed in the front yard with a special use permit so that individual sites can be evaluated on a case-by-case basis.

Henderson County Planning Department

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LDC Amendment: Home School

Text Amendment D: Clarify Definition of a Home School

Summary: This amendment would clarify the definition of a home school and put it as an accessory use in the table of permitted and special uses.

Home schools are allowed as an accessory use and do not require a zoning permit. The setback requirements for schools do not apply to home schools.

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Public Comment and Board Discussion

Henderson County Planning Department

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