

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY PLANNING BOARD

**MEETING DATE:** May 17, 2018

**SUBJECT:** LDC Text Amendment for Flood Hazard Reduction(TX-2018-05)

**PRESENTER:** Stedman Smith, Planner and Autumn Radcliff, Planning Director

**ATTACHMENTS:** 1. Staff Memo  
2. Draft Text Amendments  
3. PowerPoint Slides from Staff  
4. PowerPoint Slides from Applicant

#### **SUMMARY OF REQUEST:**

On March 8, 2018, a request was initiated by Civil Design Concepts (CDC) to amend the Natural Resources Article VIII in the Land Development Code. The amendment seeks to allow for the entire area in the flood fringe to be filled as necessary, to raise the elevation above the base flood elevation in keeping with State and Federal recommendations and requirements. Currently, only up to 20% of areas in the flood fringe can only be filled.

The proposed text amendment includes the following action:

- TX-2018-05: Remove Article VIII-Section 42-235.1-Item A, which reads: *In the flood fringe are 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 contained in each such parcel, except that additional fill may be permitted in the flood fringe pursuant to a special fill permit.*

The Technical Review Committee (TRC) and Planning Board is asked to determine if there should be no limit on the amount of area to be filled and recommended a second text amendment which makes a correction to the Floodplain Permit section of the Land Development Code that was discovered during this review. The Planning Board discussed the proposed amendment at its April meeting and voted to table its discussion until the May meeting to allow more time for the Board to research the amendment.

#### **BOARD ACTION REQUESTED:**

The Land Development Code requires the Planning Board to make a recommendation on the proposed amendment to remove the LDC item which limits fillable flood fringe area to 20% and limits fillable parcels to those created before July 5, 2005.

#### **Suggested Motion:**

*I move that the Planning Board recommend the Commissioners (approve, deny or approve with modification) the proposed LDC Text Amendment (TX- 2017-05) as discussed and that this amendment is consistent with the County Comprehensive Plan.*



## Planning Department

100 North King Street  
Hendersonville, NC 28792

### MEMORANDUM

TO: Henderson County Planning Board  
FROM: Stedman Smith, Planner  
COPY: Autumn Radcliff, Planning Director  
DATE: May 9, 2018  
SUBJECT: History of County Flood Ordinance

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For the purposes of continuing the discussion on the proposed text amendment request, staff has developed a brief synopsis of the history behind the Flood Damage Prevention Ordinance in Henderson County. The history is intended to shed light on how the ordinance was discussed, drafted, and formally adopted.

The Henderson County Flood Damage Prevention Ordinance was formally adopted by the Board of County Commissioners on July 5, 2005. From March to July, much discussion took place leading up to the adoption of the ordinance.

The 2005 Strategic Plan proposed the adoption of a Flood Ordinance. The Henderson County Flood Damage Prevention Ordinance was drafted to further the goals stated in the Henderson County 2020 Comprehensive Plan, as well as for participation in the National Flood Insurance Program. Staff presented a draft ordinance to the Commissioners in March of 2005. After the requested review by the Environmental Advisory Committee, the Agriculture Advisory Board, and the Planning Board, the Board of Commissioners held a public hearing on May 2, 2005 for County residents to comment on the draft ordinance.

The public hearing drew input from a variety of interested parties with the majority being from the farming community. Most of the farming community were against strict regulation of flood area due to much of their operations being in those areas. A few residents spoke in favor of the ordinance, citing positive environmental impacts. Other considerations in public comment referenced that taking a no-build approach in flood areas eliminates possibility for many industrial development endeavors. Also, other municipalities at the time either had no regulation of flood plains, or allowed to certain limits.

On June 6, 2005, staff presented a new draft ordinance reflecting the public comment gathered in May. At that meeting, the Board directed staff to develop a table comparing the draft ordinance to the municipalities and the state model ordinance. On June 15, 2005, the Board discussed the comparisons and directed staff to once again revise the draft.

