

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 7, 2014

SUBJECT: Continued Discussion on Land Development Code (LDC) and Minimum Housing Code Text Amendments (TX-2013-02)

PRESENTER: Autumn Radcliff, Senior Planner

ATTACHMENTS:

1. Staff Memo
2. Minimum Housing Code Draft Text Amendments
3. LDC Draft Text Amendments
4. Resolution of Consistency with County Comprehensive Plan
5. PowerPoint

SUMMARY OF REQUEST:

On March 17, 2014, the Board of Commissioners held a public hearing on the proposed text amendments to the Land Development Code and Minimum Housing Code. The proposed text amendments are based on the recommendations from the Henderson County Regulations Review Advisory Committee (RRAC), new federal and state laws pertaining to communication towers and strengthening the improvement guarantee requirements as requested by the County Attorney.

The Board voted to table its discussion on the item in order to review the proposed amendments and public comments received during the public hearing, specifically comments concerning the front setbacks for commercial zoning districts. Staff has provided a memo outlining the concerns raised and options for the Board's consideration.

BOARD ACTION REQUESTED:

Prior to acting on a text amendment, the Board must 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, adopt with modifications, or deny the proposed LDC and Minimum Housing Code text amendments.



Planning Department

100 North King Street
Hendersonville, NC 28792

MEMORANDUM

TO: Henderson County Board of Commissioners
Steve Wyatt, County Manager
Amy Brantley, Assistant County Manager
John Mitchell, Business and Community Development Director

FROM: Autumn Radcliff, Senior Planner

DATE: March 24, 2014

SUBJECT: Reducing Front Setbacks in Commercial Zoning Districts

The Regulations Review Advisory Committee (RRAC) recommended the County consider reducing front setbacks for commercial zoning districts. Currently setbacks are measured from the edge of right-of-way (ROW) or from the edge of the traveled way where no ROW exists. For example, if a 30 ft ROW exists on a road, an LDC front setback of 10 ft would be in addition to the 30 ft ROW, resulting in an overall 40 ft front setback for new buildings. Both Planning Staff and the Planning Board recommended reducing front setbacks in the Local Commercial (LC), Community Commercial (CC) and Regional Commercial (RC) zoning districts to provide greater design flexibility. This flexibility allows a business to locate closer to the road, provides increased visibility, and the opportunity to locate parking on the building's side and rear. The recommendation was to reduce the front setbacks as follows:

	<i>Local</i>	10
	<i>Collector</i>	10
<i>Front or ROW</i>	<i>Thoroughfare</i>	20
	<i>Boulevard</i>	30
	<i>Expressway</i>	40
	<i>Freeway</i>	45

Public Hearing Concerns:

Prior to the adoption of the Land Development Code (LDC) in 2007, the previous zoning ordinance required a minimum front yard setback of 75 ft from major roads and 60 ft for all other roads for commercial zoning districts. Setbacks were not measured from the edge of ROW but instead were either measured from: (1) the centerline of the street (for two lane roads) or (2) a point located 12 ft from the edge of the pavement regardless of ROW (where a street is more than 2 lanes). During the public hearing, concerns were expressed about the front setback reduction for commercial zoning districts. Public comments stated that the current

setbacks were adequate, that existing commercial business complied with larger setback restrictions, and that the variance process should be used if a front setback reduction was necessary.

The majority of the County was previously zoned Open Use (OU) prior to the LDC adoption which had no requirements for setbacks. In addition, the current commercial districts are limited in the County (until the community planning process is completed and these areas can be rezoned), and the County Comprehensive Plan (CCP) recommends that most of the County's commercial development should occur in the Urban Services Area (USA) and identified Community Services Center Nodes.

Board Options:

The Board of Commissioners may adopt, adopt with modifications or deny the proposed amendment(s). The Board could vote on one of the following options:

1. Approve the proposed front setback reductions as recommended.
2. Modify the proposed text amendment to a more restrictive setback than proposed while still supporting an overall front setback reduction as recommended by the RRAC. For example, reduce the front setback for commercial zoning districts by 5 or 10 ft instead of the proposed 15 ft reduction.
3. Deny the proposed amendment and leave the current front setbacks in place.

