

SUBDIVISION TEXT AMENDMENT: CHANGES TO EXPEDITED AND MINOR
SUBDIVISIONS
(P22-112-STA)

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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DRAFT COMPREHENSIVE PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS
STATEMENT 10



PROJECT SUMMARY

- Project Name & Case #:
 - Changes to Expedited and Minor Subdivisions
 - P22-112-STA
- Applicant:
 - John Lively
- Subdivision Ordinance Articles Amended:
 - Sec. 2.04. Review procedures.
 - Amendment to Sec. F. Expedited subdivision.
 - Amendment to Sec. I. Minor subdivision.
- Planning Board - Legislative Committee Meeting
 - January 17th, 2023
- Summary Basics:
 - The applicant petition proposes to reduce the number of required acres to be reviewed as an expedited subdivision from 5 acres to more than 2 acres.
 - City staff is proposing additional changes to the current expedited subdivision review standards in order to better align with current North Carolina State Statutes.



Summary of Amendment Petition:

John Lively initiated a text amendment to our expedited review procedures after speaking with City staff concerning the requirements for smaller subdivisions (3 lots or less) to be reviewed as a minor subdivision when the total acreage of the site falls between 2 and 5 acres. Minor subdivisions require certain infrastructure to be installed or bonded prior to the conveyance of lots.

In Mr. Lively's case, he lives on a privately maintained gravel road, in the ETJ with well water and a septic system. In order to divide his 3.16 acre lot into 3 lots, he would be required to be reviewed as a minor subdivision. Minor subdivisions must connect to the public potable water and sanitary sewer systems, which would have included Mr. Lively extending both utilities to his property, neither of which currently serve his property. As a result of connecting to the public sewer system, Mr. Lively would be required to annex into the City of Hendersonville.

Minor Subdivisions must also be served by a NCDOT-maintained roadway, or a right-of-way constructed to and maintained in accordance with NCDOT or city standards. Blythewood Drive, where Mr. Lively's property is located is a privately maintained gravel road. He would be required to build a street to NCDOT standards and dedicate it to NCDOT for maintenance. The continuation of a public street would require that it then be reviewed as a major subdivision.

Outside of the Mr. Lively's petition request, City staff is proposing additional changes to the expedited subdivision section to align with state statutes. There are also wording changes to the minor subdivision language clarifying that those standards are for subdivisions of parcels between four to eight lots with no extension of or changes to public streets.

AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW

The reasoning behind Mr. Lively's request for this amendment and the requirements of being reviewed as a minor subdivision are explained on the previous page. Due to the requirement of being reviewed as a minor subdivision, Mr. Lively explained that he would not be able to subdivide his property. It was not financially feasible for him to undertake such large infrastructure improvements in order to facilitate the creation of 2 additional lots (3 total). This isn't uncommon within the City, especially for smaller infill type of subdivisions. There have been several landowners who decided to forego subdividing their lots due to the infrastructure costs they would incur by being reviewed as a minor subdivision.

As staff have reviewed more subdivisions under the current regulations adopted in 2020, they found a trend of smaller subdivisions never getting platted. Staff found that there was a "doughnut hole" for properties between 2 acres and 5 acres that were not getting subdivided. Properties under 2 acres into not more than 3 lots can be reviewed as an "Exempt Subdivision", which are exempted from the subdivision ordinance by State Statutes. Properties over 5 acres into not more than 3 lots can be reviewed as an "Expedited Subdivision", which are special subdivisions under state statutes that do not follow the full subdivision ordinance requirements. This leaves subdivisions of 3 lots between 2 and 5 acres to follow the full subdivision ordinance which requires a variety of infrastructure improvements prior to the conveyance of any lots. The requirement for property-owners to front the cost of these improvements before they are able to convey and sale the lots reduces the likelihood of subdivisions between 2-5 acres into 3 lots being platted. Which cuts down on the likelihood of additional infill housing and additional housing stock. This further diminishes the ability to combat the affordable housing crisis.

North Carolina General Statutes 160D-802 outline what divisions of land will be reviewed as an exempt subdivisions:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.
2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.
5. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under G.S. ch. 29.