On June 21, 2005, the draft ordinance first presented the 20% fill limit on existing lots. Planning Board's recommendation at the time was to allow 100% fill. The County Manager submitted a memo at this meeting which addressed concerns related to why staff was proposing regulation of development in

the flood fringe. It cited flood storage capacity, impervious surfaces along streams, dams caused by debris, and other flood hazards.

On June 23, 2005, the Board met again to discuss the ordinance. Specifically, at this meeting, the Board adopted provisions related to development in flood fringe areas (20% on pre-existing lots). Finally, on July 5, 2005, the Board of Commissioners formally adopted the draft ordinance with notable provisions including limits on flood fringe development.

LDC Draft Text Amendment (TX-2018-05)

Amendment to General Standards of the Flood Hazard Reduction Requirements

(Requested by Civil Design Concepts, PA, Asheville, NC)

Requested changes are highlighted in red.

**LDC Text Amendment A: Remove Item A from Flood Hazard Reduction Requirements**

**Issue Summary:** The applicants for this request wish to present that the Henderson County Land Development Code section regarding flood fringe area is more restrictive than other jurisdictions in the area as well as more restrictive than current State mandates. Applicants seek to remove the restriction that limits fillable land to those parcels created before 2005. Applicants also seek to remove the 20% fill limit.