2013 Minimum Housing Code Draft Text Amendments
(Includes Recommendations from the Regulation Review Advisory Committee (RRAC))

Recommended changes are highlighted in red.

Minimum Housing Code Text Amendment A: Exempt Agricultural Workforce Housing Requirements.

Issue: The RRAC stated that the minimum housing code regulations restricts agriculture workforce housing options. The RRAC recommended the minimum housing code be reviewed to reduce and/or exempt agricultural workforce housing requirements specifically for seasonal housing accommodations.

Recommendation: Exempt agricultural workforce housing that is currently complying with federal housing standards or used for seasonal workforce housing.

Amend applicable section below.

§48-1 General

F. Exemptions. This code shall exempt agricultural workforce housing that is regulated under federal law and seasonal agricultural workforce housing that is not occupied on a year-round basis. The County shall forward any complaints received on agricultural workforce housing to the appropriate federal agency and shall investigate any complaints that a seasonal agricultural workforce housing unit is occupied as a permanent, year-round residency.

2013 LDC Draft Text Amendments
(Includes Annual LDC Amendments and
Recommendations from the Regulation Review Advisory Committee (RRAC))

Recommended changes are highlighted in red.

LDC Text Amendment A: Reduce the Agricultural Signage Restrictions.

Issue: The RRAC recommended that the regulations for agriculture signage be reduced, particularly those relating to direct sale of local agriculture products. As related to agriculture signage, the current LDC standards permit outdoor advertising signs, directional signs and agricultural produce signs in all zoning districts. Agriculture produce signs are exempt signs. All exempt signs may have one or two faces and may be illuminated per specific standards. Sign size and height regulations are based on sign type.

Recommendation: Remove the word produce (as shown below) so all types of agricultural signs is exempt and increase the maximum area to thirty-two (32) square feet per face.

Amend applicable section below.

§42-218. Exempt Sign Standards

A. Agricultural ~~Produce~~ Signs.

- (1) Maximum Area. ~~Twenty (20)~~ **Thirty-two (32)** square feet per face.
- (2) Maximum Height. Ten (10) feet.

LDC Text Amendment B: Reduce Front Setbacks in Commercial Zoning Districts.

Issue: The RRAC stated the right-of-way setbacks were burdensome to commercial development and recommended reducing the front setbacks. The current LDC standards determine the front or right-of-way setback based on the County and NCDOT road classification. The road classification is determined by the general characteristics of mobility, accessibility and access.

Recommendation: Reduce the current front or right-of-way setback for each road classification in existing commercial districts.

Amend Tables 2.3, 2.8 and 2.9 in applicable sections below.

§42-33. Local Commercial District

Table 2.7. LC Density and Dimensional Requirements			
(1) Residential Density (units/acre)	(2) Standard	4	
	(3) Maximum	16	
Maximum Impervious Surface (%)		80	
(4) Maximum Floor Area (sq ft)		30,000 or 10,000	
(5) Yard Setbacks (feet)	Front or ROW	Local	25 10
		Collector	25 10
		Thoroughfare	35 20
		Boulevard	45 30
		Expressway	55 40
		Freeway	60 45
	Side	10	
	Rear	10	
Maximum Height (feet)		40	

§42-34. Community Commercial District

Table 2.8. CC Density and Dimensional Requirements			
(1) Residential Density (units/acre)		16	
Maximum Impervious Surface (%)		80	
(2) Maximum Floor Area (sq ft)		80,000 or 30,000	
Yard Setbacks (feet)	Front or ROW	Local	20 10
		Collector	25 10
		Thoroughfare	35 20
		Boulevard	45 30
		Expressway	55 40
		Freeway	60 45
	Side	10	
	Rear	10	
Maximum Height (feet)		50	

§42-35.

