



# *imagine* **Mills River**

**unified development ordinance**

**Module 1**

**Steering Committee Meeting 5 12-10-25**



# OVERVIEW

- Virtual Meeting Schedule
- Discuss Chapter 1
- Discuss Chapter 5
- Discuss Chapter 7
- Open Discussion

*imagine*

## MILLS RIVER

### UNIFIED DEVELOPMENT ORDINANCE

**Initial Draft**

December 2025

CHAPTER 1 – ADMINISTRATION

CHAPTER 3 – DISTRICTS

CHAPTER 4 – USES

CHAPTER 5 – NONCONFORMITIES

CHAPTER 7 - VIOLATIONS

# VIRTUAL MEETINGS

IMAGINE MILLS RIVER: The Town of Mills River UDO Update		October 25	November 25	December 25	January 26	February 26	March 26	April 26	May 26	June 26	July 26
Task 3	DRAFT Annotated Outline										
	DRAFT Zoning Map										
	Meetings to Review Annotated Outline (On-Site)										
	Trip Meeting Summary		A								
Task 4	DRAFT Module 1 Chapters of the UDO		B1								
	2nd DRAFT of Zoning Map		C1		C2						
	Meetings to review Module 1 + Map (On-Site)			D1							
	Presentation of Mod. 1 + Zoning Map to Town Council			D2							
	Trip Meeting Summary				E						
	DRAFT Module 2 Chapters of the UDO			F1							
Task 5	Meetings to review Module 2 (On-Site)				G1						
	Presentation of Module 2 to Town Council				G2						
	Trip Meeting Summary					H					
	Full Consolidated UDO DRAFT				I1	I2					
	3rd DRAFT of the Zoning Map				J1	J2					
Task 6	Meetings to Review UDO and Zoning Map (On-Site)						K1				
	Presentation of consol. UDO + Map to Town Council						K2				
	Trip Meeting Summary							L			
	Adoption DRAFT of the UDO							M1	M2		
Task 7	Adoption DRAFT of the Zoning Map							N1	N2		
	Planning Board Meeting for Recommendation								O1	O2	
	Town Council Meeting for Adoption									P1	P2
Task 7	Deliver Digital Versions of UDO and Zoning Map										Q
	Staff Training Sessions										
SUPPLEMENTAL STEERING COMMITTEE VIRTUAL MEETINGS					R	R	R	R	R		

# VIRTUAL MEETINGS

- **Teams Meetings**  
**Invite for 6P**
  - **12/30**
  - **1/7**
  - **1/21**
  - **2/4**
  - **2/18**
  - **3/4**
  - **3/18**

- C1** November 21, 2025. 2nd DRAFT Zoning Map to Staff
- C2** December 26, 2025. 2nd DRAFT Zoning Map Final
- D1** December 10-11, 2025. Initial Review of DRAFT - Module 1 Meetings
- D2** December 11, 2025. Present Module 1 and Zoning Map DRAFTS to Town Council
- E** December 26, 2025. Trip Summary Notes
- F1** December 26, 2025. DRAFT UDO TO STAFF FOR REVIEW - Module 2 (Ch 2, 6, 8, 9)
- G1** January 21-22, 2026. Initial Review of DRAFT - Module 2 Meetings
- G2** January 22, 2025. Present Module 2 DRAFT to Town Council
- H** January 23, 2026. Trip Summary Notes
- I1** February 6, 2026. CONSOLIDATED UDO DRAFT
- I2** February 23, 2026 Comments Received, Revisions, Public Copy
- J1** February 6, 2026. 3rd DRAFT Zoning Map
- J2** February 23, 2026. Final Map DRAFT, Public Copy
- K1** March 10-12, 2026. Final DRAFT Meetings (Steering Committee, Public Forum)
- K2** March 12, 2026. Present Consolidated UDO and Zoning Map DRAFTS to Town Council
- L** March 20, 2026. Trip Summary Notes
- M1** March 27, 2026. Adoption DRAFT to Staff
- M2** April 17, 2026. Adoption DRAFT to public
- N1** March 27, 2026. 4th and Adoption DRAFT Zoning Map
- N2** April 17, 2026. Adoption DRAFT to public
- O1** May 5, 2026 -OR- **O2** Special Meeting. Planning Board Recommendation Meeting
- P1** June 11th, 2026. Public Hearing and Adoption of UDO - OR - **P2** June 25, 2026. Public Hearing and Adoption of UDO (if needed)
- Q** Approved Document and Zoning Map Delivery
- R** Virtual meetings with Steering Committee to review draft UDO language (+/- Dec 30, Jan 7, Jan 21, Feb 4, Feb 18, Mar 4, Mar 18)

# CHAPTER 1 ADMINISTRATION

## CHAPTER 1. ADMINISTRATION

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# CHAPTER 1 ADMINISTRATION

## ARTICLE 1: ADMINISTRATION - KEY CHANGES IN THE NEW UDO

Article 1, Administration, consolidates the standards from the following sections in the Town's current development regulations:

- Section 154, Zoning. General Provisions (Title, Purpose, Authority, Jurisdiction, Exemptions);
- Section 153, Subdivision. General Provisions (Title, Purpose, Authority, Jurisdiction, and Compliance); and
- Section 155, Vested Rights.

