



MILLS RIVER, NC

Development Regulations

This file contains a series of eight chapters from the Town Code of Ordinances. Together, these chapters constitute the Town's "Development Regulations." The chapters include:

- Chapter 30, Planning Board
- Chapter 111, Temporary Vendors
- Chapter 150, Building Regulations
- Chapter 151, Manufactured Home Parks
- Chapter 153, Subdivisions
- Chapter 154, Zoning
- Chapter 155, Vested Rights
- Chapter 156, Natural Resources

CHAPTER 30: TOWN ORGANIZATIONS

Section

Planning Board

- 30.01 Authority
- 30.02 Creation
- 30.03 Composition and appointment
- 30.04 Organization and rules
- 30.05 Effective date

PLANNING BOARD

§ 30.01 AUTHORITY.

This subchapter is enacted by the Town Council of the Town of Mills River pursuant to the authority granted in G.S. 160D-301. The Town Council of the Town of Mills River established and appointed a Planning Committee on July 17, 2003. The Planning Committee has functioned as the planning agency for the Town of Mills River within the intent and meaning of G.S. § 160D-301, and the Committee shall hereafter become and be the Planning Board as provided herein.

(Ord. 00002, passed 2-26-2004; Am. Ord. 2021-17, passed 10-14-2021)

§ 30.02 CREATION.

The Town Council of the Town of Mills River hereby establishes the Planning Board under the authority granted by and the mandate confirmed by the General Assembly of the State of North Carolina. The Board shall constitute, function and be referred to as the Mills River Planning Board.

(Ord. 00002, passed 2-26-2004)

§ 30.03 COMPOSITION AND APPOINTMENT.

(A) The Mills River Planning Board, hereinafter referred to as the Board, shall consist of 7 members.

(B) In the event of a vacancy on the Board, the Town Council shall appoint a new member to fill the unexpired term of the vacated position.

(C) All members shall serve without pay but may be reimbursed for any direct and reasonable expenses, following the town's established procedures concerning reimbursement, incurred while representing the Board. Regular attendance at all Board meetings is a requirement for membership on the Board, and a member may be replaced by the Town Council, within its sole discretion, if the member is absent for 2 consecutive Board meetings. The Chairperson of the Board, or his or her delegate, may give a member an exception to the attendance requirement for good cause.

(Ord. 00002, passed 2-26-2004; Am. Ord. 2021-17, passed 10-14-2021)

§ 30.04 ORGANIZATION AND RULES.

The Board shall operate in accordance with the current version of the Planning Board Charter and Rules of Procedure and any future amendments thereto.

(Ord. 00002, passed 2-26-2004; Am. Ord. 2021-17, passed 10-14-2021)

§ 30.05 EFFECTIVE DATE.

This subchapter shall take effect and be in full force and effect on and after the date of its adoption by the Town Council of the Town of Mills River.

(Ord. 00002, passed 2-26-2004)

CHAPTER 111: TEMPORARY VENDORS

Section

General Provisions

- 111.001 Title
- 111.002 Purpose
- 111.003 Definitions
- 111.004 Temporary vendor registration
- 111.005 Temporary vendor operations
- 111.006 Temporary vendor locations
- 111.007 Food parks
- 111.008 Fees

GENERAL PROVISIONS

§ 111.001 TITLE.

This chapter shall be known and may be cited as the “Temporary Vendor Ordinance of the Town of Mills River, North Carolina.”

(Ord. 2021-08, passed 4-22-2021)

§ 111.002 PURPOSE.

The provisions set forth in this chapter are designed to ensure that vending from vehicles, temporary structures and movable units within the jurisdiction of the Town of Mills River will be orderly, attractive and safe.

(A) Temporary vending and vending from movable units will be facilitated by permits issued by the Town.

(B) Food and other vending will be an established use and regulated based on this chapter and the Zoning Ordinance.

(Ord. 2021-08, passed 4-22-2021)

§ 111.003 DEFINITIONS.

For the purposes of this chapter and in the administration of the Zoning Ordinance, the following definitions shall apply.

FOOD PARK. A designated area where three to eight food trucks or trailers may park and vend.

FOOD STAND. A food business in a non-mobile structure with outdoor walk up service.