Regional Commercial District

Table 2.9. RC Density and Dimensional Requirements			
<i>(1) Residential Density (units/acre)</i>		16	
<i>Maximum Impervious Surface (%)</i>		80	
<i>Maximum Floor Area (sq ft)</i>		Unlimited	
<i>Yard Setbacks (feet)</i>	<i>Front or ROW</i>	<i>Local</i>	15 10
		<i>Collector</i>	30 10
		<i>Thoroughfare</i>	40 20
		<i>Boulevard</i>	50 30
		<i>Expressway</i>	50 40
		<i>Freeway</i>	60 45
	<i>Side</i>		10
	<i>Rear</i>		10
<i>Maximum Height (feet)</i>		50	

LDC Text Amendment C: Expand Permitted Business Uses in Certain Zoning Districts.

Issue: The RRAC recommended permitted uses be reviewed and expanded where possible in the zoning districts.

Recommendation: Expand the existing uses allowed in certain zoning districts. At the request of the Planning Board, a subcommittee was established to review the Table of Permitted and Special Uses (PUT). Below is an excerpt of the PUT with the amendments recommended by the Planning Board.

Amend Table of Permitted and Special Uses as indicated below and add portable sawmill as a new temporary use, including a new SR for this use. The specific SR number will be determined if the amendments are adopted.

§42-62. 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
4. RECREATIONAL USES												
<i>Camp</i>	SP	P	P	P	P	P	P	P	P	P		4.3
<i>Campground</i>	S	S	S	S	S							4.4
Miniature Golf Course or Driving Tees/Ranges (operated for commercial purposes)	S	S	S	S	S	S		P	P	P		4.11
<i>Recreational Vehicle Park</i>	S	S	S	S	S			P	SP			4.18
<i>Riding Stables</i>	P	P	P	P	P		P	P	P			4.19
<i>Shooting Ranges, Indoor</i>			S	S	S			S	S	S	S	4.21
5. EDUCATIONAL AND INSTITUTIONAL USES												
<i>Ambulance Services</i>	P	P	P	P	P	P	P	P	P	P	SP	5.2
<i>Place of Assembly, Small</i>	S	S	S	S	S	P	P	P	P	P	S	5.17
6. BUSINESS, PROFESSIONAL, AND PERSONAL SERVICES												
Tire Recapping				S	S					P	S	6-12
7. RETAIL TRADE												
<i>Landscaping Materials Sales and Storage</i>			S	S	S		P	S	P	P	S	7.8
<i>Motor Vehicle Sales or Leasing</i>								S	S	P		7.10
<i>Open Air Market</i>	S	S	S	S	S		P	S	S	P		7.11
<i>Produce Stand</i>	P	SP	P	P	P	P	P	P	P	P		7.13
9. TRANSPORTATION, WAREHOUSING AND UTILITIES												
<i>Self-Storage Warehousing</i>			S	S	S	S	P	S	P	P		9.7
11. TEMPORARY USES												
<i>Circuses, Carnivals, Fairs, Religious Services (or similar types of events)</i>			S	PS	PS			P	P	P	P	11.2
Portable Sawmill			P	P	P							11.#
12. TEMPORARY STRUCTURES												
<i>Portable Storage Container</i>	P	P	P	P	P	P	P	P	P	P	P	12.1

SR 11.#. Portable Sawmill

- (1) Duration. A portable sawmill may be permitted as a temporary use not to exceed ninety (90) days. The Zoning Administrator may allow for ninety (90) day extension upon request by the applicant.

LDC Text Amendment D: Simplify Recreational Facility Uses.

Issue: The LDC contains several uses listed in the Table of Permitted and Special Uses (PUT) for various recreational uses that could be combined into one or two specific use types.

Recommendation: Combine several existing recreational uses into one new use type to cover general recreational facilities. The new use “recreational facilities” will have a new definition and supplemental requirements (SR). The definitions and SR’s for the other listed recreational uses will be removed. The “common area recreation and service facilities” and “governmental recreational facilities” uses will remain unchanged in the PUT.

Amend Table of Permitted and Special Uses as indicated below.

