

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 6, 2021

SUBJECT: Public Hearing for Land Development Code (LDC) Text Amendments
(TX-2021-06)

PRESENTER: Autumn Radcliff, Planning Director
Matt Champion, Zoning Administrator

ATTACHMENTS: 1. Draft Text Amendment
2. Table of Permitted and Special Uses
3. Certification of Public Notices
4. Resolution of Consistency

SUMMARY OF REQUEST:

During the July 15th and August 19th, Planning Board meetings, the Board requested staff to draft a text amendment to address concerns with conditional rezoning applications and permitted uses when requested within both residential and non-residential zoning districts. The Board discussed the issue at its September 16th and October 21st meetings and clarified the text for application acceptance

The Henderson County Planning Board discussed the draft text amendment and voted unanimously to send forward a favorable recommendation. Attached is the draft text amendment recommended by the Planning Board.

PUBLIC NOTICE:

The required public notice of this hearing was published in the Hendersonville Lightning on November 24th, 2021, and December 1st, 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-2021-06).

LDC Text Amendment – TX-2021-06

Conditional Rezoning Limits in Residential and Non-Residential Zoning Districts

Recommended changes are highlighted in red.

Summary: During the July 15th and August 19th Planning Board meetings, the Board requested staff to draft a text amendment to address concerns with conditional rezonings applications and current allowed uses when requested within both residential and non-residential zoning districts. The Board discussed the issue at its September 16th meeting and clarified the text for application acceptance.

§42-45. Conditional Zoning Districts Established

Conditional Zoning Districts are created for the purpose of providing an optional rezoning choice where the *owner* of property proposes to rezone property and, in order to, among other reasons, carry out the purposes of the *Comprehensive Plan*, proposes to impose special limitations and conditions on the *use* of the property proposed for rezoning.

Conditional Zoning Districts are zoning districts in which the development and *use* of the property is subject to predetermined Chapter standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to each individual development project.

A. **Dimensional and Use Requirements.** Each *use* proposed in a petition for a Conditional Zoning District shall, at a minimum, conform to the following dimensional **and use** requirements. In some cases, a specific *use* may be required to meet the Supplemental Requirements as set forth in §42-62 (Supplemental Requirements).

(1) Dimensional requirements for single and multifamily residential *uses* shall be the same as those found in the R1 District.

~~(2) Residential *accessory structures* shall be located in *rear* and *side yards* and shall be setback ten (10) feet from any property line.~~

~~(3) Dimensional requirements for non-residential *uses* shall be the same as those found in the CC District~~

~~(4) Non-residential *accessory structures* shall be located in *rear* and *side yards* and shall be setback ten (10) feet from any property line.~~

(2) If the subject area, or any portion thereof, is zoned residential (R1, R2, R2R, R3 and R4), then only those non-residential uses permitted by right or with a special use permit in the LC District shall be allowed. Any non-residential use not listed in the LC District shall not be allowed. Dimensional requirements for non-residential uses shall be the same as those found in the LC District.

(3) If the subject area, or any portion thereof, is not located in a residential zoning district, the dimensional requirements for non-residential uses shall be the same as those found in the CC District. Uses that are only permitted in the Industrial zoning district shall not be allowed as a conditional zoning district unless the Board of Commissioners accept such an application for consideration. As application acceptance is not the same as approval, the application will then

proceed through the required amendment review process. Application acceptance does not mean the application will be approved.

(4) Conditional zoning districts are not permitted in the R-40, WR, and SW Districts.

B. General Provisions.

- (1) Site Plan. Major Site Plan required in accordance with §42-330 (Major Site Plan Review).
- (2) All CD districts shall adhere to a *site-specific vesting plan*.
- (3) Neighborhood Compatibility Meetings. A neighborhood compatibility meeting is required. See §42-372. Neighborhood Compatibility Meeting.

Certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Some land *uses* are of a nature or scale that may have significant impacts on both the immediately surrounding area and the entire community, which cannot be predetermined or controlled by general district standards. There are also circumstances in which a general use district designation allowing such a *use* by right would not be appropriate for a particular property though the *use* could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted *Comprehensive Plan*, and adopted district. The review process established in this section provides for the accommodation of such *uses* by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the *use* with the use and enjoyment of neighboring properties.

Where the *applicant* for rezoning desires property to be rezoned to such a district in such situations, the Conditional Zoning District is a means by which such special conditions can be imposed in the furtherance of the purpose of this Chapter and the recommendations of the *Comprehensive Plan*. The Conditional Zoning District classification will be considered for rezoning only with the consent of the property *owner*. If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid or if the *applicant* should fail to accept any condition, it is the intent of this Chapter that the authorization of such Conditional Zoning District shall be null and void and of no effect and that proceedings shall be instituted to rezone the property to its previous zoning classification.