FOOD TRAILER. A mobile food business unit that can be hitched and towed by a vehicle.

FOOD TRUCK. A mobile vehicle supporting a food business.

TEMPORARY VENDOR. The individual or business operating under a temporary vendor permit.

TEMPORARY VENDOR SITE. Designated property where truck or trailer vendor may operate one unit.

(Ord. 2021-08, passed 4-22-2021; Am. Ord. 2023-01, passed 2-9-2023)

§ 111.004 TEMPORARY VENDOR REGISTRATION.

Temporary vendors must be registered with the Town of Mills River. There shall be no fee associated with this process.

(Ord. 2021-08, passed 4-22-2021)

§ 111.005 TEMPORARY VENDOR OPERATIONS.

Temporary vendors shall operate under the following conditions:

(A) Hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. except for special events operating under a temporary use permit.

(B) Food trucks and food trailers shall be parked on private property with the property owner’s permission and shall not be parked within any street, right-of-way or sidewalk area.

(C) Temporary vendors are responsible for the proper disposal of solid waste, wastewater and trash associated with the operation. Waste and trash shall be removed from the location of operation at the end of each day to maintain the health and safety of the public.

(D) No grease shall be disposed of in public places, streets, stormwater drainage system, or sanitary sewer system.

(E) Advertising and signage is limited to what is displayed on the vendor truck, trailer or structure and any permitted signs on the site of operation.

(F) Food vendors shall display or otherwise make available menu items and prices.

(G) Vendor operations shall be walk up arrangements only. Drive through operations are prohibited.

(H) Vendor operations as an accessory use shall not impede or otherwise compromise the vehicle access, pedestrian access or parking arrangements of principal uses on the same site.

(Ord. 2021-08, passed 4-22-2021; Am. Ord. 2023-01, passed 2-9-2023)

§ 111.006 TEMPORARY VENDOR LOCATIONS.

(A) Temporary vendors shall be permitted based on one of the following conditions:

(1) One to two food trucks or trailers on a single property or temporary vendor site as an accessory use under a commercial zoning permit.

(a) Example: A property with an existing principal commercial use may host one or two food trucks or trailers at a given time (vendors may change as often as desired).

(2) Food parks may be permitted only as a principal commercial use under a commercial zoning permit subject to § 111.007. Food parks may not be permitted as an accessory use .

(a) Example: A vacant parcel may be established as a food park with three to eight food trucks or trailers as the principal commercial use of the property, subject to the standards of § 111.007.

(3) As a special event not to exceed 72 hours.

(a) Special events may not be permitted for a given property more than four times per year.

(b) Applications for a special event must be submitted to the Town five days prior to the planned special event.

1. Example: Any property located within the appropriate zoning district may be permitted to host a special event consisting of multiple temporary vendors for a defined period of time, not to exceed 72 hours per event. This time shall be calculated from the event's scheduled start time, continuously, for 72 hours. The food park standards shall not apply to special events.

2. Example: An event is permitted to begin at 5:00 p.m. on a Thursday evening, it may last until 5:00 p.m. on Sunday.

(B) Temporary vendor sites shall only be designated in the Mixed Use (MR-MU), Light Industrial (MR-LI), Neighborhood Commercial (MR-NC) and General Business (MR-GB) zoning districts.

(C) Temporary vendor sites and the permitting thereof are the responsibility of the property owner or the business owner of the principal use on the site. Only registered temporary vendors may operate within the Town of Mills River.

(Ord. 2021-08, passed 4-22-2021; Am. Ord. 2023-01, passed 2-9-2023)

§ 111.007 FOOD PARKS.

Food parks shall be constructed and operated under the following conditions:

(A) Permanent restrooms and hand washing facilities shall be provided on site within a permanent structure.

(B) A minimum of two tables shall be provided per designated temporary vendor spot.

(C) One common sign is permitted per site.

(D) A minimum of four parking spaces shall be provided for each designated temporary vendor spot.

(E) Sites and structures must meet the requirements of the Zoning Ordinance.

(Ord. 2021-08, passed 4-22-2021; Am. Ord. 2023-01, passed 2-9-2023)

§ 111.008 FEES.

(A) Temporary vendor site permits are subject to the most recently adopted Town of Mills River Fee Schedule.