Other Key Changes in this Chapter 1 include:

- Consolidation of all the introductory material from the Town's different ordinances into a single chapter.
- Identification of the statutory authorities to adopt the UDO.
- Clarification that these standards apply to various units of government, including the Town, the County, and the State.
- Clarification that the standards in the UDO are minimum requirements, and no development may go forward without compliance (unless exempted from the UDO).
- Identification of the range of development and activity that is exempted from this Ordinance, including farming, forestry, and agriculture.
- Establishment of a new, more comprehensive set of conflict provisions addressing situations where ordinances conflict with one another, or how to interpret the most restrictive standard.
- Identification of the adopted policy guidance documents that serve as the foundation for the UDO.
- Establishment of the effective date for the UDO (which will be on or before July 1, 2026). Subsequent amendments to the UDO after the effective date will be identified by the date of adoption and associated ordinance number as editor's notes to be embedded in the text.
- Provision of a new section on incentives and alternatives that identify and cross reference the flexibility mechanisms found throughout the UDO.
- Inclusion of a new more detailed set of purpose and intent statements that address Town goals found in adopted plans in addition to the aspects included in the State's planning enabling legislation.
- Clarification of new severability provisions that protect UDO language from summary removal via legal action.
- Establishment of a new section describing how existing development, approved but incomplete development, pending applications, and nonconforming conditions are treated when the new Ordinance takes effect.
- Incorporation of a new comprehensive vested rights section that identifies the different forms of vesting above and beyond site-specific vesting plans and the rules around vesting.

# CHAPTER 1

# ADMINISTRATION

**1.1.4 Exemptions**

**1.3 Conflict**

**1.7 Incentives & Alternatives**

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# CHAPTER 5 NONCONFORMITIES

## CHAPTER 5. NONCONFORMITIES

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### **CHAPTER 5: NONCONFORMITIES - KEY CHANGES IN THE NEW UDO**

Chapter 5, Nonconformities consolidates and replaces the various nonconforming standards for land uses in the Mills River Town Code of Ordinances. Key changes in this Chapter 5 include:

- Changes related to Session Law 2024-57 related to downzoning. The basic strategy is to grant amnesty to all existing nonconformities (so they don't have to be tracked or distinguished from those nonconformities that exist without need of consent versus those that do). Then to allow existing development to continue in perpetuity as is, but require any changes to existing development to come into compliance with the rules in place at the time of the application. Existing development that contemplates change but can not reach full compliance must secure a variance, obtain conditional rezoning approval, or the owner must receive authorization to become nonconforming (via submittal of consent to become nonconforming). The basic aspect of the strategy is that it relies on a more expansive definition of what is "new" development in order to require full compliance. This approach avoids the need for the Town to track multiple sets of development standards as they evolve over time.
- The standards in this Chapter include provisions for nonconforming lots of record, structures, signs, and uses. These standards apply only after the nonconformity has received authorization to exist from the Town (adoption of the new UDO grants amnesty to/abolishes all existing nonconformities).
- There are a set of general standards applicable to all nonconformities.
- There are a set of standards that apply to nonconforming lots – which are allowed to remain and be developed without having to be authorized as nonconforming).
- The nonconforming sign standards have been revised to recognize recent changes in the General Statutes that allow nonconforming signage to be replaced, relocated, and re-established in accordance with its current conditions.
- There are new standards for nonconforming structures (that are considered nonconforming if they don't meet required setbacks, even though setbacks are traditionally thought of as nonconforming lot aspects).
- There are new standards for nonconforming uses.
- This chapter clarifies that changes to nonconformities are generally prohibited unless the changes reduce the level or degree of nonconformity.
- There are new cessation and abandonment provisions for signs, structures, and uses.
- There are new casualty damage provisions for signs, structures, and uses.



**CHAPTER 5. NONCONFORMITIES** § 5.2 Nonconformities, Generally  
Subsection 5.2.2. Authority to Continue

**5.2.2. AUTHORITY TO CONTINUE**

- A.** Based on the standards in this Section, existing development in place or approved prior to (insert the effective date of this Ordinance) may:
01. Remain in place;
  02. Continue to operate;
  03. Cease and be re-established as it existed on the date the development ceased; and
  04. Be reduced in size, scope, density, intensity, or impact, provided that any subsequent changes following such reduction remain subject to the standards in Section <>, Alterations to Existing Development.
- B.** In no instance shall existing development be increased in size, scope, density, intensity, or impact, except in full compliance with all applicable requirements in this Ordinance.

