

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY PLANNING BOARD

**MEETING DATE:** April 19, 2018

**SUBJECT:** LDC Text Amendment for Flood Hazard Reduction(TX-2017-05)

**PRESENTER:** Stedman Smith, Planner

**ATTACHMENTS:** 1. Draft Text Amendments  
2. Application  
3. Exhibits A & B  
4. PowerPoint Slides

### **SUMMARY OF REQUEST:**

On March 8, 2018, a request was initiated by Civil Design Concepts, PA of Asheville, NC 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.

As a result of this review, a second text amendment is proposed by staff which makes a correction to the Floodplain Permit section of the Land Development Code.

### **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.*

**HENDERSON COUNTY  
TEXT AMENDMENT APPLICATION FORM**

**GENERAL INFORMATION**

**Date of Application:** March 8 2018  
**Previously Submitted (Circle One):** Yes No  
**Date of Pre-Application Conference:** February 6, 2018

**INFORMATION ABOUT THE PROPOSED TEXT AMENDMENT REQUEST**

- A. Will the proposed amendment(s):
  - 1. Change one or more existing sections of the Land Development Code?  Yes  No
  - 2. Add one or more new sections to the Land Development Code?  Yes  No
- B. Number(s) and titles(s) of the section(s) proposed to be amended. Article IIIIV- Section 42-235.1- A General Standards of the Flood Hazard Reduction section of the Natural Resources section  
Article IIIIV- Section 42-235.1- A General Standards of the Flood Hazard Reduction section of the Natural Resources section of the Land Use Code
- C. Proposed amendment which explains the purpose for the amendment.  
Please see attached Exhibits A and B for explanation of the text amendment request to delete Article IIIIV Section 42-235.1-A from the Henderson County Land Development Code.
- D. Attached is a copy of the proposed text change(s):  Yes  No

**CONTACT INFORMATION**

**Applicant:**

Name: Robert Park Phone: 828-277-8233  
Address: 1615 Olmsted Dr City, State, and Zip: Asheville, NC 28803

**Agent:**


Name: Jason Pass Phone: 828-252-5388  
Address: 168 Patton Avenue City, State, and Zip: Asheville, NC 28801

Agent Form (Circle One): Yes No

I certify that the information shown above is true and accurate and is in conformance with the Land Development regulations of Henderson County.

Jason Pass

Print Applicant (Or Agent)

  
Signature Applicant (Or Agent)

3-8-18  
Date

**County Use Only**

Fee: \$ \_\_\_\_\_ Paid: \_\_\_\_\_ Method: \_\_\_\_\_ Received by: \_\_\_\_\_

# Exhibit A

March 2, 2018

Text Amendment Request for Article IIIV- Section 42-235.1- A- General Standards of the Flood Hazard Reduction requirements of the Natural Resources section of the Henderson County Land Use Code

The proposed text amendment is to strike item A which limits the area in properties already established prior to 2005 that can be filled in the flood plain to 20% of the floodplain area from the Land Development Code Entirely.

1. This action is proposed to bring Henderson County's floodplain development regulations in line with all the surrounding counties, State Model Flood Ordinance, and NFIP floodplain development regulations. Please see Exhibit B regarding surrounding Counties Floodplain Development Requirements.
2. The option provided via code to apply for a Special Fill Permit (Article 11 Section 42-355) to increase the allowable fill area from 20% on properties recorded prior to 2005, and from 0% for newer properties is not a reasonable way to ask property owners to request added fill area because:
  - A. The property owner or developer would be required to hire a firm to prepare detailed site-specific construction plans, and perform a no-rise study. This is costly and would also have a very high probability of failure. The designers are also required to prove that there is no storage volume loss which is not possible on the same property.
  - B. If the designer is able to meet the technical requirements of the code then the plan must be presented to the Flood Damage Prevention Board for approval. If all technical requirements have been met, the special fill permit can still be denied by the Board.
3. Removal of Article IIIV- Section 42-235.1- A from the code will allow development to occur in a manner that is aligned with the Henderson County 2020 Comprehensive Plan. Specifically, with multiple aspects of the Economic Development Element as listed below:
  - A. This text amendment would allow for more commercial and industrial land use which would add potential for more economic growth, and more industrial and manufacturing jobs.
  - B. This text amendment could lead to more available residential sites on more cost-effective land which could result in lower cost of living and more affordable housing options.

**Mailing Address: P.O. Box 5432, Asheville, NC 28813**  
168 Patton Avenue Asheville, NC 28801      52 Walnut Street – Suite 9, Waynesville, NC 28786  
Phone 828-252-5388 Fax 828-252-5365      Phone: 828-452-4410 Fax: 828-456-5455

- C. This text amendment would also increase the available land area to be developed along the Asheville Regional Airport and Northern Mills River corridor which has been identified as a primary focus of future development to benefit the County by the Lockwood Greene Study.
- D. This amendment removes policy that puts Henderson County at a disadvantage to all the surrounding counties when trying to attract new industry.