**Article VIII-Natural Resources**

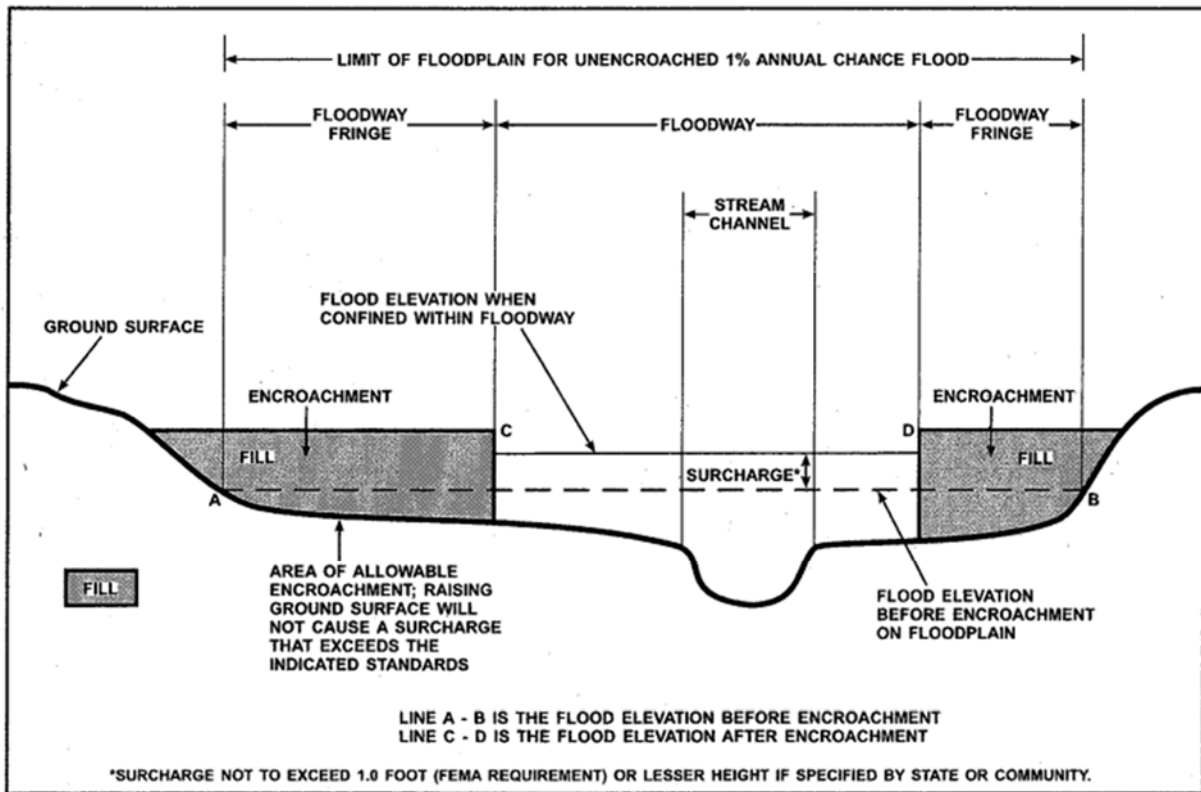
**Flood Hazard Reduction**

**§42-235.1 General Standards.**

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

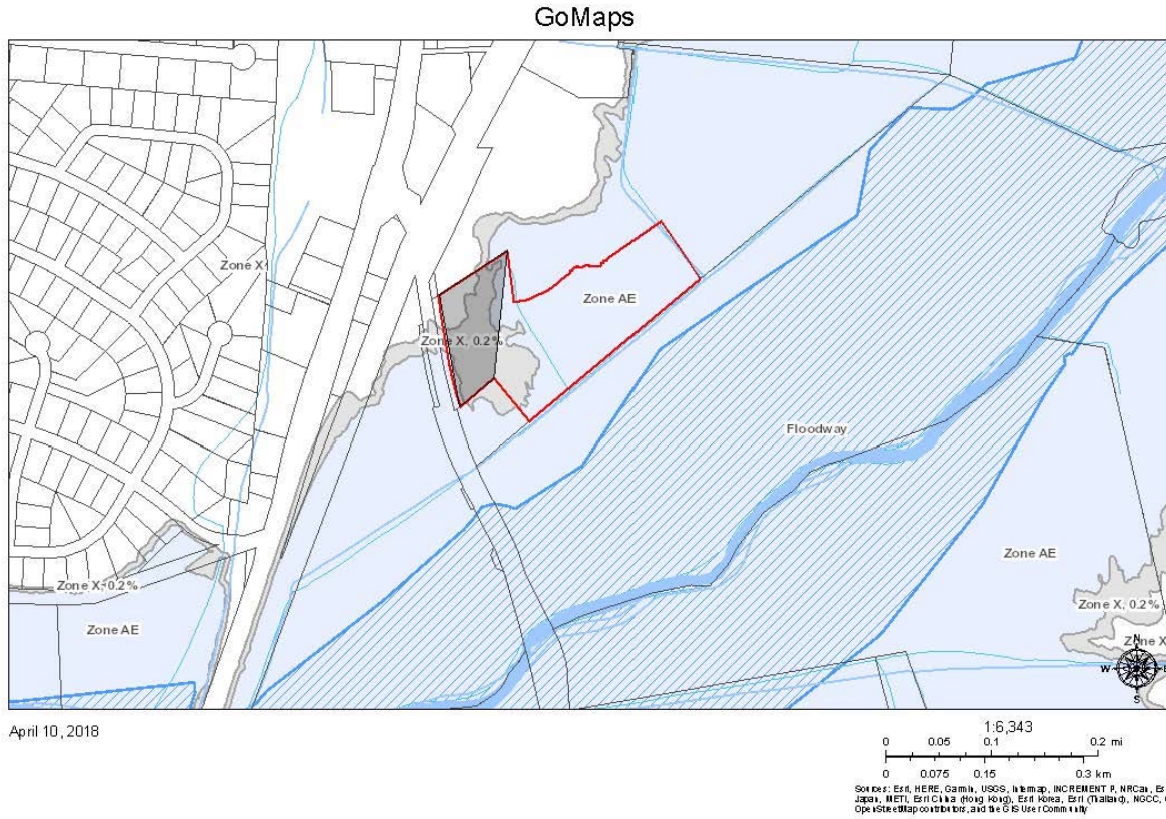
~~A. In the flood fringe area as indicated on the FIRM, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 5, 2005), and then only upon no more than 20 percent of the total of the flood fringe area contained in each such parcel, except that additional fill may be permitted in the flood fringe pursuant to a special fill permit (See §42-355 (Special Fill Permits)).~~

**Floodplain Explained:**



**Figure 1—Floodway Schematic**

**Example of 20% Fill:**



Above is an example parcel with floodplain that is approximately 10 acres. With the current 20% fill limit, one could potentially fill up to 2 acres (shaded area, approximate).