§42-63. 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
4. RECREATIONAL USES												
<i>Recreational Facilities (Indoor/Outdoor)</i>	S	S	S	S	S	S	S	S	P	P	S	4.#
<i>Athletic Field, Non-commercial</i>	P	P	P	P	P	P	P					4.2
<i>Indoor Recreational Facilities (Bowling Alley, Skating Rink, Bingo Games, Indoor Miniature Race Tracks)</i>							P	P	P	P		4.9
<i>Outdoor Recreational Facilities</i>	S	S	S	S	S				S	S	S	4.15
<i>Physical Fitness Center</i>	S	S	S	S	S	S	P	P	P	P	S	4.17
<i>School (Sports Instructional)</i>						P	P	P	P	P		4.20
<i>Sporting and Recreational Facilities</i>	S	S	S	S	S	S	S	S	P	P	S	4.23
<i>Swim and Tennis Club</i>	P	P	P	P	P	P	P	P	P			4.24

Add a new definition and supplemental requirements (SR) for “recreational facilities” as follows. The specific SR number will be determined if the amendments are adopted.

Recreational Facilities (Indoor/Outdoor). A recreational facility that is outdoors and/or indoors and which may include: public or private operations, playing fields (soccer, baseball, etc.), courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas, bowling alley, skating rink, bingo games, miniature race tracks (remote control only) and/or other such uses that fit the intent of this Chapter as determined by the Zoning Administrator. A recreational facility shall, for purpose of this Chapter, not include go-cart tracks (a recreational motor sports facility), golf courses, miniature golf courses, driving tees or driving ranges.

SR 4.#. Recreational Facilities

- (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) Perimeter Setback. One hundred (100) feet (equipment, machinery and/or mechanical devices shall not be placed within 200 feet of a *residential zoning district*. All *structures* shall be 100 feet from a *residential zoning district* property).

- (4) Structure. For activities which present potential safety hazards (batting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.
- (5) Solid Waste Collection. The facility shall provide a suitable method of solid waste disposal and collection consisting of either private collection from individual *uses* or the *use* of dumpsters (installed and/or operated to meet all local and state statutes, ordinances and regulations (including Chapter 165 of the Henderson County Code, Solid Waste) and thereafter certified by the Department of Public Health). Where dumpsters are used, Screen Class One (1), Two (2) or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification)).
- (6) Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or after 12:00 midnight.
- (7) Hours of Operation. For outdoor *uses*, 6:00 a.m. to 12:00 midnight.

LDC Text Amendment E: Communication Facilities Amendments.

Issue: In 2012, federal legislation was passed concerning the placement of wireless telecommunication support facilities. In 2013, state legislation (S.L. 2013-185) amended several general statutes to conform state law to the federal legislation. The legislation requires state and local governments approve minor modifications under certain thresholds. The burden of proof is on the local government to demonstrate that a modification does not comply with these thresholds.

Recommendation: Amend the LDC standards for communication facilities to comply with federal and state regulations as indicated below.

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

SR 9.3. Communication Facilities

(1) General Standards.

c. **Minor Modifications.** Minor modifications are permitted and include any of the following:

1. Increasing the existing vertical height of the structure by less than ten (10) percent or less than the height of one additional antenna array to the tower with separation from the nearest existing antenna not to exceed twenty (20) feet.
2. Increasing the tower by twenty (20) feet or less in width or no more than the width of the support structure at the level of the new appurtenance (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable).
3. Increasing the existing equipment compound by 2,500 square feet or less.

§42-348. Category One (1) or Two (2) Communication Facility Permits

- B. Permit Issuance. The *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. **The permitting process for communication permits complies with NCGS 153A-349.51A, including all federal and state requirements, and should be interpreted as such.**

§42-349. Category Three (3) Communication Facility Permits

- B. Permit Issuance. The Zoning Board of Adjustment (ZBA) shall grant the permit and the *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. No *Communication Facility Permit Three (3)* shall be issued without the approval of the ZBA in accordance with the requirements and procedures set forth in this subsection. **The permitting process for communication permits complies with NCGS 153A-349.51A, including all federal and state requirements, and should be interpreted as such.**

LDC Text Amendment F: Improvement Guarantee Amendments

Issue: Current LDC improvement guarantees regulations do not provide the County with an adequate mechanism for covering costs associated with completing required improvements (includes associated costs with administration, construction and project management) if the applicant is unable to complete the project.