(B) Special events permits are subject to the most recently adopted Town of Mills River Fee Schedule.

(C) Food Parks are subject to the most recently adopted version of the Town of Mills River Fee Schedule.

(D) *Penalties.* If a temporary vendor site hosts a vendor without securing proper permitting, or hosts a vendor not registered with the Town , the temporary vendor site shall be subject to a penalty in addition to the original permit fee as outlined in the most recently adopted version of the Town of Mills River Fee Schedule.

CHAPTER 150: BUILDING REGULATIONS

Section

Generally

150.01 Prohibiting restrictions on agricultural land use

150.02 Enhanced voluntary agricultural districts

Entry Gates and Entry Boxes

150.15 Definitions

150.16 Design

150.17 Size of entry gate area

150.18 Enforcement and legal status

GENERALLY

§ 150.01 PROHIBITING RESTRICTIONS ON AGRICULTURAL LAND USE.

(A) The Town of Mills River shall not impose any regulation or restriction on the use of agricultural land which is more stringent than that imposed by the state of North Carolina or the United States of America. Agricultural land shall be defined to include "agricultural land, forest land, and horticultural land" as defined in G.S. § 105-277.2 and property used for bona fide "farm purposes" as defined in G.S. § 160D-903 . Those regulations and restrictions that are prohibited include but are not limited to those related to waste management, water quality, pesticide use, farm labor, hours of operation, water usage, stream buffers, storm water runoff, sounds and odors. This prohibition does not apply to any prohibition of, regulation of or limitation on nonagricultural activities occurring upon agricultural property .

(B) Nothing herein shall be construed to impose any restriction upon the ability of Henderson County to regulate land use or prohibit or regulate any activity within the Town of Mills River pursuant to any Henderson County Ordinance that is being administered or enforced by Henderson County within the Town of Mills River pursuant to an agreement between Henderson County and the Town of Mills River.

(C) Nothing herein shall be construed to impose any restriction upon the ability of the Town of Mills River to regulate land use pursuant to G.S. Chapter 160A and Chapter 160D as long as the regulation of agricultural land is not more stringent than that imposed by the state and federal governments.

(D) (1) The purpose of this section is to encourage the voluntary preservation and protection of farmland from nonfarm development, recognizing the importance of agriculture to the economic and cultural life of the Town of Mills River.

(2) Pursuant to authority conferred by G.S. Ch. 106, Art. 61, and for the purpose of promoting the health, safety, morals and general welfare of the Town of Mills River, this section shall be known as the "Voluntary Farmland Preservation Program Ordinance of Mills River, North Carolina."

(Ord. 00001, passed 9-11-2003; Am. Ord. 00086, passed 11-14-2013; Am. Ord. 2021-03, passed 3-25-2021)

§ 150.02 ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS.

(A) The purpose of Enhanced Voluntary Agricultural Districts within the Town is to provide, pursuant to G.S. § 160-743-1, *et seq.*, all of the benefits provided in Part 2 and Part 3, Article 61 of Chapter 160 of the North Carolina General Statutes.

(B) Enhanced Voluntary Agricultural Districts shall be established and administered within the Town of Mills River as provided in Chapter 45 of the Henderson County Code of Ordinances.

(C) The County Agricultural Advisory Board, established pursuant to § 45-3 of the Henderson County Code, shall serve as the agricultural advisory board for the Town of Mills River.

(D) An Enhanced Voluntary Agricultural District shall be established only after compliance with the requirements set out in Article IV and Article VII of Chapter 45 of the Henderson County Code of Ordinances.

(Ord. 00088, passed 3-13-2014)

ENTRY GATES AND ENTRY BOXES

§ 150.15 DEFINITIONS.

Except as otherwise defined in this section, all terms contained herein shall have their meaning as otherwise defined in the Mills River Town Code , or if not so defined, as commonly used. The following terms are specifically defined as follows:

ACCESS CONTROL DEVICE. Equipment and/or machinery that opens and closes an entry gate .

ENTRY GATE. Movable partition for controlling access and egress.

VEHICLE. Any motor vehicle which is allowed to use the public roadways in North Carolina, but not including vehicles which include trailers or semi-trailers.