**Options For Board Consideration:**

- A. Remove the subdivision restriction, leave the 20% fill requirement**
- B. Increase fill percentage**
- C. Leave language and make no changes to Land Development Code**
- D. Adopt as proposed by applicant, remove Special Fill Permit Requirement (Section 42-355, see below)**

**42-355 Special Fill Permits**

~~A. Purpose. *Special Fill Permits* in the *flood fringe* may be granted by the Flood Damage Prevention Board in 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 Flood Damage Prevention Board 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 Flood Damage Prevention Board shall have the power to grant permits for special fill in the *flood fringe*. In order to grant a *Special Fill Permit*, the Flood Damage Prevention Board 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 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.~~

~~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 not be quasi-judicial in nature.~~



- ~~a. Public notification of the Planning Board meeting shall comply with the provisions of §42-371 (Quasi-Judicial 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 Flood Damage Prevention Board as to the grant or denial of the application.~~

~~(2) Flood Damage Prevention Board Public Hearing. The Flood Damage Prevention Board shall hold a quasi-judicial public hearing that complies with the provisions of §42-371 (Quasi-Judicial Process Standards):~~

- ~~a. Public notification of the Flood Damage Prevention Board meeting shall comply with the provisions of §42-371 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.~~
- ~~b. The Flood Damage Prevention Board 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 Flood Damage Prevention Board finds useful.~~
- ~~c. The Flood Damage Prevention Board shall reach a decision within 45 days of the conclusion of the quasi-judicial 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).~~

**LDC Text Amendment B: Adjust Language In Floodplain Development Permits Section**

**Issue Summary:** In reviewing Text Amendment A, staff found a correction to the Floodplain Development Permits section of the Land Development Code.

**Section 42-350 Floodplain Development Permits**

Purpose. A Floodplain Development Permit shall be required for any new development in a *Special Flood Hazard Area (SFHA)*, except for *watercourse* alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for *watercourse* alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).

Purpose. **A Floodplain Development Permit shall be required for any new development in a *Special Flood Hazard Area (SFHA)*.**

**TX-2018-05**  
**Land Development Code Text Amendment**

**Planning Board Meeting**  
**May 17, 2018**  
**Presentation By: Stedman Smith and Autumn Radcliff**

*Henderson County Planning Department*

**Land Development Code Text Amendment:**  
**A. Flood Hazard Reduction**

**Issue:** The Land Development Code states that no fill can occur in parcels of land created after July 5, 2005 and places a 20% limit on the amount of fill that is allowed.

**§42-235.1 General Standards. 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 contained in each such parcel, except that additional fill may be permitted in the flood fringe pursuant to a special fill permit.

*Henderson County Planning Department*

## Questions and Board Discussion

### **Options for Board Consideration:**

- A. Remove the subdivision restriction, leave the 20% fill requirement**
- B. Increase fill percentage**
- C. Leave language and make no changes to LDC**
- D. Adopt as proposed by applicant, remove Special Fill Permit Requirement (Section 42-355)**

*Henderson County Planning Department*

## History of County Flood Ordinance

### **Adopted on July 5, 2005 with Notable Provisions**

1. Development in the floodway only for water dependent structures, water and sewer lines where no viable alternative exists, and streambank restoration, and with “no-rise” certifications.
2. Fill as of right in the floodway fringe only on parcels which are recorded as of the date of adoption, and then only on 20% of such parcels
3. A new section allowing “special fill permits” in the floodway fringe, only if “full compensatory flood storage” and only if the Board of Commissioners finds that the project advances a public or community purpose.