**5.2.3. ALTERATIONS TO EXISTING DEVELOPMENT**

**A. GENERALLY**

01. Except as authorized in accordance with Section <>, Exemptions, below, any alteration to existing or approved by incomplete development subject to the Unified Development Ordinance shall be considered as new development subject to full compliance with all applicable provisions of this Ordinance and any applicable conditions of approval in place at the time the alteration is proposed.
02. A development may be considered to be fully compliant if it:
  - a. Meets all applicable Town requirements, standards in this Ordinance, and conditions of approval; or
  - b. Is subject to an approved Variance in accordance with Section <>, Variance, that addresses aspects of the development that do not meet all applicable Ordinance standards and conditions of approval; or
  - c. Is subject to a conditional rezoning approval established in accordance with Section <>, Conditional Rezoning, that includes conditions of approval intended to mitigate instances where the subject development does not meet all applicable Ordinance standards; or
  - d. The development has authorization to be nonconforming, established in accordance with Section <>, Authority to Become Nonconforming.
03. Examples of alterations to existing development subject to the standards in this section include, but are not limited to:
  - a. Changes in use type;
  - b. Any subdivision or change to a lot line;
  - c. Any change that increases the amount of impervious surface on a lot; or
  - d. Any change that increases the height of a building, sign, or other structure subject to the height standards in this Ordinance.

**B. EXEMPTIONS**

The following activities or forms of development shall not be considered an alteration to existing development subject to Section (A) Generally, above:

01. Sale or re-sale without a change in use type;
02. Complete demolition and removal of all above-ground structures and site features;
03. Replacement of existing landscaping, provided the applicable minimum planting standards and screening performance objectives are maintained;
04. Changes in exterior building materials, provided they comply with any applicable standards in Chapter 6, Standards;
05. Replacement of signage, subject to NCGS§160D-912.1, and provided the signage complies with any applicable uniform sign plan requirements; or
06. Establishment of a temporary use or structure, subject to the standards in Section <>, Temporary Uses.

**CHAPTER 5. NONCONFORMITIES** § 5.2 Nonconformities, Generally  
Subsection 5.2.4. Authority to Become Nonconforming

**5.2.4. AUTHORITY TO BECOME NONCONFORMING**

Development proposed for alteration in accordance with Section <>, Alterations to Existing Development, that cannot reasonably comply with the applicable standards of this Ordinance, cannot meet the standards for approval of a Variance in accordance with Section <>, Variance, or is not subject to an approved Conditional Rezoning that authorizes the proposed development's configuration (see Section <>, Conditional Rezoning), may only be altered by an applicant in accordance the following requirements:

**A. REQUEST FOR AUTHORIZATION**

Prior to the establishment of a nonconformity, a landowner shall file a request for authorization to establish a nonconformity in accordance with these standards. A portion of the request for authorization shall include a signed statement of consent for nonconformity creation that is signed by all affected landowners (see Section <>, Application Filing).

**B. RECORDATION OF CONSENT**

01. Following receipt of a request for authorization and associated statement of consent, Town staff shall review the request and statement, and if approved, the Town shall grant authorization and return the statement of consent form to the applicant for recordation with the Henderson County Register of Deeds. Failure of the applicant to record the statement of consent may result in the inability of the Town to process any future permit requests.
02. The decision to approve a request for authorization and statement of consent shall be at the sole discretion of the Planning Director, whose decision shall be based on the practicality of the proposed development reaching full compliance with the applicable requirements of this Ordinance. The Planning Director's decision may be appealed in accordance with Section <>, Appeal.

**5.2.5. STATEMENT OF CONSENT**

An approved statement of consent authorizes a lot, use type, sign, structure, site feature, or proposed development to be nonconforming with respect to the provisions of this Ordinance.

**A. RECORDED**

Following acceptance by the Town, statements of consent shall be recorded with the Henderson County Register of Deeds. Failure to record a statement of consent shall render it null and void and may prevent the Town from issuing any subsequent permits for the use or site subject to the statement.

**B. NOT RESCINDED**

Once a statement of consent has been recorded, it shall run with the land and may not be rescinded unless the nonconformity subject to the statement conforms with this ordinance or an amendment thereto.

**C. EFFECT**

Development subject to a recorded statement of consent shall be subject to the applicable provisions in Chapter 5, Nonconformities.

**5.2.6. MAINTENANCE AND CONTINUATION OF AUTHORIZED NONCONFORMITIES**

Only nonconformities subject to an approved statement of consent in accordance with Section <>, Authority to Become Nonconforming, may be maintained and continued, subject to the following:

**A. CONTINUATION**

Authorized nonconformities are allowed to continue in accordance with the requirements of this Chapter.