Recommendation: As per the County Attorney's request, the following amendments are proposed for the improvement guarantees section. At the request of the Planning Board, staff forwarded the proposed text amendment to several engineers with knowledge and experience in developing cost estimates for improvement guarantees. The responses received were incorporated below at the recommendation of the Planning Board. County Staff recommendations not supported by the Planning Board are highlighted in gray below for the Boards consideration.

Subpart E. Subdivision Improvement Guarantees

§42-115. General

Where the required improvements have not been completed, prior to the submission of the *final plat* for approval, the approval of said *plat* shall be subject to the *applicant* guaranteeing the installation of the improvements within **thirty (30) months** ~~two (2) years~~ **provided the following:** ~~Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the applicant to the Subdivision Administrator together with a schedule indicating time of initiation and completion of the work, as a whole or in stages and any required fee. Cost estimates must be prepared by a professional engineer, professional land surveyor or landscape architect at the applicant's expense. The applicant shall guarantee the installation of such improvements by either of the methods described below:~~

- ~~A. Filing a performance or surety *bond* or an irrevocable standby letter of credit in the amount of 125 percent of the cost to complete the work as determined by cost estimates. Portions of the guarantee may be released as work progresses.~~
- ~~B. Depositing or placing in escrow a certified check or cash in an amount equal to 125 percent of the cost to complete the work as determined by cost estimates amount. Portions of the guarantee may be released as work progresses.~~
- A. A minimum of 25 percent of the required on-site improvements (based on total project cost that the applicant is guaranteeing) is in place. The required improvements shall include rough grading for all proposed roads that are part of said *improvement guarantee*.**
- B. All required Federal, State and Local permits for the development must be issued with copies provided to the Subdivision Administrator (includes any required U.S. Army Corps of Engineers permits, NCDENR permits, water supply and distribution system permits, wastewater collection and treatment system permits, approvals for the extension of electrical power service and other necessary utilities, and all applicable Federal and State permits).**
- C. All associated design plans and construction specifications for the required improvements (i.e. roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc.) including the design engineer's release of such approved plans are submitted to the *Subdivision Administrator*.**

§42-116. Cost Estimate Standards

Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the *applicant* to the *Subdivision Administrator*. Cost estimates shall:

- A. Be prepared by a professional **engineer licensed in N.C., or certified by a professional land surveyor or landscape architect who is routinely engaged in cost estimates and licensed in N.C.,** at the *applicant's* expense. **Water and sewer system infrastructure improvements shall be prepared by a professional engineer licensed in N.C. at the *applicant's* expense.**
- B. Provide a schedule for initiation and completion of work.
- C. Include separate estimates for roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, utilities (including electrical power, natural gas and communication lines), etc. consistent with the approved design plans construction specifications.
- D. Include separate estimates for any off-site infrastructure improvements such as roadways, stormwater system, water system, sanitary sewer system, etc are required to be included in the improvement guarantee.
- E. Include all Federal and/or State mitigation fees due but not paid at the time of the execution of the improvement guarantee. Proof of payment for remediation fees shall be provided to the Subdivision Administrator.
- F. Include all professional engineering and land surveying fees associated with the bidding and award, construction contract administration and engineering certifications associated with the development of the infrastructure for the proposed development.