*Henderson County Planning Department*

## Land Development Code Text Amendment: B. Floodplain Development Permits

**Issue:** The Land Development Code currently states that Floodplain Development Permits are required unless the Corps of Engineers or State of North Carolina has already issued a permit.

**§42-350. Floodplain Development Permits.** A Floodplain Development Permit shall be required for any new development in a Special Flood Hazard Area (SFHA), except for watercourse alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for watercourse alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).

*Henderson County Planning Department*

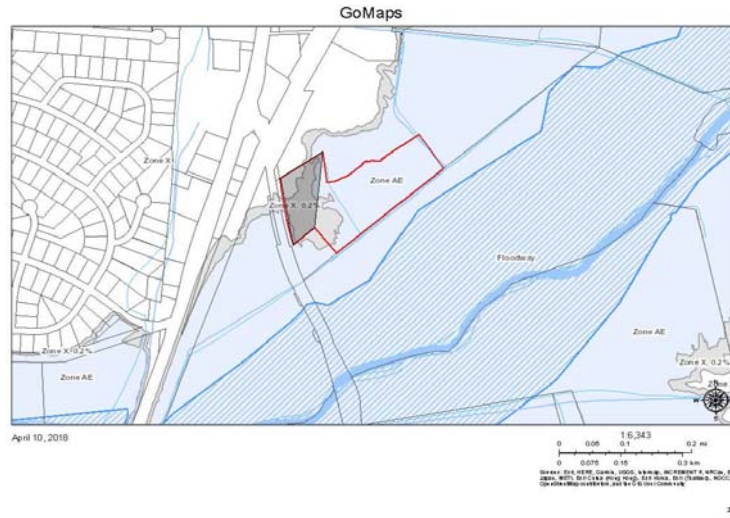
## Questions and Board Discussion

### **Option for Board Consideration:**

A Floodplain Development Permit shall be required for any new development in a Special Flood Hazard Area (SFHA), ~~except for watercourse alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for watercourse alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).~~

*Henderson County Planning Department*

# Land Development Code Text Amendment: Flood Hazard Reduction



Henderson County Planning Department

# Henderson County Proposed Text Amendment to the Land Development Ordinance

Jason Pass, Civil Design Concepts, PA  
Chris LaMack, Elevation Real Estate Group LLC  
Eric Sklar, Elevation Real Estate Group LLC  
Robert Park, M.D.



Friday, May 11, 2018

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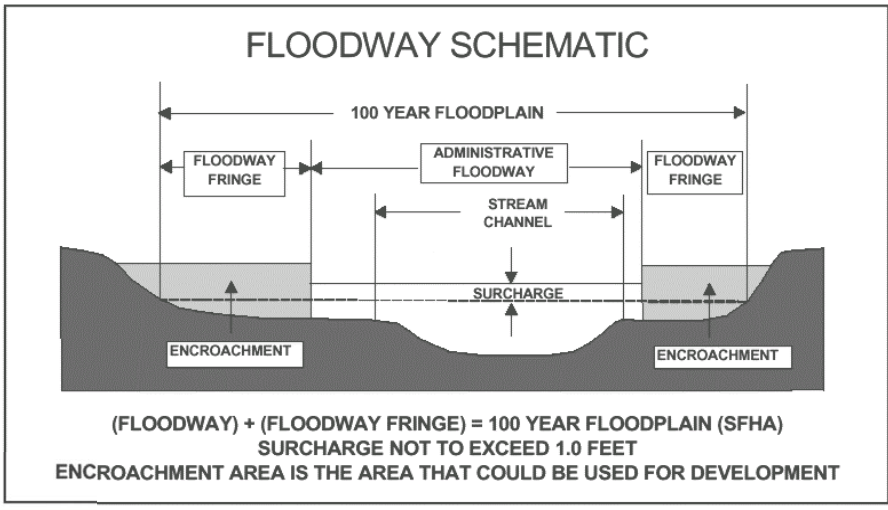
## Current Restrictions on Proposed Development