**B. COMPLETION**

Authorized nonconformities that are under construction shall be permitted to be completed in accordance with their associated approvals despite.

**C. MAINTENANCE ALLOWED**

01. Incidental or minor repairs and routine maintenance necessary to keep an authorized nonconformity in safe and sound condition are permitted and encouraged.

**CHAPTER 5. NONCONFORMITIES** § 5.2 Nonconformities, Generally  
Subsection 5.2.7. Tenancy and Ownership Changes

02. Except as permitted in Section <>, Strengthening Allowed, repair or maintenance activities that amount to an expansion of an authorized nonconformity are prohibited.

**D. STRENGTHENING ALLOWED**

01. Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by a duly authorized Town official.
02. Nothing shall prevent the elevation of habitable or conditioned floorpace to a point above the regulatory floodplain or freeboard elevation, as appropriate.

**5.2.7. TENANCY AND OWNERSHIP CHANGES**

Except as indicated with respect to outdoor advertising rules, authorized nonconforming status shall run with the land and is not affected by a change in tenancy, ownership, or management.

**5.2.8. LOSS OF AUTHORIZED NONCONFORMING STATUS**

**A. CESSATION AND ABANDONMENT**

01. Cessation of a nonconformity is the stoppage or pause of an authorized nonconformity. Cessation may be either temporary or permanent. Temporary cessation for a period of up to 180 days allows for the recommencement or continuation of an authorized nonconformity. Permanent cessation means the authorized nonconformity is abandoned, and may not be recommenced or continued. Recommencement or continuation of a nonconformity following cessation is a violation of this Ordinance subject to the standards in Chapter 7, Violation.
02. Authorized nonconformities that are ceased for a period of time longer than specified in this Ordinance shall be considered abandoned, and may not be reestablish, recommenced, or continued unless conforming with the provisions of this Ordinance.

**B. CASUALTY DAMAGE**

01. Casualty damage to a nonconformity is condition resulting from fire, flooding, Acts of God, or other instances that render the nonconformity damaged to an extent that re-establishment to its prior condition will cost more than 51 percent of the nonconformity's assessed value immediately prior to the casualty event.
02. Authorized nonconformities that suffer casualty damage shall be considered abandoned and may only be re-established in full compliance with the standards in this Ordinance.

**C. ALTERATION THAT INCREASES NONCONFORMITY**

Alterations, expansions, or other changes to an authorized nonconformity that increase the amount or degree of nonconformity are prohibited, shall be considered a violation of this Ordinance, and may result in the loss of authorized nonconformity status.

**D. ALTERATION THAT REDUCES THE DEGREE OF NONCONFORMITY**

Alterations to an authorized nonconformity that reduce the degree of nonconformity may be permitted in accordance with the provisions of this Chapter. Alterations that remove the authorized status by rendering the development conforming to the provisions in this Ordinance are strongly encouraged.

**E. EFFECT OF LOSS**

Loss of authorized nonconforming status, whether by cessation and abandonment, casualty damage, or alteration that increases the degree of nonconformity, shall require the development to be removed or reconfigured in ways that conform to this Ordinance and prohibit the recommencement or replacement of the development in ways that are nonconforming with the standards of this Ordinance.

**CHAPTER 5. NONCONFORMITIES** § 5.3 Nonconforming Lots of Record  
Subsection 5.3.1. Applicability

**§ 5.3 NONCONFORMING LOTS OF RECORD**

**5.3.1. APPLICABILITY**

- A. A nonconforming lot of record is a lot that has been lawfully-established and recorded in the office of the Henderson County Register of Deeds, but that does not comply with the applicable dimensional requirements of the zoning district where located or that does not maintain access to the larger street network as required under this Ordinance.
- B. Lawfully-established nonconforming lots of record may be developed in accordance with the standards in this section.

**5.3.2. AUTHORIZATION FOR NONCONFORMITY NOT REQUIRED**

Nonconforming lots of record that are lawfully-established prior to (insert the effective date of this Ordinance) are not subject to the standards in Section <>, Authority to Become Nonconforming, though any development located upon a nonconforming lot of record is subject to the standards in Section <>, Alterations to Existing Development, or Section <>, Authority to Become Nonconforming, as appropriate.

**5.3.3. CREATION PROHIBITED**

- A. Except in accordance with Section <>, Governmental Acquisition of Land, in no instance shall a subdivision or other development approval sought under this Ordinance result in the establishment of a nonconforming lot of record.
- B. Development approvals granted after (insert the effective date of this Ordinance) that could result in a new nonconforming lot of record shall be null and void.