The most common exempt subdivision that City Staff reviews is “4.The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.” For subdivisions that are deemed to be “exempt” City staff cannot require that the subdivider submit a plat for review. The subdivision ordinance further states that “The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to document that a proposed division of land is exempted from the subdivision requirements of this ordinance in accordance with G.S. 160D-802. This review is voluntary on the part of the applicant and is provided by the city as a courtesy”

Expedited subdivisions were created by the North Carolina General Assembly in 2017. Review procedures for expedited subdivisions can be found in 160D-802 (b) and (c). The language from those sections are as follows.

A local government may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than 5 acres.
- (4) After division, no more than three lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
 - a. All lot dimension size requirements of the applicable land-use regulations, if any. NC General Statutes - Chapter 160D Article 8 2
 - b. The use of the lots is in conformity with the applicable zoning requirements, if any.
 - c. A permanent means of ingress and egress is recorded for each lot.

Expedited subdivisions are not an exemption in the traditional sense, but more of a review channel for subdivisions meeting specific criteria. Subdivisions meeting the criteria outlined in the above general statutes must be reviewed as an expedited subdivision. Outside of Mr. Lively’s request to amend the minimum required acreage, staff is proposing additional changes. The additional changes are to align our current ordinance with the NC general statutes. The general statutes states that Cities may only require a plat for recordation for expedited subdivisions. This means that we cannot require certified evaluations from Henderson County Environmental Health or federal permits, as currently stated in our ordinance. This is not to say, that they cannot be required at a later time during a different review process, it is just stating that we cannot require them in order for the owner to subdivide the property. We are also proposing to remove the requirement that “The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with city standards” since State Statutes only state that “A permanent means of ingress and egress is recorded for each lot.”. This can be accomplished through private drives or lots designed to have direct access to public roads, it just has to be permanent. A Coates Cannon’s blog describing the details of the legislative

changes for expedited subdivisions is included in your packet for additional information.

SUBDIVISION TEXT AMENDMENT – EXPEDITED AND MINOR SUBDIVISIONS

The proposed Expedited and Minor Subdivision Language reads as follows:

Additions to the Ordinance

~~Deletions from the Ordinance~~

Sec. 2.04. Review procedures.

F. Expedited subdivision.

- I. **Purpose and intent.** The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their ~~small-size-~~ ~~and~~ limited likelihood to create significant impacts on surrounding lands.

Figure 2.04.D F: ~~Conservation~~ Expedited Subdivision Procedure

2.

STEP	ACTION
1	FILE APPLICATION Filed with Development Assistance Department <u>Community Development Department</u> -Required prior to conveyance of lots
2	COMPLETENESS DETERMINATION See Section 2.03.D.5, completeness Determination -Application shall include copies of any protective covenants or deed restrictions -Plat shall include all required certification language
3	STAFF REVIEW
4	CITY MANAGER DECISION Decision shall be made in writing
5	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1st class mail
6	RECORDATION With the Henderson County Register of Deeds within 10 days of approval

Applicability.

- a. The standards in this section shall apply to divisions of land meeting all the following criteria:
 - i. The proposed division of land is not exempted from the subdivision standards of this ordinance in accordance with G.S. 160D-802; and
 - ii. The proposed division will not result in more than three lots (including any residual or "parent" parcel); and
 - iii. The area of land subject to the division shall be comprised of ~~at least five~~ more than two (2) acres under common ownership; and
 - iv. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years; and

- v. The use of all lots is in conformity with the zoning district where located; and
- vi. No extension of public streets is proposed.
- b. Divisions of land not meeting all these standards shall be reviewed as a minor subdivision or major subdivision, as appropriate.
- c. Lots within an expedited subdivision are not exempted from any applicable zoning district dimensional requirements.

3. Expedited subdivision review procedure.

a. Application submittal.

- i. Applicable (see section 2.03.D, application filing and acceptance).
- ii. Expedited subdivision plats shall be prepared by a licensed professional authorized by the state to prepare such documents.
- iii. ~~Applications for an expedited subdivision shall include an evaluation from Henderson County Environmental Health indicating that an on-site wastewater system and on-site potable water system may be used on each lot not connected to the public potable water or sanitary sewer systems.~~

b. Staff review and action.

- i. Applicable (see section 2.03.E, staff review and action).
- ii. The city manager shall review and make an administrative decision/determination regarding the application in accordance with section 2.04.F.4, expedited subdivision review standards. Notice of the administrative decision/determination shall be given in accordance with section 2.03.~~K~~ J. I.
- iii. If an expedited subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an expedited subdivision application that has been denied. Alternatively, the applicant may appeal the city manager's administrative decision or determination to the zoning board of adjustment in accordance with section 2.04 F.9. appeal.