- TX-2018-05: Remove Article VIII-Section 42-235.1-Item A, which reads: *In the flood fringe are 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 contained in each such parcel, except that additional fill may be permitted in the flood fringe pursuant to a special fill permit.*
- Thus only 20% of flood fringe can be filled and developed.
- No property subdivided for any reason after 2005 can be filled at all.
- Special Fill Permits cannot be obtained as the regulation is currently written



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## State & County Requirements Regarding Floodplain Development

WESTERN CAROLINA'S FLOODWAY PREVENTION ORDINANCES										5/30/2018
County	State	Contact Person	Department/Title	Contact Phone	e-mail	County GIS Links	Flood Map Links	Flood Prevention Ordinance Links	Percentage of FF Permitted in Flood Plain	Comments
Restricts Development in the flood plain area with a limit on the amount of fill that can be used to bring the site to required base flood elevation										
Henderson	North Carolina	Autumn Rackliff	Water Resources Development/ Project Engineer	(828) 694-6356	autumr@hendersoncountync.org	Henderson County GIS	Henderson County Flood Map	Henderson County Flood Prevention Ordinance	20%	Restricts Development in the flood plain area with a limit on the amount of fill that can be used to bring the site to required base flood elevation
Buncombe	North Carolina	Cynthia Fox-Clark	Flood Plain Administrator	(828) 250-4836	cynthia.fox-clark@buncombecounty.org	Buncombe County GIS	Buncombe County Flood Map	Buncombe County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements
Polk	North Carolina	Cathy Ruth	County Planner	(828) 894-2732	planning@polknc.org	Polk County GIS	Polk County Flood Map	Polk County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements
Rutherford	North Carolina	Danny Searcy	Director of Planning	(828) 287-6052	danny.searcy@rutherfordcountync.gov	Rutherford County GIS	Henderson County Flood Map	Rutherford County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements
Transylvania	North Carolina	Mark Burrows	Director of Planning	(828) 884-3205	Mark.Burrows@transylvaniacounty.org	Transylvania County GIS	Henderson County Flood Map	Transylvania County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements
Greenville	South Carolina	Jonathan Graham	Planning and Development Manager	(864) 467-4476	jgraham@greenville.gov	Greenville County GIS	Greenville County Flood Map	Greenville County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements
Spartanburg	South Carolina	Robert Harkrader	Planning Director	(864) 596-3570	rharkrader@spartanburgcountync.gov	Spartanburg County GIS	Spartanburg County Flood Map	Spartanburg County Flood Prevention Ordinance	100%	Allows for the buildable area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation so long as everything is in compliance with FEMA requirements



## Proposed Option 1

Remove the restriction of 20% minimum fill area in the flood fringe, AND  
remove the pre-2005 subdivision requirement

- This would allow property to be developed in the flood fringe in a similar manner to all the surrounding counties
- This would allow for properties that have been subdivided in the last 13 years to be filled in the flood fringe
- This would allow for property to be developed in and along business corridors throughout the County that would remain underutilized due to current regulation
- This change would still keep Henderson County in compliance with State flood model ordinance, the NFIP floodplain Development Requirements, and FEMA
- This change would eliminate the special fill permit section of the land use code that is not feasible to comply with in it's current state



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## Proposed Option 2

Allow fill in Flood Fringe to match State standards in the Land Use Code and  
limit filling to case-by-case basis by requiring a CLMR and  
using the existing CZ process.

