

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 3, 2020

SUBJECT: Public Hearing for Land Development Code (LDC) Text Amendments (TX-2019-02)

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

ATTACHMENTS:

1. LDC Draft Amendments
2. Certification of Public Notice
3. Resolution of Consistency with County Comprehensive Plan
4. PowerPoint

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19, 2007, the Board of Commissioners directed staff to prepare annual updates to the LDC to prevent it from becoming outdated.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

The proposed LDC text amendments are related to conditional zoning districts, removing the mixed-use district option, expanding the mailed notice for rezoning's, 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.

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

PUBLIC NOTICE:

The required public notice of this hearing was published in the Hendersonville Lightning on January 22nd, 2020 and January 29th, 2020 (See attachment 5, 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.

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 – Soil Erosion and Sedimentation Control

Recommended changes are highlighted in red.

§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 *NC GS*.
- (4) A *land-disturbing activity* over which the State has exclusive regulatory jurisdiction as provided in *NC GS* §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.]**

Certification of Notice of Public Hearing

In accordance with NCGS 153A-323 and 153A-343 the Planning Department certifies notices of the February 3rd, 2020 hearing regarding the proposed Henderson County Land Development Code Text Amendments (TX-2019-02), were:

- 1. Submitted to the Hendersonville Lightning on January 13, 2020 to be published on January 22, 2020 and January 29, 2020 by Matt Champion;

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

- 1. Matt Champion _____

STATE OF NC _____

COUNTY OF Henderson _____

I, Toby Linville _____, a Notary Public, in and for the above County

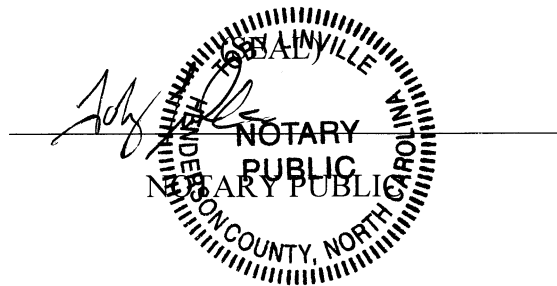
and State, do hereby certify that Matt Champion _____

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

WITNESS my hand and notarial seal, this the 13 day of JAN _____, 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-2019-02; 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 February 3, 2020; 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-2019-02-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 3rd day of February, 2020.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
GRADY HAWKINS, Chairman
Henderson County Board of Commissioners

ATTEST:

TERESA L. WILSON
Clerk to the Board of Commissioners

[COUNTY SEAL]

2019 Land Development Code Text Amendments

(conditional zoning districts, removing the mixed use district option, expanding notice requirements, CCP reference, and soil erosion and sedimentation control regulations)

Public Hearing
Board of Commissioners Meeting
February 3, 2020
Presentation By: Autumn Radcliff, Planning Director
Matt Champion, Project Development Planner

Henderson County Planning Department

Public Hearing Requirements

- Planning Board reviewed and discussed these amendments during their December 19th meeting
- Planning Board voted to send forward a favorable recommendation
- Notices of the public hearing were published in the Hendersonville Lightning on January 22nd and January 29th

Henderson County Planning Department

LDC Amendment: Conditional Rezoning

Text Amendment A: Remove Mixed Use District Option

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)

Henderson County Planning Department

LDC Amendment: Conditional Rezoning

Text Amendment B: Amend the Conditional Zoning District Option

- Remove the corresponding general use district language as conditional zoning districts are site specific with a corresponding plan
- Clarify that the dimensional requirements are the same as the R1 zoning district for residential uses and the same as the CC district for non-residential uses
- Clarify location and setback of accessory structures for both residential and non-residential uses
- General Provisions:
 - Requires a major site plan for application
 - Must adhere to the site-specific development plan standards
 - Neighborhood Compatibility Meeting required
- Clarification to the effect of approval section including that the approved conditions be recorded with the site plan in the register of deeds office

Henderson County Planning Department

LDC Amendment: Public Notices

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

- Mailed notification of the Planning Board meeting and the public hearing will be to adjacent property within 400 feet of the subject parcel at least 7 days prior to the date of the meeting.

Henderson County Planning Department

LDC Amendment: CCP Plan References

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

Henderson County Planning Department

LDC Amendment: Soil Erosion and Sedimentation Control

§42-254. Scope and Exclusions:

Required changes due to state changes/clarifications

- Exclusion activities include the following:
 - 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:
 - Llamas
 - 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.

Henderson County Planning Department

LDC Amendment: Soil Erosion and Sedimentation Control

Exclusion activities continued:

- 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.
- 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.

Henderson County Planning Department

LDC Amendment: Soil Erosion and Sedimentation Control

§42-269. Penalties:

Required changes due to state changes/clarifications related to penalties and clarification to remission of assessments and contested assessments

- Maximum cumulative total is \$25,000 under the new provisions outlined
- Notice of civil penalty assessment can be a filed request with the Sedimentation Control Commission within 60 days of the notice and must be accompanied by a waiver of right.
- Payments must be received within 60 days.
- Provides guidelines for Penalties collected by the County and they shall not exceed 20% of penalties collected.

Henderson County Planning Department

Public Comment and Board Discussion

Henderson County Planning Department