4. Expedited subdivision review standards.

- a. An expedited subdivision shall be approved if the application complies with the following:
 - i. The expedited subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in Henderson County;
 - ii. The expedited subdivision plat is prepared and sealed by a licensed professional authorized by the state to prepare such documents;
 - iii. The expedited subdivision plat complies with all applicable standards in this ordinance and G.S. 47-30;
 - iv. The expedited subdivision plat includes all required certifications;
 - v. ~~The applicant has secured all required state and federal permit approvals;~~
 - vi. ~~All lots have been certified by Henderson County Environmental Health as capable of accommodating the wastewater generated from the proposed use, in cases when the lots are not served by a centralized wastewater system;~~

- vii. ~~All lots have been certified by Henderson County Environmental Health as served by an acceptable source of potable water in cases when the lots are not served by a centralized potable water system;~~
 - viii. All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located;
 - ix. ~~The lots are served by a NCDOT-maintained roadway or a right-of-way constructed to and maintained in accordance with city standards; and~~ A permanent means of ingress and egress is recorded for each lot.
 - x. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years.
- b. Subdivisions of land located within a special flood hazard area shall comply with all applicable city standards for flood damage prevention, and include the following statement:
- "Use of land within a floodplain or a special flood hazard area is substantially restricted by the City of Hendersonville."

5. Recordation.

- a. Once an expedited subdivision plat is approved, a signed statement by the city manager shall be entered on the face of the plat. The expedited subdivision plat may not be recorded without this and all other required certifications.
- b. Land may not be conveyed or construction started until the expedited subdivision plat is recorded.

6. Effect.

- a. Approval of the expedited subdivision plat allows the sale or conveyance of lots within the subdivision.
- b. Building permits may be issued following recordation of the expedited subdivision plat.
- c. Land subject to an expedited subdivision approval shall not be further subdivided as an expedited subdivision within ten years of the date of the prior expedited subdivision approval.

7. Amendment. Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

8. Expiration. The period of validity for an expedited subdivision plat shall be determined in accordance with chapter 40 of the City of Hendersonville Code of Ordinances.

9. Appeal. Appeal of an administrative decision or determination by staff under this section 2.04.F. expedited subdivisions, shall be reviewed and decided by the BOA in accordance with section 2.04.C, appeal.

I. Minor subdivision.

1. Purpose and intent. The purpose for this minor subdivision review procedure is to allow certain land divisions to be reviewed via an administrative review procedure based on the limited number of new lots and no extension of or changes to existing public streets is required.

2. Applicability.

- a. Subdivisions of land that include ~~up to~~ four to eight lots (including the parent parcel) with no extension of or changes to public streets are minor subdivisions and shall be reviewed in accordance with the standards in this section.

Figure 2.04.I: Minor Subdivision Procedure

STEP	ACTION
1	PRE-APPLICATION CONFERENCE Optional
2	FILE APPLICATION Filed with Development Assistance Department <u>Community Development Department</u> -Required prior to conveyance of lots
3	COMPLETENESS DETERMINATION See Section 2.03.D.5, Completeness Determination -Application shall include copies of any protective covenants or deed restrictions -Plat shall include all required certification language
4	STAFF REVIEW
5	CITY MANAGER DECISION Decision shall be made in writing
6	NOTIFICATION OF DECISION Delivered via personal service, electronic mail, or 1st class mail
7	RECORDATION With the Henderson County Register of Deeds within 30 days of approval

- b. All lots shall connect to the public potable water and sanitary sewer systems as part of the establishment of the minor subdivision. However, connection to the public water or sewer system shall not require the subdivision to be reviewed as a major subdivision.
- c. No lot within a minor subdivision (including the parent parcel) shall be the subject of another minor subdivision application for a period of three years from the date the minor subdivision is approved.....

PUBLIC INPUT / RECOMMENDATION

Legislative Committee of the Planning Board – January 17th, 2023

The Legislative Committee reviews all text amendments prior to consideration by the Planning Board. Planning Board Member Neil Brown was the only Legislative Committee member present for this meeting. Staff discussed the nature of the text amendment and the reasoning behind the changes. Planning Board Member Brown voiced his support of the changes and did not provide any additional corrections. No formal vote was taken by the committee.