(Ord. 00040, passed 4-12-2007)

§ 150.16 DESIGN.

(A) All subdivision or community entry gates constructed hereafter shall be setback sufficiently far from public road or street access to allow for the stacking of at least 50 feet out of the public travel lanes on the public road or street .

(B) All entry gates hereafter constructed shall have an additional setback between the point of the access control device and the entry gate to allow a vehicle which is denied access to safely turn around and exit onto a public street .

(C) Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

(D) Key boxes approved by the Fire Chief shall be installed on all new commercial and industrial uses and on existing uses where a nuisance or repeated alarms occur. Installation of the key box may be on access gates or other locations where access is delayed. Strip malls or commercial developments may have a centrally located key box where each business may locate a key. Multiple keys will require some identification as to which key corresponds to each business.

(Ord. 00040, passed 4-12-2007)

§ 150.17 SIZE OF ENTRY GATE AREA.

Entry gates shall have sufficient minimum gate width and opening to allow safe passage of all vehicles. Overhead barriers or obstructions shall provide a minimum 13' 6" vertical clearance at its lowest point. All new gates installed after this subchapter is adopted shall have a minimum width of 15 feet clearance through the gate. The Fire Chief may require modifications to existing gate structures to allow them to accommodate emergency vehicles.

(Ord. 00040, passed 4-12-2007)

§ 150.18 ENFORCEMENT AND LEGAL STATUS PROVISIONS.

(A) All plans for entry gates for which construction is not complete as of the adoption of this subchapter shall be subject to inspection by Mills River Fire and Rescue for compliance with the provisions. Once plans are approved, the entry gate shall be constructed in compliance with such plans.

(B) All entry gates for which construction is complete as of the adoption of this subchapter shall be retrofitted in such manner as to be in compliance with the terms of this subchapter within 6 months of the date of adoption of this subchapter .

(C) The developer and homeowners' association shall provide unfettered access to all private streets by emergency and law enforcement vehicles. Access procedures must ensure immediate access through the entry gates for emergency and law enforcement vehicles responding to emergencies without need of special keys or codes. This may be done by access control device approved by Mills River Fire and Rescue. The developer and homeowner's association shall provide and annually update documentation necessary to provide this access to Henderson County Sheriff's Department, Emergency Services, the Town of Mills River, and Mills River Fire and Rescue that proposed entry gates and access procedures meet all town standards for access by emergency and law enforcement vehicles. If the homeowner's association fails to maintain reliable access for the provision of emergency or other public services, the town may enter the gated residential, development and open, disable or remove any gate or device, which is a barrier to access, at the sole expense of the homeowners' association. The declaration of covenants, conditions and restrictions and any other relevant documents of the homeowners' association shall include a statement to this effect.

(D) The developer and homeowners' association shall guarantee reasonable access to all private streets by the Town of Mills River, Henderson County and State of North Carolina employees operating within the scope of their official duties to perform zoning, inspections and other governmental regulatory activities, and to all public utility companies to perform installation and maintenance activities of public utility infrastructure. A statement to this effect shall be filed with the Henderson County Sheriff's Department and appear on the final plat of all new development.

(Ord. 00040, passed 4-12-2007; Am. Ord. 2021-03, passed 3-25-2021)

CHAPTER 151: MANUFACTURED HOME PARKS

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GENERAL PROVISIONS

§ 151.001 TITLE.

This chapter shall be known and cited as the “Manufactured Home Park Ordinance of Town of Mills River, North Carolina.” (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.002 AUTHORITY.

This chapter is enacted pursuant to the authority and provisions of G.S. §§ 160A-174 and 160D-910. (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.003 PURPOSE.

The purpose of this chapter shall be to regulate and guide the development of manufactured home parks in order to promote the public health, safety and general welfare of residents of manufactured home parks and the citizens of the Town of Mills River.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.004 JURISDICTION.

The provisions of this chapter shall apply to all areas within the corporate boundaries of the Town of Mills River to the extent provided by the Town of Mills River Zoning Ordinance (see Chapter 154 of the Town of Mills River Code, as amended or replaced). In the event of a conflict between this chapter and the Zoning Ordinance for the Town of Mills River, the terms and provisions of the Zoning Ordinance shall prevail.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.005 MANUFACTURED HOME PARKS ALLOWED IN CERTAIN ZONING DISTRICTS AS A SPECIAL USE.