§42-117. Improvement Guarantee Instrument

- A. Amount of Guarantee. The improvement guarantee shall be in the amount of 125 percent of the cost to complete the work as determined by cost estimates.
- B. Guarantee. The applicant shall guarantee the installation of such improvements in an amount equal to the improvement guarantee cost to complete the work as determined by cost estimates amount by either of the methods described below.
 - (1) Filing a performance or surety *bond* or an irrevocable standby letter of credit.
 - (2) Depositing a certified check or cash.
- C. Release of Funds. Portions of the improvement guarantee may be released as work progresses, provided the following:
 - (1) The applicant submits a new cost estimate as described in §42-117A (Amount of Guarantee) detailing the work that has been complete and the work that is remaining. The amount remaining under the improvement guarantee shall meet or exceed the cost of the remaining improvements.
 - (2) Funds shall not be released if the property is in violation of any laws until the violations are remedied to the satisfaction of the charging party.
 - (3) A total of not more than four (4) requests for release of funds shall be allowed. The first request for release is eligible when twenty-five (25) percent of the work is completed. The second and third request for release is eligible when fifty (50) percent and seventy-five (75) percent of the work is completed. The fourth and final release is eligible upon completion of all required improvements listed in the

improvement guarantee. The release of funds must include a professional Engineer's statement certifying that the work has been satisfactorily completed.

§42-118. Amount and Terms of Guarantee; Time Limits

~~All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. Following receipt of an *improvement guarantees* application, the *Subdivision Administrator* shall review all application materials taking into consideration the amount and terms of the guarantees for improvements, including time of initiation and completion of the work. The *Planning Director* shall have the authority to approve all improvement guarantee applications. The *Planning Director* may also, upon proof of difficulty, grant an extension of completion dates set forth in its approval for a maximum of one (1) additional year, but the time between initiation and the completion of the required improvements shall not exceed two (2) years. If the improvements are not completed within the two (2) years the *applicant* shall be in breach with the requirements of this section and the *improvement guarantee* and any and all monies and accrued interest shall be forfeited by the *applicant*. If the *Planning Director* has found that the *applicant* has made a good faith effort in completing the required improvements within the two (2) years, the County may allow the *applicant* to execute a second *improvement guarantee*. Said agreement must be in the form of cash on deposit equal to 125 percent of the cost of the remaining improvements. The County shall assess an administrative fee equal to ten (10) percent of the new *improvement guarantee* monies. The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All guarantees for improvements shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina.~~

- A. **Approval.** All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. The *Planning Director* shall have the authority to approve all improvement guarantee applications **taking into consideration the amount and terms of the guarantees for improvements (including time of initiation and completion of the work).**
- B. **Temporary Access and Construction Easement.** The applicant shall provide temporary access and permanent construction easements for all infrastructure improvements.
- C. **Amount and Terms.** The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All *improvement guarantees* shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina **and be from a national association or FDIC registered group.**

The following terms shall be stated in the performance agreement:

- (1) The applicant shall be provided 15 days to identify a new security provider or prove alternate security where the security provider is in default, bankruptcy, or otherwise determined to be insolvent by the County after which time the County may redeem the improvement guarantee.
- (2) The applicant shall provide the County with specific benchmarks for completion of work and, as a term of the agreement, should the applicant fail to meet the self-imposed benchmarks the County may redeem the improvement guarantee.

(3) If in violation of any other provision of this Chapter 42, Henderson County Land Development Code, where the applicant has been notified of the violation, and the applicant has been provided the period for remediation authorized by the approving agency, and where applicant is in continued violation, the County may consider this to be a breach of the agreement and call the improvement guarantee to prevent further violation of Chapter 42, Land Development Code.

D. Time Limits. The *improvement guarantee* is valid for a period of **eighteen (18) months** ~~one (1) year~~ from the date of execution.

Staff Recommendation Not Supported by Planning Board. Leave the current one (1) year validation period and not increase to eighteen (18) months for simplicity and since one year should be sufficient time.

E. Extensions. The *Planning Director*, upon proof of difficulty, may grant an extension for a maximum of one (1) additional year. Improvements not completed within **thirty (30) months** ~~two (2) years~~ shall be in breach with the requirements of this section and the *improvement guarantee* and any and all monies and accrued interest shall be forfeited by the *applicant*.