COMPREHENSIVE PLAN CONSISTENCY	
Land Use & Development	<i>Infill development: Development that takes place within existing neighborhoods, making maximum use of the existing infrastructure instead of building on previously undeveloped land. -Centers for Disease Control and Prevention, Healthy Places Terminology.</i>
	<i>Goal LU-1. Encourage infill development that utilizes existing infrastructure in order to maximize public investment and revitalize existing neighborhoods.</i>
	<i>Action LU-3.2.1 Discourage satellite annexations unless they significantly advance Comprehensive Plan goals and strategies.</i>
Population & Housing	<p><i>Section 2.2. Issues and Opportunities Hendersonville is fortunate to have several stable and desirable neighborhoods, although years of rapid growth and demographic shifts have resulted in <u>housing affordability gaps</u> and several neighborhoods without adequate pedestrian infrastructure. <u>With developable land decreasing, the City must now shift its focus to infill development and maintaining the viability of existing neighborhoods.</u></i></p> <p><i>Housing Affordability</i></p> <ul style="list-style-type: none"> <i>-Growth in home values in Hendersonville and Henderson County has outpaced the Asheville MSA, North Carolina and the United States.</i> <i>-Home appreciation rates have exceeded income and population growth, creating a need for affordable housing and a mismatch between jobs and housing in Hendersonville.</i> <p><i>Strategy PH-1.1. Promote compatible infill development.</i></p> <p><i>Goal PH-2. Encourage a wide range of housing types and price points in order to meet the diverse and evolving needs of current and future residents, match the housing supply with the local workforce, and promote diverse neighborhoods.</i></p> <p><i>Strategy PH-2.1. Encourage variation in lot sizes and housing types within new developments.</i></p> <p><i>Action PH-2.1.1. Amend zoning and/or subdivision standards to require and/or offer incentives for variation in lot and unit sizes within a single development.</i></p>
Natural & Environmental Resources	<i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i>
Cultural & Historic Resources	<i>Strategy CR-1.3. Promote investment in and adjacent to Historic Districts through compatible infill development, particularly on currently underutilized, non historic properties.</i>

Community Facilities	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Water Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Transportation & Circulation	There are no Goals, Strategies, or Actions that are directly applicable to this petition.

GENERAL REZONING STANDARDS	
Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –
	<i>The proposed text amendment allows property owners to subdivide their property while requiring that all resulting lots meet all zoning district standards for which it is located. This requires that the new lots be in conformance with existing lots within that zoning district area.</i>
Changed Conditions	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -
	<i>The decrease of available housing stock has further exacerbated the affordable housing crisis. Cities are tasked with finding new and creative ways of fostering compatible infill development while managing growth. The added flexibility provided by this text amendment furthers property owners rights with their land while limiting the impact to the overall community.</i>
Public Interest	Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -
	<i>The proposed text amendment allows property owners the flexibility to create low impact subdivisions without compromising community safety or functionality. The allowance of more infill development will aid in the ongoing need for affordable housing.</i>

Public Facilities	<p>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</p>
	<p><i>The change to allow subdivisions of up to 3 lots on more than 2 acres to be reviewed as an expedited subdivision rather than a minor subdivision does not force citizens to extend public utilities (water and sewer) to areas where the City is not ready to do so. By allowing citizens to connect to private waste water and potable water sources; the City is not force to grow and maintain their utilities in areas that they are not ready to serve.</i></p>
Effect on Natural Environment	<p>Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -</p>
	<p><i>There are not any direct connections between this text amendment and the environment/ natural resources. However, even if subdivided, the subject properties will have to meet any applicable zoning, natural resource, stormwater, floodplain, etc. requirements.</i></p>

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The petition aligns with the Comprehensive Plan's goals to Promote compatible infill development (Strategy PH-1.1.) and to amend zoning and/or subdivision standards to require and/or offer incentives for variation in lot sizes. (Action PH-2.1.1.).

We [find] this proposed subdivision text amendment petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *The proposed text amendment creates flexibility for property owners while still limiting potential impacts to the greater community.*
- *The proposed text amendment removes additional obstacles to accomplish less impactful infill developments.*
- *The proposed text amendment could create opportunities for additional housing stock to be available for residents.*

DRAFT [Rational for Denial]

- *The proposed text amendment would lower the minimum acreage requirement from what is required in state statutes.*
- *The proposed text amendment will limit the public infrastructure required in order to convey lots for certain subdivisions.*