

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 6, 2020

SUBJECT: Set Public Hearing for Land Development Code (LDC) Text Amendments (TX-2019-02) (Soil Erosion and Sedimentation Control, Conditional Rezoning, Public Notice and CCP References)

PRESENTER: Autumn Radcliff, Planning Director
Matt Champion, Project Development Planner

ATTACHMENTS: 1. LDC Draft Text Amendments

SUMMARY OF REQUEST:

The Planning Board has been in the process of reviewing several amendments to the Land Development Code as part of the 2019 annual review. The attached amendments are related to conditional zoning districts, removing the mixed use district option, expanding the mailed notice for rezonings, and correcting the comprehensive plan references. In addition, recent changes in the state's model ordinance requires Henderson County to amend its soil erosion and sedimentation control regulations. The attached amendments also include the necessary revisions required.

The Henderson County Planning Board discussed the draft text amendments on December 19, 2019 and voted to send forward a favorable recommendation on the attached draft LDC text amendments (TX-2019-02).

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. Planning Staff requests the Board set a public hearing for Monday, February 3, 2020 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- 2019-02) for Monday, February 3, 2020 at 5:30 p.m.

2019 Annual LDC Text Amendments – Conditional Rezoning, Public Notices and Comprehensive Plan References

Recommended changes are highlighted in red.

Conditional Rezoning

Summary: The Board of Commissioners has received several recent conditional rezoning applications. Based on the recommendation of the County Attorney and to prevent potential confusion about this process, the proposed amendments will clarify that each approved conditional district will be a unique stand-alone zoning districts with a corresponding site plan and list of conditions. Below is a list of all related conditional rezoning amendments.

Text Amendment A: Remove Mixed Use District Option

Remove the mixed use district designation. This is a conditional rezoning and is approved under that process. (Remove Article II, Subpart C. Mixed Use District, remove the use from the Permitted Use Table, and remove all references to the mixed use district in the LDC)

Text Amendment B: Amend the Conditional Zoning District Option

Article II, Subpart B. Conditional Zoning Districts **§42-45. Conditional Zoning Districts**

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. ~~For each General Use Zoning District, there is a corresponding Conditional Zoning District (CD) which corresponds to each of the districts authorized by this Chapter as follows: R1 CD; R2 CD; R2R CD; R3 CD; R 4 CD; OI CD; LC CD; CC CD; RC CD; I CD; R 40 CD; WR CD; SR CD; and MU CD.~~

A. Dimensional Requirements. Each *use* proposed in a petition for a Conditional Zoning District shall, at a minimum, conform to the following dimensional requirements. In some cases, a specific *use* may be required to meet the Supplemental Requirements as set forth in §42-63 (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.

B. General Provisions.

- (1) Site Plan. Major Site Plan required in accordance with §42-331 (Major Site Plan Review).
- (2) All CD districts shall adhere to a *site-specific development plan*.
- (3) Neighborhood Compatibility Meetings. A neighborhood compatibility meeting is required. See §42-372. Neighborhood Compatibility Meeting.

§42-49. Effect of Approval

If a petition for conditional zoning is approved, the development and *use* of the property shall be governed by the existing Chapter requirements applicable to the ~~district's category~~ **special requirements for the approved use or uses**, the approved *site plan* for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Official Zoning Map.

Only those *uses* and *structures* indicated in the approved petition and *site plan* shall be allowed on the subject property. A change of location of the *structures* may be authorized pursuant to §42-50 (Alterations to Approval). Changes to the *site plan* layout shall not increase the number of *structures*.

Following the approval of the petition for a Conditional Zoning District, the subject property shall be identified on the Official Zoning Map by the appropriate district designation. A conditional zoning shall be identified by **the letters "CD" then followed by the calendar year and application number** ~~the same designation as the underlying general district followed by the letter's "CD"~~ (for example "~~OL-CD~~ **CD-2019-01**"). **Approved conditions shall be recorded with the approved site plan in the registered of deeds office.**

Public Notices

Text Amendment C: Amend the mailed notice requirements for map amendments

§42-346. Ordinance Amendments

C. Map Amendments

- (6) Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §42-370 (Legislative Process Standards) B(5) (Posted Notice), for posted notices. **Mailed notification of the Planning Board meeting for zoning map amendments shall be sent to the *owner* of that parcel of land, and all parcels of land within four hundred (400) feet of any property line of the proposed development by first class mail to the address as shown on the County tax listing. Mailed notices must be deposited in the mail at least seven (7) days prior to the date of the meeting.** Public notification of the Commissioners public hearing shall comply with the provisions of NCGS §153A-323 and §153A-343, as amended, **and additional provisions outlined in (See §42-370 (Legislative Process Standards)).** Planning Staff shall be responsible for all necessary public notifications.