Manufactured home park developments may be located in the MR-30, MR-MU, and MR-NC subject to the approval of a Major Special Use Permit by Town Council in consideration of the recommendations of the Planning Board that certain conditions are met.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00052, passed 6-26-2008; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.006 CONFORMANCE WITH OTHER ORDINANCES.

(A) This chapter applies in areas under the jurisdiction of the Town of Mills River Zoning Ordinance to the extent allowed by the Zoning Ordinance.

(B) In the case of manufactured home parks proposed for development in designated water supply watershed areas, the parks shall conform to the requirements of the appropriate watershed district according to the terms of the Henderson County Water Supply Watershed Ordinance as amended as or replaced as well as to the standards of this chapter, and, in case of conflict, the most restrictive shall apply.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.007 DEFINITIONS.

For the purpose of this chapter, the following words shall have the meanings indicated:

APPLICANT. The legal owner of the real property to be developed for a manufactured home park who is responsible for submitting an application for a manufactured home park construction permit and upon whom final responsibility for ensuring compliance with the terms and conditions of this chapter rests. For purposes of submission and review of an application, an agent designated by the legal owner, in writing, will also be considered an **APPLICANT**.

APPLICATION. A manufactured home park construction permit application form, the site development plan and any other supporting documents.

BUILDING. Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or personal property. Two buildings connected by a common roof shall be considered as one (1) building, provided that the width of the connecting roof shall be at least 20% of the principal building width, but in no case less than 6 feet in width. The connection of two (2) buildings by means of an open porch, breeze way or passageway without a roof, or with a roof less than 6 feet in width, shall not be deemed to make them one (1) building.

BUILDING, ACCESSORY. A detached building subordinate to a main building or manufactured home for purposes customarily incidental to the main or principal building and located on the same lot or manufactured home space therewith.

CERTIFICATE OF COMPLETION (COC). A document issued by the Manufactured Home Park Ordinance Administrator to a manufactured home park applicant upon completion of the park, or phase thereof, which certifies that the park conforms to the requirements of this chapter. A **CERTIFICATE OF COMPLETION** is required in order to obtain manufactured home set-up permits or other building permits from the Henderson County Inspections Department.

COMMON AREA. Area set aside, dedicated or reserved for the use and enjoyment of residents of a manufactured home park. **COMMON AREA** may include space for community buildings, ponds, gardens, walking paths, outdoor play areas, swimming pools, ball fields, basketball courts, racquet courts, gazebos, picnic shelters, utility easements, and the like. Areas above subsurface sewage disposal systems or wells may, in some cases, also be used as **COMMON AREA**. Land within required building setbacks and separation areas, internal roads, exterior road rights-of-way, driveways, parking spaces, common storage facilities, laundry rooms, mail delivery areas, model homes, solid waste disposal areas and areas needed for aboveground utility facilities, including water supply or sewage disposal systems, shall not be considered **COMMON AREA**.

DRIVEWAY. An area used for ingress or egress of vehicles and allowing access from an internal road to no more than 2 dwelling units.

DWELLING UNIT. A building, or portion thereof, that provides complete and permanent living facilities for 1 family. Also known as a **UNIT**.

EASEMENT. A grant by the owner of property of the use of a strip of land for specified purpose and use by the public, a corporation or persons. **EASEMENTS** are typically granted (dedicated) for utility use and for ingress and egress such as a road easement, commonly referred to as a **RIGHT-OF-WAY**.

FAMILY. One or more persons living independently as a single housekeeping unit and using cooking facilities and certain rooms in common. A **FAMILY** shall not include a group occupying a boarding house, lodging house, club or fraternity house or similar dwelling.

LOT. A piece of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to same.

MAJOR PARK. Any manufactured home park consisting of 11 or more manufactured homes and/or spaces.

MANUFACTURED HOME. A single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976). For purposes of this chapter, however, the term includes **MOBILE HOMES** (see definition below).

