

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** October 18, 2023

**SUBJECT:** LDC Text Amendment – TX-2023-04, Flood Hazard Amendment

**PRESENTER:** Autumn Radcliff, Planning Director

**ATTACHMENTS:** 1. Draft Text Amendment  
2. Certification of Public Notices  
3. Resolution of Consistency  
4. PowerPoint

### **SUMMARY OF REQUEST:**

Planning staff received an application for a text amendment (#TX-2023-04) to amend the special fill requirements for the floodways. This amendment, if adopted, would still comply with the state model ordinance. The Land Development Code (LDC) does not allow for an applicant to initiate a study of the floodway or consider any fill in the floodway area. The state ordinance allows for fill within the floodway if an applicant obtains a certification by a registered professional engineer proving that the anticipated encroachment will not result in any increase in the elevation of the regulatory flood during an occurrence of the base flood. The amendment would allow an applicant to seek a special fill permit from the Board of Commissioners if certification can be acquired. The current LDC allows for 20% of the flood fringe to be filled and allows for an applicant to seek a special fill permit from the Board of Commissioners when exceeding the 20% fill threshold if certification can be obtained. The LDC does not currently allow for fill of any kind in the floodway.

The Planning Board reviewed the application at its meeting on September 21st. Following a lengthy discussion, the Board voted 5-3 to send forward an unfavorable recommendation to amend the flood hazard regulations for fill in the floodway. Those in favor of the amendment stated that the amendment would provide a property owner the option to study the property to see if a no rise was possible and make an application for a special fill permit to the BOC. They felt the process in place allowed the County to review these applications through the conditional rezoning application and upon an engineer study and were comfortable with allowing this option in the LDC. The item will move to the BOC for a public hearing.

### **PUBLIC NOTICE:**

The required public notice of this hearing was published in the Hendersonville Lightning on October 4<sup>th</sup>, 2023, and October 11<sup>th</sup>, 2023 (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 (approve or deny) the proposed text amendment TX-2023-04, flood hazard amendment with any changes as discussed, and find that these changes are consistent with the County Comprehensive Plan.*

# LDC Text Amendment (TX-2023-04) Flood Hazard Amendment Application

Changes are shown in red.

## Flood Hazard Amendment

### Summary:

Planning staff received an application for a text amendment (#TX-2023-04) to amend the special fill requirements for the floodways and non-encroachment areas. This amendment, if adopted, would still comply with the state model ordinance. The amendment would allow an applicant to seek a special fill permit from the Board of Commissioners if certification can be acquired. The current LDC allows for 20% of the flood fringe to be filled and allows for an applicant to seek a special fill permit from the Board of Commissioners when exceeding the 20% fill threshold if certification can be obtained. The LDC does not currently allow for fill of any kind in the floodway.

### Amend Section 42.234. Flood Hazard Reduction

#### **42-234.1 General Standards.**

In all *Special Flood Hazard Areas* the following provisions are required.

- A. In the *flood fringe* area as indicated on the *FIRM*, ~~no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 5, 2005), and then only upon~~ no more than 20 percent of the total of the *flood fringe* area **may be filled** contained in each such parcel, except that additional fill may be permitted in the *flood fringe* pursuant to a *special fill permit* (See §42-354 (Special Fill Permits).
- B. **In the *floodway* area as indicated on the *FIRM*, fill may be permitted in the *floodway* pursuant to a *special fill permit* (See §42-354 (Special Fill Permits).**

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

- A. Purpose. *Special Fill Permits* in the ***flood fringe special flood hazard area*** 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.
- B. Permit Issuance. The Board of Commissioners shall have the power to grant permits for special fill in the ***flood fringe special flood hazard area***. In order to grant a Special Fill Permit, the Board of Commissioners must conclude that the **application meets the requirements under 42-354.**



**Certification of Notice of Public Hearing**

In accordance with NCGS 160D-323 and 160D-343 the Planning Department certifies notices of the October 18, 2023, hearing regarding the proposed Henderson County Land Development Code Text Amendments (TX-2023-04)), were:

1. Submitted to the Hendersonville Lightning on September 28, 2023 to be published on October 4, 2023 and October 11, 2023 by Autumn Radcliff;

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

1. Autumn Radcliff

STATE OF North Carolina

COUNTY OF Henderson

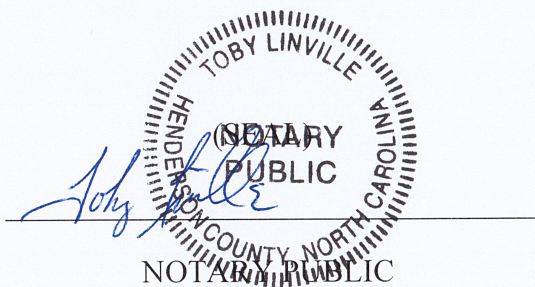
I, Toby Linville, a Notary Public, in and for the above County and State, do hereby certify that Autumn Radcliff

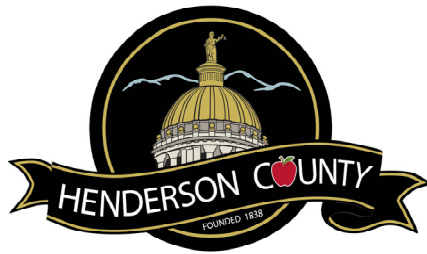
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 28th day of September, 2023.

