

REQUEST FOR BOARD ACTION

HENDERSON COUNTY  
BOARD OF COMMISSIONERS

**PUBLIC HEARING  
TO CONSIDER  
MODIFICATION TO “SPECIAL FILL” ORDINANCE  
SECTION 42-354 OF THE HENDERSON COUNTY CODE  
July 20, 2022, at 9:30 a.m.**

ATTACHMENT(S): Current ordinance  
Draft amended ordinance

SUMMARY:

A public hearing has been scheduled on July 20, 2022, at 9:30 a.m., in the above matter.

At the conclusion of the public hearing, the Board may choose to take action, delay action to a subsequent meeting, or take no action.



## **42-354. Special Fill Permits**

- A. Purpose. Special Fill Permits in the flood fringe may be granted by the Board of Commissioners only in Conditional Zoning Districts where particular cases meeting specific community need and subject to appropriate conditions and safeguards.
1. Proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; and,
  2. Special Fill Permit, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
  3. Proposed encroachment will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
  4. Special Fill Permit, if granted, will comply with the Comprehensive Plan, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the Special Fill Permit.

Any grant of a Special Fill Permit by the Board of Commissioners may include conditions, which must be satisfied by the applicant. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

- B. Permit Issuance. The Board of Commissioners shall have the power to grant permits for special fill in the flood fringe. In order to grant a Special Fill Permit, Board of Commissioners must conclude that the:

C. Application.

1. Application. The application for the permit shall be on a form provided by the Floodplain Administrator, and shall be submitted prior to any fill activity requiring a Special Fill Permit. The application shall include the following:
  - a. Certification, on a form as published by FEMA, or acceptable alternative form approved by FEMA, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; or
  - b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
  - c. An alternative method currently approved by FEMA for use in the revision process for FEMA flood maps. In this case, the engineer shall provide a letter from FEMA indicating that the method used is acceptable; and,
  - d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.
  - e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the Special Fill Permit, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
  - f. The application shall include information demonstrating compliance with the Comprehensive Plan, and demonstrating the substantial public or community purpose(s) which the Special Fill Permit, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the Special Fill



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- Permit, if granted, which must be demonstrated include:
- a. Advancing a governmental purpose, which includes promoting and preserving use of land for agriculture.
  - b. Meeting public infrastructure needs.
  - c. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
  - d. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
  - g. A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the Special Fill Permit is proposed.
2. Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on appeals before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.
- D. Staff Review. The Floodplain Administrator shall review the application for compliance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. The Floodplain Administrator shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.
- E. Formal Review.
1. Henderson County Planning Board Review and Recommendation. The review by the Planning Board shall be legislative in nature.
    - a. Public notification of the Planning Board meeting shall comply with the provisions of §42-370 (Legislative Process Standards). The Floodplain Administrator shall be responsible for all necessary public notifications.
    - b. The Planning Board shall hear a summary and review of the application by the Floodplain Administrator, evidence as presented by the applicant, and such other evidence as the Planning Board may find useful.
    - c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the Board of Commissioners as to the grant or denial of the application.
  2. Board of Commissioners Public Hearing. The Board of Commissioners shall hold a legislative public hearing that complies with the provisions of §42-370 (Legislative Process Standards).
    - a. Public notification of the Board of Commissioners meeting shall comply with the provisions of §42-370 (Legislative Process Standards). The Floodplain Administrator shall be responsible for all necessary public notifications.
    - b. The Board of Commissioners shall consider a summary of the proposed project from the Floodplain Administrator, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the applicant, evidence from adjacent property owners, and such other evidence as the Board of Commissioners finds useful.



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- c. The Board of Commissioners shall reach a decision within 45 days of the conclusion of the legislative hearing.
- F. Permit Validity. A Special Fill Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the Floodplain Administrator from thereafter requiring correction of errors in plans or construction, or violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

**Source URL:** <https://www.hendersoncountync.gov/code-document/42-354-special-fill-permits>

## 42-354. Special Fill Permits

### A. Entitlement.

1. Condition Zoning Districts: Except in Industrial Zoning Districts (Henderson County Code §42-23(10)), Special Fill Permits in the flood fringe may be granted by the Board of Commissioners only in Conditional Zoning Districts where particular cases meet specific community need and subject to appropriate conditions and safeguards. Any grant of a Special Fill Permit by the Board of Commissioners may include conditions, which must be satisfied by the applicant. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought. Considerations to be presented to the Board include:

- a. Proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; and,
- b. Special Fill Permit, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
- c. Proposed encroachment will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
- d. Special Fill Permit, if granted, will comply with the Comprehensive Plan, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the Special Fill Permit.

2. Industrial Zoning Districts: Special Fill Permits in the flood fringe are permitted as of right in Industrial Zoning Districts (Henderson County Code §42-23(10)) upon the filing with the Flood Administrator of a certification as provided in sub-section B.1.a., below.

### B. Application.

1. Application. The application for the permit shall be on a form provided by the Floodplain Administrator, and shall be submitted prior to any fill activity requiring a Special Fill Permit. The application shall include the following:

- a. Certification, on a form as published by FEMA, or acceptable alternative form approved by FEMA, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood; or
- b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or

c. An alternative method currently approved by FEMA for use in the revision process for FEMA flood maps. In this case, the engineer shall provide a letter from FEMA indicating that the method used is acceptable; and,

d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.

e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the Special Fill Permit, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.

f. The application shall include information demonstrating compliance with the Comprehensive Plan, and demonstrating the substantial public or community purpose(s) which the Special Fill Permit, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the Special Fill Permit, if granted, which must be demonstrated include:

1. Advancing a governmental purpose, which includes promoting and preserving use of land for agriculture.

2. Meeting public infrastructure needs.

3. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.

4. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.

g. A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the Special Fill Permit is proposed.

2. Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on appeals before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.

C. Staff Review. The Floodplain Administrator shall review the application for compliance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. The Floodplain Administrator shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.

D. Formal Review.

1. Henderson County Planning Board Review and Recommendation. The review by the Planning Board shall be legislative in nature.

a. Public notification of the Planning Board meeting shall comply with the provisions of §42-370 (Legislative Process Standards). The Floodplain Administrator shall be responsible for all necessary public notifications.

b. The Planning Board shall hear a summary and review of the application by the Floodplain Administrator, evidence as presented by the applicant, and such other evidence as the Planning Board may find useful.

c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the Board of Commissioners as to the grant or denial of the application.

2. Board of Commissioners Public Hearing. The Board of Commissioners shall hold a legislative public hearing that complies with the provisions of §42-370 (Legislative Process Standards).

a. Public notification of the Board of Commissioners meeting shall comply with the provisions of §42-370 (Legislative Process Standards). The Floodplain Administrator shall be responsible for all necessary public notifications.

b. The Board of Commissioners shall consider a summary of the proposed project from the Floodplain Administrator, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the applicant, evidence from adjacent property owners, and such other evidence as the Board of Commissioners finds useful.

c. The Board of Commissioners shall reach a decision within 45 days of the conclusion of the legislative hearing.

E. Permit Validity. A Special Fill Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the Floodplain Administrator from thereafter requiring correction of errors in plans or construction, or violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).