**5.3.4. DEVELOPMENT AUTHORIZED**

- A. Development existing on a nonconforming lot of record prior to (insert the effective date of this Ordinance) may continue in accordance with Section <>, Authority to Continue.
- B. Alterations or modifications to existing development on a nonconforming lot of record after (insert the effective date of this Ordinance) shall be subject to the standards in Section <>, Alterations to Existing Development.
- C. New development on an existing lot of record after (insert the effective date of this Ordinance) shall comply with all applicable requirements in this Ordinance.
- D. New structures proposed on a nonconforming lot of record after (insert the effective date of this Ordinance) that do not meet the required setbacks or other dimensional standards of the zoning district where located shall require approval of an Administrative Adjustment, Alternative Plan, Conditional Rezoning, or Variance, as appropriate.

**5.3.5. FURTHER SUBDIVISION LIMITED**

Subdivisions, recombinations, or changes to existing lot boundaries of a nonconforming lot of record proposed after (insert the effective date of this Ordinance) shall only be permitted in cases where such change reduces the level or degree of nonconformity.

**5.3.6. GOVERNMENTAL ACQUISITION**

Lawfully-established conforming lots subject to governmental acquisition of a portion of the lot for a public purpose and the acquisition renders the lot nonconforming with respect to the applicable dimensional requirements shall nonetheless be deemed conforming.

**5.3.7. SPECIAL PURPOSE LOTS**

In cases where a use or feature on a lawfully-established special purpose lot ceases or is abandoned, the special purpose lot shall be considered a nonconforming special purpose lot. Development on a nonconforming special purpose lot shall comply with all applicable dimensional requirements of the zoning district where it is located, or shall be subject to an approved Administrative Adjustment, Alternative Plan, Conditional Rezoning, or Variance.



**§ 5.4 NONCONFORMING SIGNS**

**5.4.1. APPLICABILITY**

The standards in this section shall apply to any nonconforming sign or sign-supporting structure that is authorized to be nonconforming in accordance with Section 6. Authority to Become Nonconforming, and that does not comply with applicable development standards in this Ordinance.

**5.4.2. MAINTENANCE ALLOWED**

- A.** This section permits routine maintenance and change of sign copy provided such changes do not impact the degree of nonconformity.
- B.** Maintenance does not include digitization or internal illumination of an existing sign that is not digital or internally illuminated as of the effective date of this Ordinance.

**5.4.3. RELOCATION, RECONSTRUCTION, OR RE-ESTABLISHMENT**

- A.** A lawfully-established and authorized nonconforming sign may be relocated, reconstructed, or re-established at any time provided:
  - 01.** The nonconforming sign remains on the same lot;
  - 02.** The nonconforming sign face area is not increased above what existed prior to relocation, reconstruction, or re-establishment;
  - 03.** The nonconforming sign's height is not increased; and
  - 04.** The relocation, reconstruction, or re-establishment is completed within two years of commencement.
- B.** Nonconforming aspects of the relocated, replaced, or re-established sign, such as structure, height, mounting style, illumination, color, or other features may be continued, but in no instance shall the new signage increase the level or degree of nonconformity.
- C.** In no instance shall a relocated, reconstructed, or re-established sign be permitted within:
  - 01.** Required sight distance triangles;
  - 02.** Public utility or access easements; or
  - 03.** Required open space set-aside.

**5.4.4. RELATIONSHIP TO ALLOWABLE CONFORMING SIGNAGE**

In no instance shall a lot with an authorized nonconforming sign also be permitted to have additional conforming signage of the same type to an extent beyond that permitted by this Ordinance.

**5.4.5. REZONING OF A LOT**

- A.** Rezoning approvals that would render an existing sign nonconforming shall not be permitted unless the nonconforming signage is removed prior to issuance of a Certificate of Occupancy on the lot where the nonconforming sign is located.
- B.** A Conditional Rezoning may include a condition of approval that addresses nonconforming signage.

**§ 5.5 NONCONFORMING STRUCTURES**

**5.5.1. APPLICABILITY**

The standards in this section shall apply to any nonconforming building or other non-habitable structure that is authorized to be nonconforming in accordance with Section 6. Authority to Become Nonconforming, and that does not comply with required setbacks, applicable dimensional requirements, or other applicable development standard in this Ordinance.

**5.5.2. CONTINUATION AND REPLACEMENT**

**A. CONTINUATION**

A nonconforming structure may be operated and continued in accordance with Section 6. Maintenance and Continuation of Authorized Nonconformities.

**B. REPLACEMENT**

- 01.** Replacement of a authorized nonconforming structure shall be permitted provided the replacement does not increase the level or degree of nonconformity.
- 02.** Replacements that seek to increase the degree of nonconformity shall require prior approval of an Administrative Adjustment, Alternative Plan, Conditional Rezoning, or Variance, as appropriate.