- Eliminate the 20% area fill Cap and the post 2005 subdivision requirements
- Require Floodway Development sites to be CZ Zoning
- Require applicant to submit to FEMA a Conditional Letter of Map Revision (CLMR)
  - As-Built certification must be submitted to support the revision to the Flood Insurance Rate Map (FIRM)
- This change would allow fill to be placed in the flood fringe on a project by project basis



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## Proposed Option 3

### Remove Fill Restrictions For Areas that have been Identified for Future Development

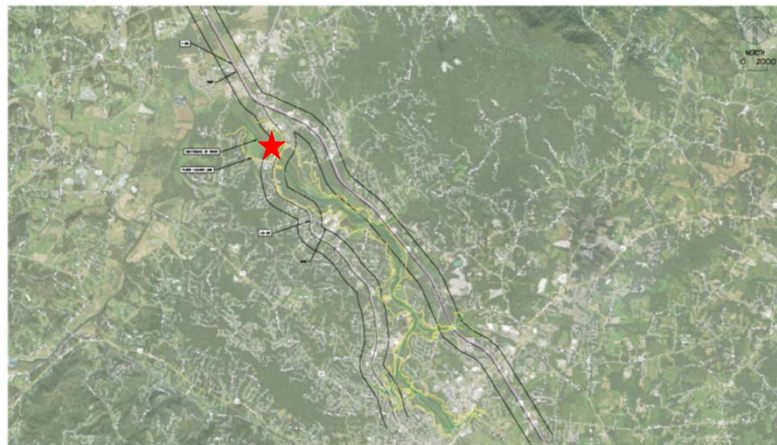
- Properties in which portions are located within a quarter mile of a major Roadway (I-26, HWY 25, Hwy 64 etc.)
- Areas around existing business centers
- Areas within identified industrial corridors
- CLMR and as-built could still be required as well.



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## Commercial Development Corridor I-26 and US Highway 25 Example



DEVELOPMENT AREAS WITHIN  
I-26/US-25 CORRIDOR  
APRIL 2016



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## How the Current Rule Affects Proposed Development

- This is a specific example of how the current rule affects potential development sites affected by the flood fringe designation under current regulations
- The proposed text amendment would be for all of Henderson County



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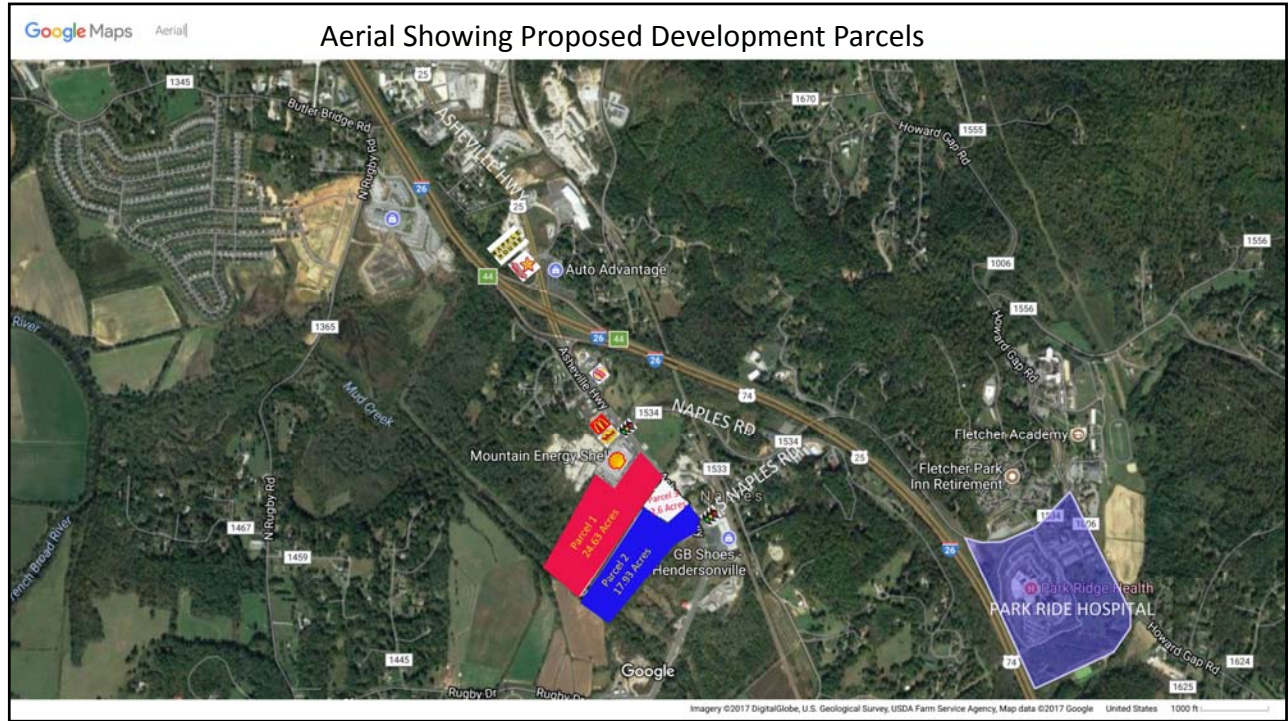
## Asheville Highway/South Naples Road Proposed Development

