

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY PLANNING BOARD**

**MEETING DATE:** March 19, 2020

**SUBJECT:** Land Development Code Text Amendments #TX-2020-01 (Special Fill Permits and Permeable Surface Requirements for Multi-Family)

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

**ATTACHMENTS:** 1. Draft Amendments

### **SUMMARY OF REQUEST:**

The Planning Board has been reviewing several amendments to the Land Development Code as part of the 2019 annual review. Planning staff has identified two additional amendments to bring before the Planning Board for review. The attached amendments are related to the permeable surfaces' requirement for multi-family developments and the governing body for reviewing and granting special fill permits.

### **BOARD ACTION:**

Recommendation by the Planning Board is required prior to the Board of Commissioners adopting any text amendments to the Land Development Code.

### **Suggested Motion:**

I move that the Planning Board forward the following text amendments as discussed to the Board of Commissioners for adoption and that these amendments are consistent with the County's Comprehensive Plan.

**2020 Annual LDC Text Amendments (TX-2020-01) –  
Special Fill Permits and Permeable Surface Requirements for Multi-Family**

**Recommended changes are highlighted in red.**

**Special Fill Permits**

**Summary:** Amend the approval process and granting board on special fill permits. Special fill permits may be granted by the Zoning Board of Adjustment. This amendment would require the Board of Commissioners approve as a conditional rezoning.

**ARTICLE X – DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES**

**§42-303. Henderson County Board of Commissioners**

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Henderson County Board of Commissioners by law or by regulations, The Board of Commissioners shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
- (1) Land Use Plans. To adopt a *Comprehensive Plan* and other land use plans for the County and to amend such plans as appropriate.
  - (2) Administrative Amendments. To initiate *administrative amendments* to the *Comprehensive Plan* by submittal to the *Planning Director*; and to adopt *administrative amendments* proposed by any individual or agency as appropriate.
  - (3) Substantive Amendments. To initiate *substantive amendments* to the *Comprehensive Plan*; and to adopt *substantive amendments* proposed by any individual or agency as appropriate and following review by the Planning Board.
  - (4) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*; and to adopt any *text amendment* proposed by any individual or agency as appropriate.
  - (5) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adoption of a motion; and to adopt any *map amendment* proposed by any individual or agency as appropriate.
  - (6) Special Fill Permits. To grant *special fill permits* as authorized by this Chapter.**
  - (7) Plan Review. To approve, approve conditionally or deny any plan for a *subdivision* for which it is the reviewing agency and any plan referred to it by another reviewing agency.
  - (8) Water Supply Watershed Regulation Text and Map Amendments. To initiate *text amendments* related to the *water supply watershed* regulations of this Chapter; to initiate *map amendments* related to the *water supply watershed* on the Official Zoning Map; and to adopt any text or *map amendment* related to the *water supply watershed* as appropriate.
  - (9) Fees. To establish fees for permits and approvals related to the administration of this Chapter.

- (10) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Board of Commissioners elsewhere in this Chapter and in other laws and regulations.

#### **§42-307. Henderson County Flood Damage Prevention Board**

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Flood Damage Prevention Board by law or by regulations, the Flood Damage Prevention Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
  - (1) Administrative Review. To hear and decide *appeals* from any decision or determination made by the *Floodplain Administrator* in the enforcement of any sections of this Chapter which relate to flood damage prevention.
  - (2) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*.
  - (3) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion.
  - ~~(4) Special Fill Permits. To grant *special fill permits* as authorized by this Chapter.~~
  - (5) Variances. To grant, in specific cases, *variances* from the terms of any sections of this Chapter which relate to flood damage prevention.
  - (6) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Flood Damage Prevention Board elsewhere in this Chapter and in other laws and regulations.

### **ARTICLE XI – REVIEW PROCESSES AND PROCEDURES**

#### **§42-355. Special Fill Permits**

- A. Purpose. *Special Fill Permits* in the *flood fringe* may be granted by the ~~Flood Damage Prevention Board~~ 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 ~~Flood Damage Prevention Board~~ 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 ~~Flood Damage Prevention Board~~ 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*, the ~~Flood Damage Prevention Board~~ 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 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 legislative~~ in nature.
  - a. Public notification of the Planning Board meeting shall comply with the provisions of §42-~~371~~ 370 (~~Quasi-Judicial Process Standards~~ 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 ~~Flood Damage Prevention Board~~ Board of Commissioners as to the grant or denial of the application.
- (2) ~~Flood Damage Prevention Board~~ Board of Commissioners Public Hearing. The ~~Flood Damage Prevention Board~~ Board of Commissioners shall hold a ~~quasi-judicial legislative~~ public hearing that complies with the provisions of §42-~~371~~0 (~~Quasi-Judicial Legislative~~ Process Standards).
  - a. Public notification of the ~~Flood Damage Prevention Board~~ Board of Commissioners meeting shall comply with the provisions of §42-~~371~~0 (~~Quasi-Judicial Legislative~~ Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
  - b. The ~~Flood Damage Prevention Board~~ 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 ~~Flood Damage Prevention Board~~ Board of Commissioners finds useful.

- c. The ~~Flood-Damage-Prevention Board~~ Board of Commissioners shall reach a decision within 45 days of the conclusion of the ~~quasi-judicial 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).

## Permeable Surface requirements for Multi-Family

**Summary:** Due to the ongoing maintenance issues, remove the permeable pavement requirement for multi-family developments.

### Article II – Zoning District Regulations

#### Subpart E. Supplemental Requirements to the Table of Permitted and Special Uses

##### SR 1.5 Dwelling, Multifamily

- (4) Multifamily dwellings of five (5) or more units:
  - a. May be developed in *phases*.
  - b. Shall have a minimum spacing between *buildings* of 20 feet, with an additional one (1) foot of separation for each one (1) foot of *building* height in excess of 30 feet.
  - c. Shall have a maximum *building* length of 150 feet.
  - d. May increase the building height to 50 feet where a B1 *Buffer* is provided as detailed in §42-168 (Buffer Determination).
  - ~~e. Shall be required pervious pavement for a minimum of 25 percent of all paved surfaces (*roads, parking areas, drives, sidewalks, etc.*).~~
  - e. Shall adhere to the *road* standards required for a *major subdivision* in accordance with Article III, Subdivision Regulations, and shall be organized:
    1. To provide increased internal mobility;
    2. To provide safe and convenient access;
    3. In intersecting/grid patterns where possible; and
    4. Without cul-de-sacs (except where topographical considerations/ restrictions are submitted by the *applicant*).
  - f. Shall have subsurface utilities.
  - g. Shall have a *perimeter setback* of one hundred (100) feet in residential zoning districts including the *Local Commercial (LC) zoning district*.