My commission expires:

6/29/26





**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-2023-04; 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 October 18, 2023; 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-2023-04 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 provide 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 18<sup>th</sup> day of October, 2023.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** \_\_\_\_\_  
**REBECCA MCCALL, Chairman**  
**Henderson County Board of Commissioners**

**ATTEST:**

\_\_\_\_\_  
**DENISA LAUFFER**  
**Clerk to the Board of Commissioners**

**[COUNTY SEAL]**



# TX-2023-04 Flood Hazard Amendment

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October 18, 2023

Board of Commissioners Meeting







## Terminology/Definitions:

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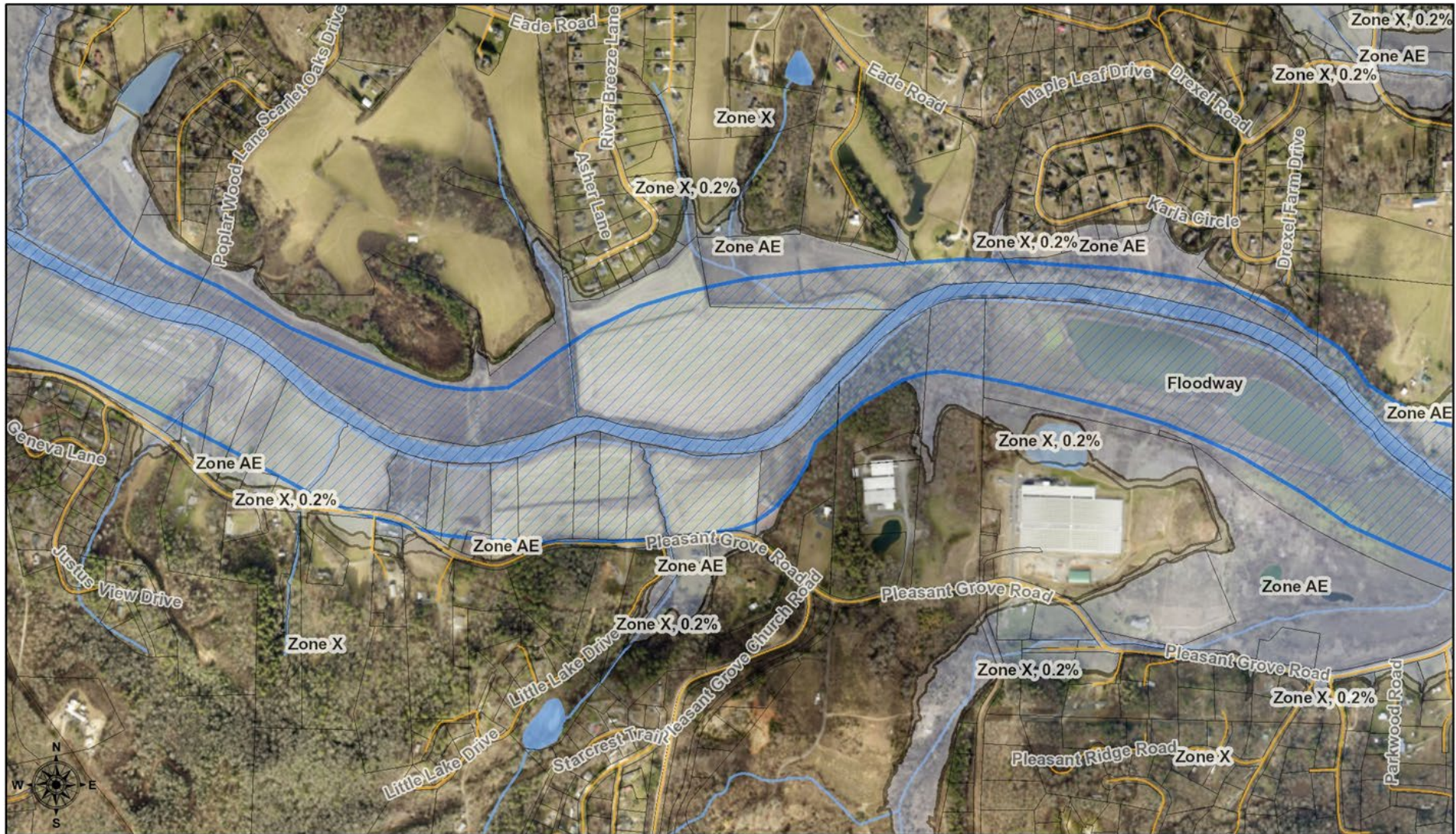
**Floodway.** The channel of a river or other *watercourse* and the adjacent land areas that must be reserved in order to discharge the *base flood* without cumulatively increasing the *water surface elevation* more than one (1) foot.

**Floodplain.** Any land area susceptible to being inundated by water from any source.

- **100-year floodplain** – Areas with a 1% annual chance of flooding.
- **500-year floodplain** – Area with a 0.2% (or 1 in 500 chance) annual chance of flooding. Area of minimal flood hazard and not regulated.



# GoMaps



September 21, 2023

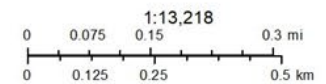
**Streets and Highways**

- FREEWAY
- INTERSTATE
- BOULEVARD

- THOROUGHFARE
- COLLECTOR
- Local Roads
- Parcels

**THIS IS NOT A SURVEY.**

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).





## Current LDC Regulations:

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- 20% of the floodplain may be filled (for parcels that existed as of July 5, 2005)
- Any additional fill beyond the 20%, may be allowed provided:
  - A study is required
  - If the certification can be obtained, then the applicant must apply for a special fill permit through the conditional rezoning process to the BOC
- No fill is allowed in the floodway

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.

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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*.



## Text Amendment TX-2023-04, Flood Hazard Amendment

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- B. In the *floodway* area as indicated on the *FIRM*, **fill may be permitted in the *floodway* pursuant to a *special fill permit* (See §42-354 (Special Fill Permits)).**



## Text Amendment TX-2023-04, Flood Hazard Amendment

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

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# Questions