**C. RELOCATION**

A nonconforming structure shall not be moved, in whole or in part, to another location on the parcel of land on which it is located, unless the relocation removes or lessens the degree of nonconformity.

**5.5.3. ALTERATION AND EXPANSION**

- A.** No nonconforming structure may be altered in any way which increases the nonconformity; however, any nonconforming structure or portion thereof may be altered to decrease the degree of nonconformity.
- B.** Additions or expansions to a nonconforming structure that encroaches into a required setback may be permitted provided that no portion of the addition or expansion is closer to a lot line than the closest point of the existing nonconforming structure.

**5.5.4. COMPLIANCE WITH DESIGN STANDARDS**

In cases where an existing nonconforming structure pre-dates or is exempted from any applicable design standards in Chapter 6, Standards, any allowable modifications or expansions to the nonconforming structure shall also be exempted from the otherwise applicable design standards.

**5.5.5. RECONSTRUCTION FOLLOWING DAMAGE OR DESTRUCTION**

- A.** If a nonconforming structure is damaged or destroyed by any means to an extent of 51 percent or more of its assessed value, it may only be reconstructed in accordance with the requirements of this Ordinance.
- B.** The Planning Director may, in the Director's sole discretion and on a case-by-case basis, utilize the cost of replacement in lieu of assessed value in determining the ability of a damaged or destroyed nonconforming structure to be reconstructed.
- C.** A nonconforming structure damaged to an extent that the cost of reconstruction is less than 51 percent of its assessed value may be reconstructed.

**§ 5.6 NONCONFORMING USES**

The lawful nonconforming use of a structure, land, or water existing as of *(insert the effective date of this Ordinance)*, may only be continued in accordance with the standards in this section. The standards in this section shall apply to both principal and secondary uses, unless otherwise indicated.

**5.6.1. DECLARED INCOMPATIBLE**

All nonconforming uses are hereby declared generally incompatible with the permitted uses in the district in which they are located and with the provisions of this Ordinance.

**5.6.2. CONTINUATION ALLOWED**

Authorized nonconforming uses are allowed to continue and be maintained only in accordance with the requirements of this Chapter.

**5.6.3. USE SEPARATION REQUIREMENTS**

In cases where a use type is lawfully established and in compliance with the applicable standards of this Ordinance, and another use type is subsequently established within a minimum required separation distance required by Section 6. Standards for Specific Principal Uses, the initial existing use shall not be rendered nonconforming.

**5.6.4. PARTIAL NONCONFORMANCE**

In cases where the principal use of a lot is nonconforming, the entire use, including all related, partial, or secondary uses, or associated activities shall also be considered nonconforming.

**5.6.5. EXPANSION OR EXTENSION**

No expansion or extension of an authorized nonconforming use shall be permitted.

**5.6.6. CONVERSION**

No nonconforming use shall be converted to another nonconforming use. Nonconforming uses may only be converted to a conforming use.

**5.6.7. RECONSTRUCTION FOLLOWING DAMAGE OR DESTRUCTION**

- A.** If a nonconforming use is damaged or destroyed by any means to an extent of 51 percent or more of its assessed value, it may only be reconstructed in accordance with the requirements of this Ordinance.
- B.** The Planning Director may, in the Director's sole discretion and on a case-by-case basis, utilize the cost of replacement in lieu of assessed value in determining the ability of a damaged or destroyed nonconforming use to be reconstructed.
- C.** A nonconforming use damaged to an extent that the cost of reconstruction is less than 51 percent of its assessed value may be reconstructed.

**5.6.8. RESTORATION FOLLOWING ABANDONMENT**

Restoration of a nonconforming use following abandonment for a period for 180 days or more shall be prohibited unless the restoration renders the use conforming.



# CHAPTER 7 VIOLATIONS

## CHAPTER 7. VIOLATIONS

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### CHAPTER 7 VIOLATIONS – KEY CHANGES IN THE UDO

Chapter 7, Violations sets out the enforcement provisions for the Mills River UDO, and consolidates / replaces the enforcement provisions found in Section 151.999 Penalty in the Manufactured Home Parks Chapter, Section 153.999 from the Subdivision Chapter, Section 154.999 from the Zoning Chapter, Sections 156.028 and 156.029 from the Watersupply Watershed Chapter, and Article 4 Section D of the Town's new Hazard Prevention ordinance (becomes the Special Hazard Area Overlay).

Other key changes in this Chapter 7 include:

- Consolidation of the various enforcement provisions from four chapters of the Town Code + the new Hazard area provisions.
- Add clarity that the objective is to reach compliance not punish.
- A comprehensive list of generic violations.
- A comprehensive list of entities who may be held responsible for a violation.
- A detailed description of the enforcement procedure, including receipt of complaints and investigation.
- Details related to the filing of a written notice of violation.
- Enumeration of the range of remedies available to the Town for correcting violations.
- Increased clarity on the process for assessment and collection of civil penalties.
- Inclusion of the statute of limitations on enforcement under State law.
- Clarification that criminal penalties may only be assessed for certain violations of NCGS Chapter 160D, watersupply watershed protection, or the special hazard area overlay provisions.