	A	B	C	D	E	F	J
1	<b>Exhibit B</b>	<b>WESTERN CAROLINA'S FLOODWAY PREVENTION ORDINANCES</b>					
2							
3							
4		<b>Restricts Development in the flood plain area with a limit on the area that can be filled to bring the site to required base flood elevation</b>				<b>Does Not Restrict Development in the flood plain area with a limit on fill area</b>	
5	<b>County</b>	<b>State</b>	<b>Contact Person</b>	<b>Departmet/Title</b>	<b>Contact Phone</b>	<b>e-mail</b>	<b>Comments</b>
6	Henderson	North Carolina	Autumn Radcliff	Water Resources Development/ Project Engineer	(828) 694-6558	<a href="mailto:autumnr@hendersoncountync.org">autumnr@hendersoncountync.org</a>	<b>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</b>
7	Buncombe	North Carolina	Cynthia Fox-Clark	Flood Plain Administartor	(828)-250-4836	<a href="mailto:cynthia.fox-clark@buncombecounty.org">cynthia.fox-clark@buncombecounty.org</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements
8	Polk	North Carolina	Cathy Ruth	County Planner	(828)-894-2732	<a href="mailto:planning@polknc.org">planning@polknc.org</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements
9	Rutherford	North Carolina	Danny Searcy	Director of Planning	(828) 287-6052	<a href="mailto:danny.searcy@rutherfordcountync.gov">danny.searcy@rutherfordcountync.gov</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements
10	Transylvania	North Carolina	Mark Burrows	Director of Planning	(828) 884-3205	<a href="mailto:Mark.Burrows@transylvaniacounty.org">Mark.Burrows@transylvaniacounty.org</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements
11	Greenville	South Carolina	Jonathan Graham	Planning and Development Manager	(864)-467-4476	<a href="mailto:jbgraham@greenvillesc.gov">jbgraham@greenvillesc.gov</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements
12	Spartanburg	South Carolina	Robert Harkrader	Planning Director	(864)-596-3570	<a href="mailto:bharkrader@spartanburgcounty.org">bharkrader@spartanburgcounty.org</a>	Allows for the entire area in the flood plain to be filled as necessary to raise the elevation above the base flood elevation in keeping with State and Federal recommedations and requirements

