

## 0REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** August 18, 2021

**SUBJECT:** Public Hearing for Administrative Text Amendments to the Flood Damage Prevention Section of the LDC (#TX-2021-03)

**PRESENTER:** Autumn Radcliff, Planning Director  
Natalie Berry, Project Engineer/Site Development Director

**ATTACHMENTS:** 1. Draft Text Amendment  
2. Certification of Public Notice  
3. Resolution of Consistency

#### **SUMMARY OF REQUEST:**

At the request of the Site Development Director/Project Engineer, Natalie Berry, administrative text amendments to the Flood Damage Prevention section are needed. These changes are related to the model ordinance as a result of the adoption of NCGS 160D. The Board of Commissioner adopted the 160D amendments to the Land Development Code, but there are additional administrative amendments necessary to comply the NC's model ordinance as it relates to the 160D changes.

The Planning Board discussed the proposed text amendments at its meeting on June 17, 2021 and voted unanimously to send forward a favorable recommendation on the proposed amendments as attached.

#### **PUBLIC NOTICE:**

The required public notice of this hearing was published in the Hendersonville Lightning on August 4<sup>th</sup>, 2021 and August 11<sup>th</sup>, 2021 (See attached Certification of Public Notice).

#### **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.

#### **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 text amendments to the LDC (#TX-2021-03) related  
to Flood Damage Prevention as discussed.*

# Administrative Text Amendments to the Flood Damage Prevention Section (TX-2021-03)

Recommended changes are highlighted in red.

## **Chapter 160D and model ordinance updates to the Flood Damage Prevention Section:**

**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 VIII NATURAL RESOURCES

This Article reflects and incorporates the Flood Damage Prevention, Water Supply Watershed Protection, Perennial and Intermittent Surface Water Buffers, Protected Mountain Ridges, and Soil Erosion and Sedimentation Control Ordinances previously adopted by the County. The purpose of this Article is to consolidate these existing ordinances into one article of the Land Development Code. This Article also includes *stormwater* management regulations for the purposes of improving the County's water quality and quantity.

#### Subpart A. Flood Damage Prevention

##### §42-135. Statutory Authorization, Findings of Fact, Purpose and Objectives

The following sections are incorporated herein by reference and considered to be a part of the regulations of this Article VIII, Subpart A: §42-307 (Henderson County Flood Damage Prevention Board), §42-311 (Henderson County Floodplain Administrator), §42-350 (Floodplain Development Permits), §42-355 (Special Fill Permits), §42-368 (Variances (Flood Damage Prevention), §42-378 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), §42-379 (Appeals), and §42-391 (Definitions).

##### §42-232.1 Statutory Authorization.

The Legislature of the State of North Carolina has in Part 6 of Article 21 of Chapter 143 and ~~Chapter 160D-923~~ Article 6 of Chapter 153A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes (NCGS), delegated *local governmental* units the **responsibility authority** to adopt regulations designed to promote the public health, safety, and general welfare.

##### §42-232.2 Findings.

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

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

### §42-232.3 Objectives.

The objectives of this Subpart A are to:

- A. Protect human life, safety and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business losses and interruptions;
- E. Minimize interruptions and disruptions of family life caused by flooding;
- F. Minimize damage to public facilities and utilities (i.e. water and gas mains; electric, telephone and sewer lines; and ~~roads/bridges~~ streets and bridges that are located in ~~floodplain~~-flood prone areas;
- G. Help maintain a stable tax base by providing for the sound use and development of *flood prone areas*;
- H. Permit and encourage the retention of open land *uses* which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the community and which will not impede the flow of flood waters;
- I. Prevent victimization by ensuring that potential land, home and business buyers are notified that property is located in an identified flood hazard area; and
- J. Prevent increased flood levels caused by unwise *floodplain* development.
- K. Minimize damage to private and public property due to flooding;
- L. Ensure that potential buyers are aware that property is in a Special Flood Hazard Area;
- M. Maintain the natural and beneficial functions of the floodplains; and
- N. Make flood insurance available to the community through the National Flood Insurance Program.

### §42-232.4 Purpose.

It is the purpose of this Subpart A to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

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

### §42-136. General Provisions

#### **42-232.1 Lands to Which this Article VIII, Subpart A Applies.**

The provisions of this Subpart A shall apply to all *Special Flood Hazard Areas* within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality, and (2) the incorporated areas and extraterritorial jurisdiction of any municipality specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners, in accordance with the *Flood Insurance Study* (FIS) and its accompanying *Flood Insurance Rate Map(s)* (*FIRM*), for Henderson County dated October 2, 2008. (In making such a request, the municipality must comply with the requirements of *NCGS* §160D-923). Unless otherwise provided herein, in no instance shall this subpart apply to any area which is not duly established and identified as a *Special Flood Hazard Area*, either by the methods listed in §42-233.2 (Basis for Establishing the Special Flood Hazard Areas), or as shown on the *Flood Insurance Study* (FIS) and its accompanying *Flood Insurance Rate Map(s)* (*FIRM*), for Henderson County. ~~dated October 2, 2008. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Chapter.~~ The Chapter and map shall be on file in the office of Henderson County *Floodplain Administrator*.