MANUFACTURED HOME PARK (PARK). A tract of land designed to accommodate 3 or more manufactured or mobile home spaces, 3 or more manufactured or mobile homes or any combination of such for rent or lease. Notwithstanding the foregoing, manufactured home parks which consist of no more than 10 manufactured homes and in which all of the manufactured homes provide or are intended to provide migrant housing subject to and in accordance with the Migrant Housing Act of North Carolina (G.S. §§ 95-222 *et seq.*) are specifically exempted from the terms of this chapter.

MANUFACTURED HOME PARK CONSTRUCTION PERMIT. A permit issued by the Manufactured Home Park Ordinance Administrator to a manufactured home park applicant upon approval of a Special Use Permit by Town Council which certifies that the applicant may begin improvements to the park or phase site.

MANUFACTURED HOME PARK ORDINANCE ADMINISTRATOR (ADMINISTRATOR). An official or designated person (s) of the Town of Mills River authorized to review and approve applications and plans for manufactured home parks under the terms and conditions of this chapter. **THE MANUFACTURED HOME PARK ORDINANCE ADMINISTRATOR** may be the Zoning Administrator.

MINOR PARK. Any manufactured home park consisting of 10 or fewer manufactured homes and/or spaces.

MOBILE HOME. A transportable, factory- built home, designed to be used as a single-family residential dwelling and manufactured prior to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective on June 15, 1976.

OPERATOR. The person responsible for the operation of a manufactured home park .

PHASE. A portion of a manufactured home park delineated on the site development plan .

PLAN, SITE DEVELOPMENT. A graphic representation or map of the tract of land to be developed for a manufactured home park indicating all proposed uses of land, improvements and other general and specific information as may be required to fully disclose the applicant 's intentions.

RIGHT-OF-WAY. An easement for ingress and egress, such as a road easement . See **EASEMENT**.

ROADS, INTERNAL. Vehicular travelways located within a manufactured home park . **INTERNAL ROADS** may be of 2 types: collector roads or service roads.

(1) **INTERNAL COLLECTOR ROAD.** An internal road which serves 25 or more units or spaces and serves as the most probable and convenient route to and from any external road or street connected to the manufactured home park .

(2) **INTERNAL SERVICE ROAD.** An internal road which serves no more than to 24 units or spaces.

SEPARATION. The required minimum horizontal distance which must be reserved between the nearest vertical surface of a building and the applicable street right-of-way line, street , boundary line or other building or structure in which no other structure may be erected. However, for the purpose of this chapter, all structures attached to manufactured homes , including storage buildings , carports, covered or open porches, covered or open decks and steps, shall not be counted when measuring separation requirements from manufactured homes . See also **SETBACK, BUILDING**.

SETBACK, BUILDING. The distance from an established property boundary or other line defined in this chapter that establishes the buildable area on a lot and/or a manufactured home space . See also **SEPARATION**.

SEWAGE DISPOSAL SYSTEM. Any facilities for wastewater (sewage) collection, treatment and disposal. A **SEWAGE DISPOSAL SYSTEM** may be of the following types:

(1) **APPROVED PUBLIC OR COMMUNITY SEWAGE SYSTEM.** A single system of sewage collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility constructed and operated in compliance with applicable requirements of the North Carolina Division of Environmental Management.

(2) **MUNICIPAL SEWAGE DISPOSAL SYSTEM.** An approved public or community sewage system which is owned and operated by a county or municipality.

(3) **SEPTIC TANK.** A subsurface wastewater system consisting of a settling tank and subsurface disposal field.

SPACE, MANUFACTURED HOME. An area of land within a manufactured home park designed for the exclusive use of 1 manufactured or mobile home and associated accessory buildings . A space shall be defined on the ground by the presence of 2 or more of the following :

(1) A water supply system service connection;

(2) A sewage disposal system service connection; and

(3) Electric service equipment.

SPECIAL USE, MAJOR. A use that is not permitted by right, but is permitted after a review and finding by the Town Council that the use will meet all of the required general standards (see § 154.138) and the applicable specific site standards or site conditions.

STATE ROAD STANDARDS. Those standards contained in the NCDOT publication *Subdivision Roads - Minimum Construction Standards*, dated January 2010, as may be amended.

STREET, EXTERNAL. Vehicular travelway located outside of a manufactured home park that abuts the manufactured home park property .