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**

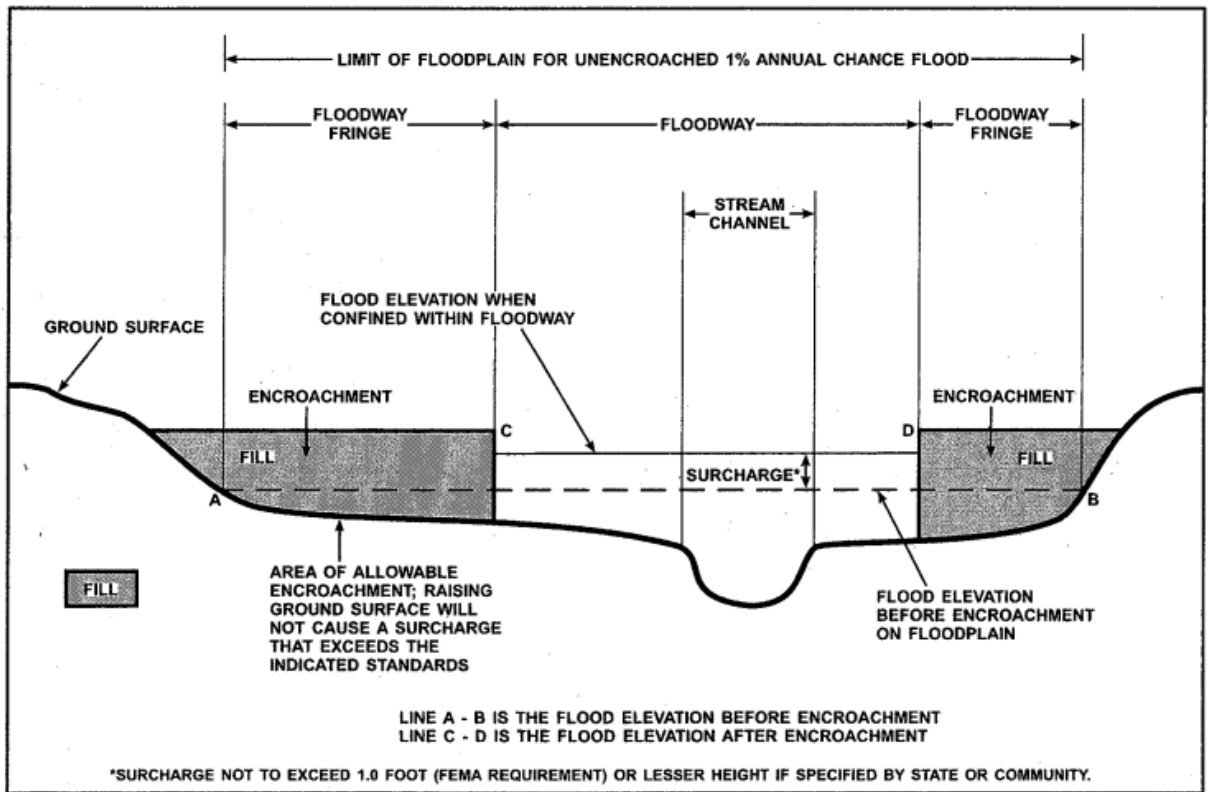
**Flood Hazard Reduction**

**§42-235.1 General Standards.**

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

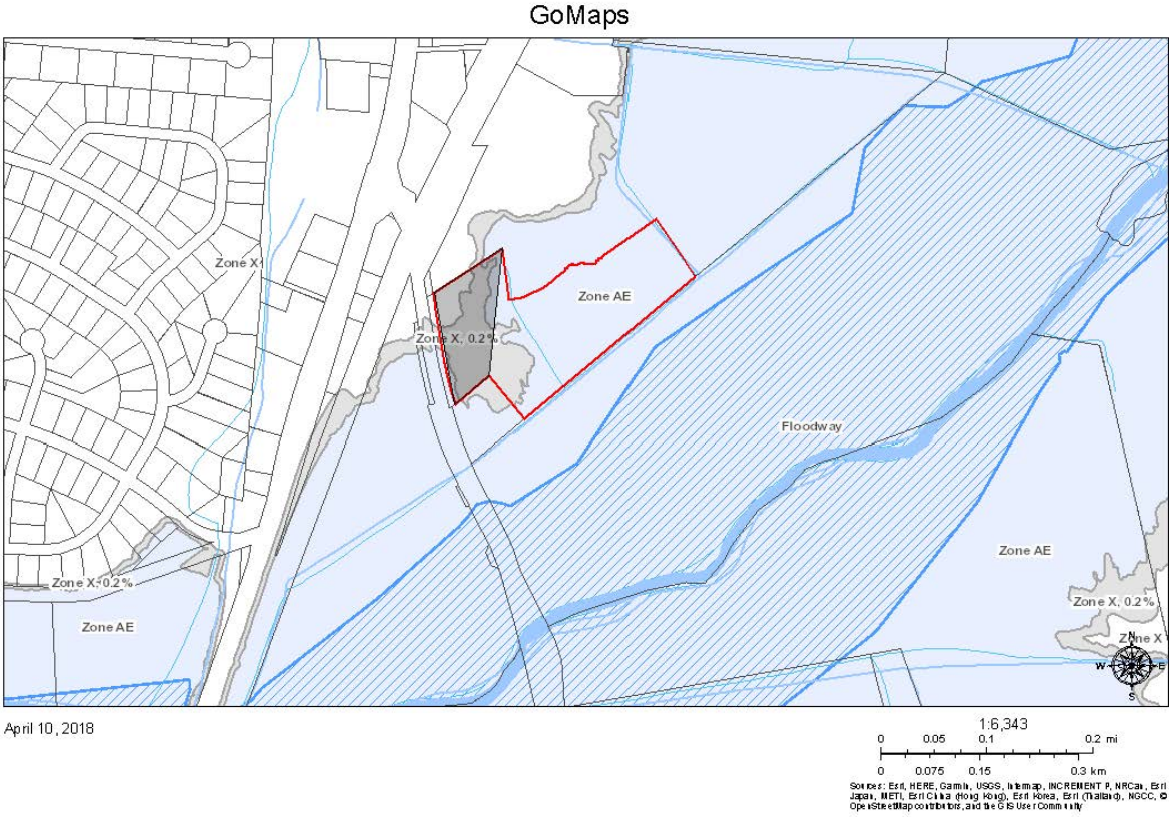
- ~~A. In the flood fringe area as indicated on the FIRM, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 5, 2005), and then only upon no more than 20 percent 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  
April 19, 2018  
Presentation By: Stedman Smith and Autumn Radcliff

*Henderson County Planning Department*

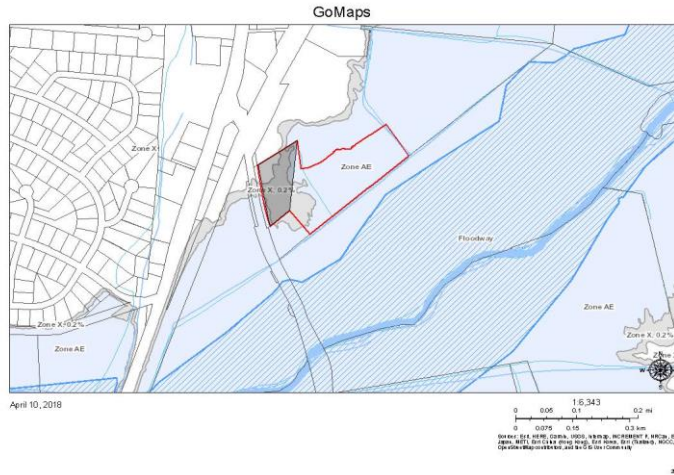
### Land Development Code Text Amendment: A. Flood Hazard Reduction

**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*

## Land Development Code Text Amendment: Flood Hazard Reduction



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

## 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*