F. Second Improvement Guarantee. If the *Planning Director* has found that the *applicant* has made a good faith effort in completing the required improvements within the **thirty (30) months** ~~two (2) years~~, the County may allow the *applicant* to execute a second *improvement guarantee*. Said agreement must be in the form of cash on deposit equal to the cost **as described in §42-117A (Amount of Guarantee)** of the remaining improvements. The County shall assess an administrative fee equal to ten (10) percent of the new *improvement guarantee* monies.

§42-119. Violations and Penalties

If an *applicant* of a *subdivision* is in violation of any County regulations (including Soil Sedimentation and Erosion Control Permits) the County will not release the *improvement guarantee* prior to the expiration date unless the violations are corrected.

The County may charge for the cost for construction and project administration for any *improvement guarantee* that is executed.

§42-120. Reserved

§42-121. Reserved

§42-122. Reserved

§42-123. Reserved



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-2013-02; 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 March 17, 2014; 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-2013-02 – Annual 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 7th day of April, 2014.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
CHARLIE MESSER, Chairman

ATTEST:

Terry Wilson, Clerk to the Board

[COUNTY SEAL]

Land Development Code & Minimum Housing Code Text Amendments

Board of Commissioners Meeting
April 7, 2014
Presentation By: Autumn Radcliff, Senior Planner

Henderson County Planning Department

Proposed Text Amendments

- Proposed text amendments based on the
 - Annual review of the Land Development Code
 - Recommendations of the RRAC
 - New federal and state laws pertaining to communication towers
- BOC held a public hearing on March 17, 2014

Henderson County Planning Department

Public Hearing Comments:

- During the public hearing concerns were expressed about the front setback reductions for commercial zoning districts. Specific concerns included:
 - Setback requirements currently in place are adequate.
 - Existing commercial business complied with larger setbacks.
 - Setbacks should only be reduced through the variance process.

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Land Development Code Text Amendment B: Reduce Front Setbacks in Commercial Zoning Districts

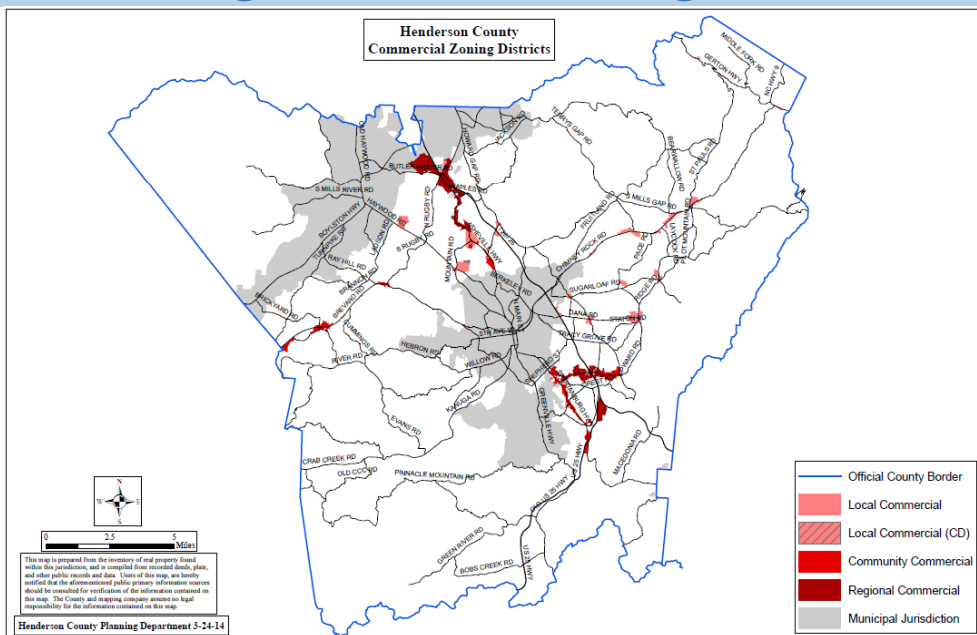
Issue: Current LDC front setback requirements are restrictive in commercially zoned districts. Reducing front setbacks allow for better design options.