## § 7.4 ENTITY RESPONSIBLE FOR VIOLATION

### 7.4.1. RESPONSIBLE FOR VIOLATION

Any of the following parties associated with or participating in a situation that is contrary to the requirements of this Ordinance may be jointly or separately held responsible for a violation and subject to the penalties and remedies provided in this Ordinance:

- A. A property owner(s);
- B. A tenant or occupant of any land, building, structure, sign, use of land, or part thereof;
- C. A permit or approval holder;
- D. A contractor or designated agent;
- E. An architect, engineer, or builder; or
- F. Any person conducting the violating activity.

### 7.4.2. FAILURE BY TOWN DOES NOT RELIEVE ENTITY

Except as authorized under Section <>, Statute of Limitations, failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate this Ordinance, or to deny the issuance of a development permit, shall not relieve the applicant or landowner from responsibility for the condition or damages that may result and shall not result in the Town, its officers, or agents being responsible for conditions or damages.

## § 7.5 GENERAL ENFORCEMENT PROCEDURES

When a Town official identifies or is made aware of a potential violation of this Ordinance, the enforcement procedure shall take place in accordance with this section.

### 7.5.1. COMPLAINTS

- A. Whenever the Planning Director or other designated Town official receives a complaint in a manner consistent with Town policy that alleges a violation of this Ordinance, the Planning Director or other designated Town official shall investigate the violation allegation in accordance with the standards in this section.
- B. The Planning Director, or other designated Town official, shall inform the complainant, if complainant has identified themselves, as to whether a violation of this Ordinance was discovered upon investigation, and if a violation is found to exist, the actions that will be taken by the Town to address the violation.
- C. Nothing shall limit the Planning Director or other designated Town official from investigating possible violations of this Ordinance without receipt of a written complaint.

### 7.5.2. INSPECTIONS AND INVESTIGATION

- A. The Planning Director or other designated Town official, as appropriate, shall have the power to conduct any lawful inspection and investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.
- B. In exercising these powers, the Planning Director or other designated Town official may enter any premises open to the general public and located within the Town's planning jurisdiction at all reasonable hours for the purposes of inspection or other enforcement action.

alleged violations, or determination of compliance or other enforcement action of this Ordinance.

- D. If the Planning Director or other designated Town official charged with enforcing this Ordinance seeks to enter a premises not open to the general public but cannot obtain permission to enter from a responsible entity, the Town shall obtain an administrative search or inspection warrant prior to entering the property.
- E. The Planning Director or other designated Town official shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, evidence, or reports relating to complaints or alleged violations of this Ordinance.

### 7.5.3. WRITTEN NOTICE OF VIOLATION OR CITATION

#### A. CONTENTS OF WRITTEN NOTICE OF VIOLATION

When the Planning Director or other designated Town official finds that a violation of this Ordinance exists, a written notice of violation shall be delivered to the responsible entity(ies). The notice of violation shall include all of following:

##### 01. VIOLATION EXISTS

That the land, building, structure, sign, or use is in violation of this Ordinance;

##### 02. NATURE OF THE VIOLATION

The nature of the violation, and citation of the section(s) of this Ordinance violated;

##### 03. REMEDY

The measures necessary to remedy the violation;

##### 04. TIME PERIOD FOR CORRECTION

The time period in which the violation must be corrected;

##### 05. PENALTIES THAT MAY BE ASSESSED

That penalties or remedies may be assessed if the violation is not addressed within the time period for correction; and

##### 06. APPEAL

That the responsible entity has the right to appeal the notice in accordance with Section <>, Appeal.

#### B. DELIVERY OF WRITTEN NOTICE

- 01. The notice of violation shall be delivered to the responsible entity and the landowner if the landowner is not the responsible entity, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity.
- 02. The notice of violation may be posted on the property.
- 03. The Town official providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.
- 04. In the case of notice for a potential soil erosion and sedimentation violation, notice shall be issued by any means authorized under NCGS§ 1A-1, Rule 4, pursuant to NCGS§ 113A61.1(c).

#### C. INITIAL NOTICE SHALL CONSTITUTE FINAL NOTICE

The initial written notice of a violation shall constitute final notice regarding a violation, though additional written notice may be provided, in the sole discretion of the Planning Director or other designated Town official.

### 7.5.4. REMEDY UPON NOTICE

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the time period for correction stated in the notice of violation.