Subpart D. Table of Permitted and Special Uses

[illegible]

Subpart D. Table of Permitted and Special Uses

[illegible]

Subpart D. Table of Permitted and Special Uses

USE TYPE	GENERAL USE DISTRICT P=Permitted; S=Special Use Permit										
	R1	R2	R2R	R3	R4	OI	LC	CC	RC	I	SR
<i>Childcare Facility</i>	P	P	P	P	P	P	P	P	P	S	5.5
<i>Club/Lodge</i>	P	P	P	P	P	P	P	P	P	S	5.6
<i>College or University</i>						P		P	P		5.7
<i>Community Club</i>	P	P	P	P	P	P	P	P	P		5.8
<i>Correctional Facilities</i>										S	5.9
<i>Fire and Rescue Station</i>	P	P	P	P	P	P	P	P	P	P	5.10
<i>Funeral Home or Crematorium</i>						P	P	P	P		5.11
<i>Government Offices</i>						P	P	P	P	S	5.12
<i>Homeless Shelter</i>						P		S	P		5.13
<i>Hospital</i>						P		P	P		5.14
<i>Museum/Library/Archive</i>	S	S	S	S	S	P	P	P	P		5.15
<i>Place of Assembly, Large</i>						S	P	P	P	S	5.16
<i>Place of Assembly, Small</i>	S	S	S	S	S	P	P	P	P	S	5.17
<i>Police Station</i>	S	S	S	S	S	P	P	P	P	P	5.18
<i>Religious Institution</i>	P	P	P	P	P	P	P	P	P	S	5.19
<i>School (Home)</i>	P	P	P	P	P	P	P				-
<i>School (Public/Private/Charter)</i>	P	P	P	P	P	P	P	P	P		5.20
<i>Youth Center</i>	S	S	S	S	S	P	P	P	P		5.21
6. BUSINESS, PROFESSIONAL, AND PERSONAL SERVICES											
<i>Animal Shelter</i>							S	S	P		6.1
<i>Automobile and Equipment Service</i>			S	S	S		P	P	P	S	6.2
<i>Automotive Towing</i>									P	S	6.3
<i>Broadcasting and Communications Facilities</i>						P	P	P	P	S	6.4
<i>Car Wash</i>							P	P	P		6.5
<i>Exterminating and Pest Control Services</i>				S	S		P	P	P	S	6.6
<i>Kennel</i>		S	S	S	S		S	S	P		6.7
<i>Motel/Hotel</i>							S	P	P		6.8
<i>Office: Business, Professional and Public</i>			S	P	P	P	P	P	P		6.9
<i>School (Technical, Trade and Business)</i>						P	P	P	P	S	6.10
<i>Theater, Drive-In</i>								P	P		6.11
<i>Urgent Care Clinic</i>	S	S	S	S	S	P	P	P	P		6.12
7. RETAIL TRADE											
<i>Adult Book and Retail Merchandise Store</i>										S	7.1
<i>Adult Theatre and Live Entertainment</i>										S	7.2
<i>Cinema Complex</i>								P	P		7.3
<i>Convenience Store</i>						P	P	P	P	S	7.4
<i>Entertainment Complex</i>									P		7.5
<i>Flea Market</i>									P		7.6
<i>Fuel Oil Distribution and Sales</i>										S	7.7
<i>Landscaping Materials Sales and Storage</i>			S	S	S		S	P	P	S	7.8
<i>Manufactured/Mobile Home Sales</i>									P	S	7.9
<i>Motor Vehicle Sales or Leasing</i>							S	S	P		7.10

Subpart D. Table of Permitted and Special Uses

[illegible]

Subpart D. Table of Permitted and Special Uses

[illegible]

Subpart D. Table of Permitted and Special Uses

[illegible]

Certification of Notice of Public Hearing

In accordance with NCGS 160D-323 and 160D-343 the Planning Department certifies notices of the December 6th, 2021, hearing regarding the proposed Henderson County Land Development Code Text Amendments (TX-2021-06), were:

1. Submitted to the Hendersonville Lightning on November 18th, 2021 to be published on November 24, 2021 and December 1, 2021 by Matt Champion;

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

1. Matt Champion

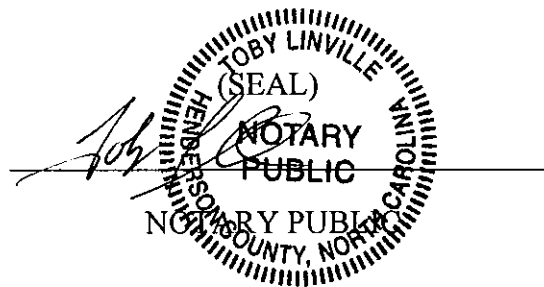
STATE OF North Carolina

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 19th day of November, 2021.

My commission expires:

6/25/26





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-2021-06; 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 November 17, 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-2021-06 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 6th day of December, 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]