#### **42-232.2 Basis for Establishing the Special Flood Hazard Areas.**

- ~~A.~~ The *Special Flood Hazard Areas* are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and the Federal Emergency Management Agency (*FEMA*) in its *Flood Insurance Study* (FIS) and its accompanying *Flood Insurance Rate Map(s)* (*FIRM*), for Henderson County dated October 2, 2008, which are adopted by reference and declared to be part of this Chapter, **and all revisions thereto.** ~~The initial Flood Insurance Rate Map(s) are as follows for the jurisdiction areas at the initial date:~~

~~Henderson County Unincorporated Area, dated March 1, 1982~~

~~Village of Flat Rock, dated March 1, 1982~~

~~Town of Fletcher, dated March 1, 1982~~

~~City of Hendersonville, dated January 20, 1982~~

~~Town of Laurel Park, dated October 2, 2008~~

~~Town of Mills River, dated March 1, 1982~~

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

- ~~B. Delineation of Floodway: For the purposes of delineating the floodway and evaluating the possibility of flood damages, the Floodplain Administrator may:~~

~~(1) Request technical assistance from the competent federal agencies, including the US Army Corps of Engineers, the Soil Conservation Service, and the US Geological Survey, or successor agencies, and~~

~~(2) Utilize reports and data supplied by federal and State agencies in delineating floodways and evaluating the possibilities of flood damages.~~

#### **42-232.3 Establishment of Floodplain Development Permit.**

A *Floodplain Development Permit* shall be required in conformance with the provisions of this Subpart A and §42-350 (*Floodplain Development Permits*) prior to the commencement of any development activities within *Special Flood Hazard Areas* as determined in §42-233.2 (Basis for Establishing the Special Flood Hazard Areas).

#### **42-232.4 Compliance.**

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

**42-232.5 Abrogation and Greater Restrictions.**

- A. Subpart A is not intended to repeal, abrogate, or impair any existing *easements*, covenants, or deed restrictions. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- B. The following may impose additional regulations for land *uses* and *structures* located in any portion of a *floodplain* and are hereby adopted and incorporated into this Subpart A by reference as though they were copied herein fully. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
  - (1) The International Building Codes, as adopted by the North Carolina Building Code Council and enforced by State and local code enforcement officials, and including all volumes.
  - (2) The Southern Building Code Congress International “SBCCI Standard for Floodplain Management” SSTD 4-89,
  - (3) The US Army Corps of Engineers “Flood Proofing Regulations” – ~~EPI 1651-2-314~~ EP 11651-2-314, December 15, 1995.
  - (4) Federal Emergency Management Agency “Managing Floodplain Development in Approximate Zone A Areas,” April, 1995.

**Certification of Notice of Public Hearing**

In accordance with NCGS 160D-323 and 160D-343 the Planning Department certifies notices of the August 18<sup>th</sup>, 2021 hearing regarding the proposed amendments (#TX-2021-03) to the Henderson County Land Development Code, were:

1. Submitted to the Hendersonville Lightning on July 28, 2021 to be published on August 4, 2021 and August 11, 2021 by Matt Champion;

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

1. Matt Champion

STATE OF North Carolina

COUNTY OF Henderson

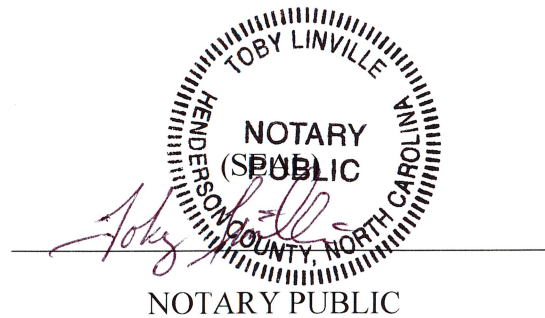
I, Toby Linville, a Notary Public, in and for the above County and State, do hereby certify that Matt Champion

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

WITNESS my hand and notarial seal, this the 3<sup>rd</sup> day of August, 2021.

My commission expires:

6/29/24





**RESOLUTION OF CONSISTENCY WITH THE COUNTY COMPREHENSIVE PLAN**

**WHEREAS**, pursuant to N.C. General Statute §160D, Article 1, 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-2021-03; and

**WHEREAS**, pursuant to N.C. General Statute §160D-601, the Planning Department provided the prescribed public notice and the Board held the required public hearing on August 18, 2021; and

**WHEREAS**, N.C. General Statute §160D-605 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 amendments related to (#TX-2021-03 to the Land Development Code) 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 amendments 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 18<sup>th</sup> day of August, 2021.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** \_\_\_\_\_  
**WILLIAM LAPSLEY, Chairman**  
**Henderson County Board of Commissioners**

**ATTEST:**

\_\_\_\_\_  
**DENISA LAUFFER**  
**Clerk to the Board of Commissioners**

[COUNTY SEAL]