### 7.5.5. FAILURE TO COMPLY

If the landowner or responsible entity fails to comply with a notice of violation from which no appeal has been taken, or fails to comply following a final decision by the Board of Adjustment on an appeal, the landowner or responsible entity shall be subject to such remedies and penalties as may be provided for by State law or Section <>, Remedies.

### 7.5.6. EACH DAY A SEPARATE VIOLATION

Each day a violation continues following notice for failure to comply is considered a separate and distinct offense.

## § 7.6 REMEDIES

Upon failure to address a notice of violation in accordance with this Ordinance, the Town may pursue any of the following remedies to correct the violation. Each of these remedies is cumulative and continuous to the maximum extent provided by State law. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

### 7.6.1. ASSESSMENT OF CIVIL PENALTIES

#### A. GENERALLY

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of the minimum amount per day specified in the Town's adopted schedule of fees and any other applicable enforcement provisions in this Ordinance and the Town Code of Ordinances.

#### B. NOTICE

##### 01. NOTIFICATION REQUIRED

Civil penalties may not be assessed until the responsible entity in violation has been notified in accordance with Section <>, Enforcement Procedure.

##### 02. CIVIL PENALTY IMPOSED

If, after receiving a written notice of violation under Section <>, Enforcement Procedure, the responsible party fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this Chapter.

##### 03. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

##### 04. ASSESSMENT CONTENTS

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the responsible party, and shall direct the responsible party to pay the civil penalty within 30 days of the date of the notice.

##### 05. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The Town may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

##### 06. ASSESSMENT UNTIL COMPLIANCE

Civil penalties may be assessed until compliance is achieved.

#### C. CONTINUING VIOLATION

For each day the violation is not corrected, the responsible party shall be subject to an additional and separate offense and subject to additional civil penalty.

#### D. DEMAND FOR PAYMENT

01. If compliance is not achieved, then the Town shall make a written demand for payment of penalties that have accrued while the property has been in violation.
02. The demand for payment shall be sent to the responsible party in violation and must include a description of the violation for which the civil penalties have been imposed.
03. Payment of the penalty shall not constitute a remedy for the violation.

### E. NONPAYMENT

If payment is not received or an equitable settlement reached within 30 days after demand for payment is made, the Town may recover any unpaid civil penalty by filing a civil action in the nature of debt.

### F. PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

### 7.6.2. CONDITIONED PERMIT OR CERTIFICATE

- A. The Planning Director or other designated Town official may condition a permit, authorization, or other approval for land, subdivision, building, structure, sign, use, or development activity on the correction of the violation, payment of civil penalties, and/or the posting of a compliance guarantee approved by the appropriate governmental authority.
- B. In no instance shall the authorization of any permit, certificate, or approval for one property with a violation or outstanding enforcement action be conditioned with the correction of a violation, payment of civil penalties within a specified time, or the posting of a compliance guarantee for a different property.
- C. In no instance shall the Town withhold a permit or Certificate of Occupancy on one lot or site for an applicant's failure to comply with the provisions of this Ordinance on a different lot or site.

### 7.6.3. CRIMINAL PENALTIES

#### A. GENERALLY

Criminal penalties may be assessed for any of the following violations, which shall be treated as misdemeanors under State law, or this Ordinance, as appropriate:

01. Transfer of lot ownership in an unapproved subdivision in accordance with NCGS§160D-402;
02. Certain violations of the State Building Code pertaining to unsafe structures in accordance with NCGS§160D-1125;
03. Violation of the SHAO standards in accordance with Section <>, Violation of SHAO District Controls; and
04. Violation of the WSPO standards in accordance with Section <>, Violation of WSPO District Controls.

#### B. UNLAWFUL TRANSFER OF LOTS OR BUILDING CODE VIOLATIONS

01. Any person who unlawfully transfers lots in an unapproved subdivision or who fails to comply with NCGS§160D-1125 pertaining to the State Building code shall, upon conviction thereof, be guilty of a Class 1 misdemeanor and fined not more than \$100.00.
02. Each day such violation continues shall be considered a separate finable offense.
03. Nothing herein contained shall prevent the Town of Mills River from taking such other lawful action as is necessary to prevent or remedy any violation.

#### C. VIOLATION OF OVERLAY DISTRICT STANDARDS

01. Violation of the Special Hazard Area Standards shall be a violation of this Ordinance subject to the remedies in Section <>, Violation of SHAO District Controls.
02. Violation of the Watersupply Watershed Protection standards shall be a violation of this ordinance subject to the remedies in Section <>, Violation of WSPO District Controls.

### 7.6.4. DENIAL OF PERMIT OR AUTHORIZATION

- A. The Planning Director or other designated Town official may withhold or deny a permit or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.
- B. In no instance shall the Town withhold issuance of a Building Permit or a Certificate of Occupancy for an applicant's failure to complete installation of required improvements or site features on a separate property subject to a different development approval.

# OPEN DISCUSSION