Subpart H. Legislative and Quasi-Judicial Process Standards

§42-370. Legislative Process Standards

B. Map Amendments

- (3) Mailed Notice. In **addition to requirements found in accordance with** NCGS 153A-343, whenever there is a *zoning map amendment*, the *owner* of that parcel of land as shown on the County tax listing, and the *owners* of all parcels **within four hundred (400) feet of any property line of the proposed development** ~~of land abutting that parcel of land~~ as shown on the County tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such *owners* on the County tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than 25 days prior to the date of the public hearing. The *person* or *persons* mailing such notices shall certify to the Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. The first class mail notice requirement shall not be required if the *zoning map amendment* directly affects more than 50 properties, owned by a total of at least 50 different property *owners*, and the County elects to *use* the Expanded Published Notice (see subsection (4)).

Comprehensive Plan References

Summary: Correct all references in the Land Development Code to the 2020 Comprehensive Plan to state, “current comprehensive plan”.

2019 Annual LDC Text Amendments – Water Quality Amendments

Recommended changes are highlighted in red.

Text Amendment: Soil Erosion and Sedimentation Control

§42-254. Scope and Exclusions

A. Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this subpart to all *land-disturbing activity*, this subpart shall not apply to the following types of *land-disturbing activity*:

- (1) ~~An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:~~ **Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:**
 - a. forage and sod crops, grain and feed crops, tobacco, cotton, orchards and fruit crops, and peanuts.
 - b. dairy animals and dairy products.
 - c. poultry and poultry products.
 - d. livestock, including beef cattle, **llamas**, sheep, swine, horses, ponies, mules, and goats.
 - e. bees and apiary products.
 - f. fur producing animals.
 - g. mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.**
- (2) An activity *undertaken* on forestland for the production and harvesting of timber and timber products and conducted in accordance with **standards defined by the best management practices set out in** Forest Practice Guidelines Related to Water Quality (**Best Management Practices**), as adopted by *NC DENR*. If *land-disturbing activity undertaken* on forestland for the production and harvesting of timber and timber products is not conducted in accordance with **standards defined by the** Forest Practice Guidelines Related to Water Quality, the provisions of this subpart shall apply to such activity and any related *land-disturbing activity* on the *tract*.
- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the *NCGS*.
- (4) A *land-disturbing activity* over which the State has exclusive regulatory jurisdiction as provided in *NCGS* §113A-56(a).
- (5) An activity which is essential to protect human life during an emergency.
- (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.**

- (7) Activities undertaken pursuant to Natural Resources Conservation Services standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations §12.2.

§42-269. Penalties

A. Civil Penalties

- (1) Civil Penalty for a Violation. Any *person* who violates any of the provisions of this subpart, or rule or order adopted or issued pursuant to this subpart, or who initiates or continues a *land-disturbing activity* for which an Erosion and Sedimentation Control Plan is required except in accordance with the terms, conditions, and provisions of an approved Erosion and Sedimentation Control Plan or Permit, is subject to a civil penalty. The maximum civil penalty amount that the *Soil Erosion and Sedimentation Control Administrator* may assess per *violation* is 5,000 dollars. A civil penalty may be assessed from the date of the *violation*. Each day of a continuing *violation* shall constitute a separate *violation*. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).]
- (2) Civil Penalty Assessment Factors. The *Soil Erosion and Sedimentation Control Administrator* shall determine the amount of the civil penalty based upon the following factors:
- a. the degree and extent of harm caused by the *violation*,
 - b. the cost of rectifying the damage,
 - c. the amount of money the violator saved by noncompliance,
 - d. whether the *violation* was committed willfully, and
 - e. the prior record of the violator in complying or failing to comply with this subpart.

Notice of Civil Penalty Assessment. The *Soil Erosion and Sedimentation Control Administrator* shall provide notice of the civil penalty amount and basis for assessment to the *person* assessed. The notice of assessment shall be served by any means authorized under *NCGS* 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the

North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

- (3) Hearing. A hearing on a civil penalty shall be conducted by the *ZBA* within 30 days after the date of the written demand for the hearing.
- (4) Final Decision. The *Board of Adjustment* shall render its final decision on **contested assessments** on the civil penalty within 45 days of the receipt of the *appeal*.
- (5) Appeal of Final Decision. Appeal from the final decision of the *Board of Adjustment* shall be to the Competent Court of Jurisdiction.
- (6) Collection. If payment is not received within ~~30~~ **60** days after it is due, Henderson County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the *violation* occurred, or the violator's residence or where the violator's principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (7) Credit of Civil Penalties. Civil penalties collected pursuant to this subpart shall be credited to the Civil Penalty and Forfeiture Fund. **Penalties collected by Henderson County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each county for the prior fiscal year. [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]**