- The proposed development is comprised of three parcels totaling more than 45 acres
- Approximately 13 acres lie within the floodway and cannot be developed
- Of the remaining 33 acres, only 5 acres sits above the current flood elevation line
- Of the remaining 28 acres, using the 20% rule, only another 5 acres could be developed, however, due to the single parcel restriction, the maximum allowable area would be 2.27 acres
- Therefore, of the total 45 acres, only 7.27 acres could be developed under the current standards



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Photograph Showing Proposed Development Land from Highway 25

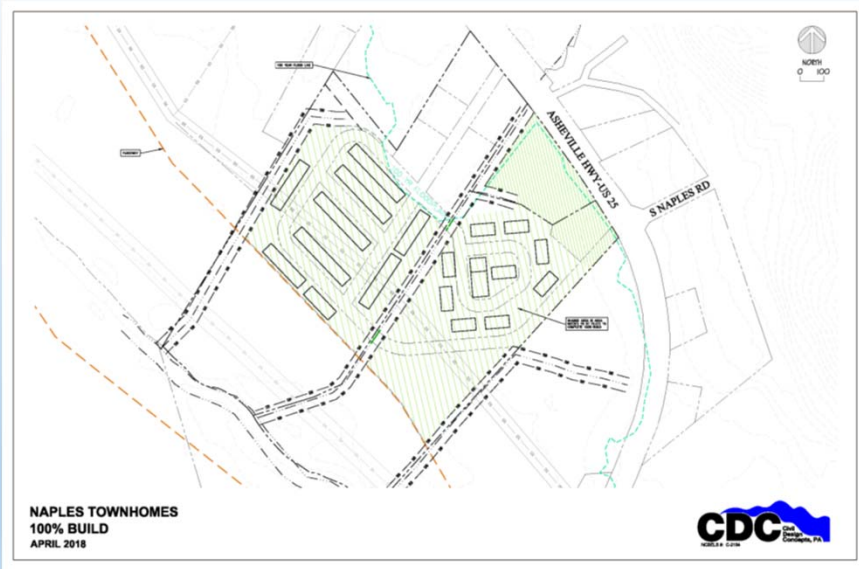




## Schematic Showing Proposed Full Buildout in Flood Fringe

- ❖ with change to code via text amendment

- TOTAL AREA = 45.10 AC
- AREA IN FLOODWAY = 12.83 AC
- AREA IN FLOOD FRINGE = 23.90 AC



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## Proposed Site Plan with Revision to Code

- Proposed 45 acre Mixed-Use development
- Convenient to I-26 Interchange and Hospital
- Fronting Highway 25 Commercial Corridor
- Potential Uses Include:
  - Retail/Restaurant
  - Professional Offices
  - Multi-Family
  - Single-Family Townhomes



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