Recommendation: Reduce front setbacks in the Local Commercial (LC), Community Commercial (CC) and Regional Commercial (RC) zoning districts to the following:

Front or ROW	<i>Local</i>	10
	<i>Collector</i>	10
	<i>Thoroughfare</i>	20
	<i>Boulevard</i>	30
	<i>Expressway</i>	40
	<i>Freeway</i>	45

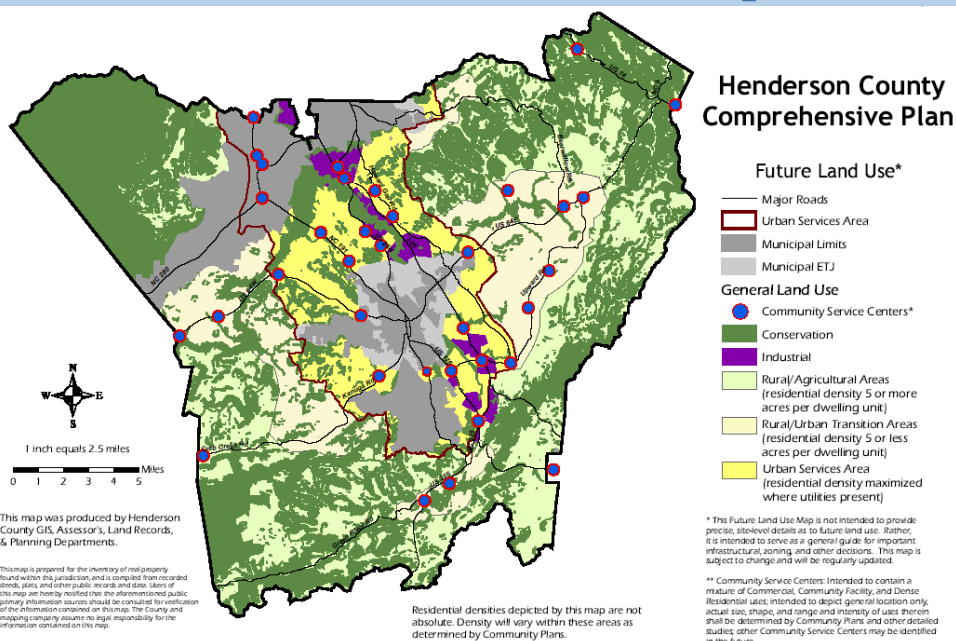
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Existing Commercial Zoning Districts



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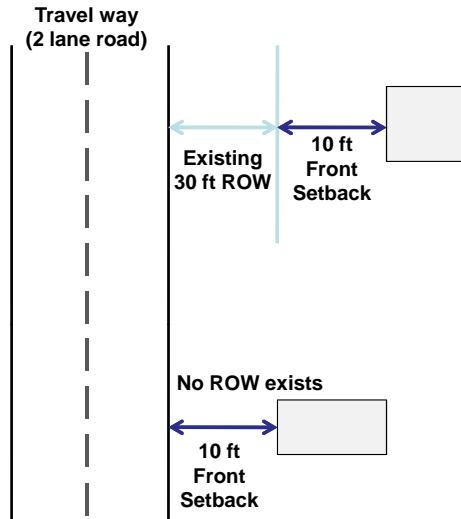
CCP Future Land Use Map



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Front Setback Measurements

- Front setbacks are measured from the edge of the public right-of-way (ROW)
- Where no ROW exist, the front setback is measured from the edge of the traveled way or pavement.



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Alternative Options for Front Setback Amendment:

- Leave current front setbacks in place
- Approve proposed text amendment to reduce front setbacks as described
- Modify the proposed text amendment to a more restrictive setback than proposed (a 5 or 10 ft reduction)..

Local Commercial Zoning District

Front or ROW	Road Class	Existing Setback	Proposed Setback	Alternative Setback
	Local		25	10
Collector		25	10	15
Thoroughfare		35	20	25
Boulevard		45	30	35
Expressway		55	40	45
Freeway		60	45	50

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Board Discussion

Suggested Motion:

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

I move that the Board adopt, adopt with modifications, or deny the proposed LDC and Minimum Housing Code text amendments.