STREET, MAJOR. An external street whose average daily traffic is greater than 4,000 vehicles per day.

STRUCTURE, ACCESSORY. See **BUILDING, ACCESSORY**.

TRACT. An area, site, piece of land or property which is the subject of a development application . A **TRACT** may contain 1 or more smaller parcels or lots all in the same ownership or control.

UNIQUE NATURAL AREAS. An area that contains features sensitive to development and is listed in the publication titled "Natural Areas of Henderson County, A Preliminary Inventory of the Natural Areas of Henderson County, North Carolina," by L.L. Gaddy, Ph.D., dated January 1994.

WASTEWATER. Any sewage or industrial process wastewater discharged, transmitted or collected from a residence, place of business, place of public assembly or other places into a sewage disposal (wastewater) system.

WATER SUPPLY SYSTEM. A system for the collection, treatment, storage and distribution of potable water from the source of supply to the consumer. A **WATER SUPPLY SYSTEM** may be of the following types:

(1) **MUNICIPAL WATER SYSTEM.** A public water system owned and operated by a local government.

(2) **PRIVATE WELL WATER SUPPLY.** Any water supply furnishing potable water to less than 15 residences or 25 persons .

(3) **PUBLIC WATER SYSTEM.**

(a) A system for the provision to the public of piped water for human consumption which serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

1. Any collection, treatment, storage or distribution facility under the control of the operator of the system and used primarily in connection with the system.

2. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

(b) A public water system is either a **COMMUNITY WATER SYSTEM** or a **NONCOMMUNITY WATER SYSTEM** as follows:

1. **COMMUNITY WATER SYSTEM.** A public water system which serves 15 or more service connections or which regularly serves at least 25 year -round residents.

2. **NONCOMMUNITY WATER SYSTEM.** A public water system which is not a community water system.

WATERSHED ADMINISTRATOR. An official or designated person of Henderson County responsible for the administration and enforcement of the Water Supply Watershed Protection Ordinance for Henderson County.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.008 CONFLICT WITH OTHER LAWS.

It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulations or permit previously adopted or issued pursuant to laws, except that should this chapter conflict with any applicable federal, state or local laws, the most stringent shall govern.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

APPLICATIONS, PLAN REVIEW AND APPROVAL

§ 151.020 APPROVAL/SPECIAL USE PERMIT REQUIRED.

No person , firm or corporation shall construct a manufactured home park within the jurisdiction of this chapter without first obtaining a Major Special Use Permit approval from the Town Council as defined in §§ 154.138 and 154.180. Upon approval by Town Council , the Manufactured Home Park Ordinance Administrator shall issue a notice to proceed in the form of a manufactured home park construction permit .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.021 APPLICATION PROCEDURE.

(A) *Planning conference.* A planning conference with the Administrator to acquaint the applicant with the approval process is required prior to submitting an application for a manufactured home park Major Special Use Permit . At the time of the conference, the applicant shall provide a general sketch for discussion and comment.

(B) *Application .* Prior to constructing a new manufactured home park or phase thereof or prior to expanding an existing park, an applicant shall submit a complete manufactured home park construction permit application (see Appendix B) along with 8 legible copies of the proposed site development plan , drawn at a scale of 1 inch equals 100 feet, a buffer plan (if applicable, per § 151.044), a detailed drainage plan (per § 151.050), a description of the solid waste disposal method (per § 151.061), plus required fees to the Administrator (see Appendix A for site development plan requirements).

(C) *Review procedure.* Major Special Use Permits go to Planning Board for recommendation, then to Town Council for an evidentiary hearing. Refer to § 154.138 and § 154.180.

(D) *Manufactured home park construction permit .*

(1) Application *approval*. If the application meets the requirements of this chapter, the Administrator shall issue the applicant a manufactured home park construction permit . The permit shall state the improvements that must be constructed by the applicant prior to issuance of a certificate of completion (see § 151.022).

(2) Application *approval with conditions*. If the application is approved with conditions, the Administrator shall provide the conditions to the applicant , in writing, within 10 days of the action. The applicant must fulfill all conditions before the Administrator may issue a manufactured home park construction permit . Any development activity started prior to obtaining the permit shall be at the applicant's risk and may be deemed a violation of this chapter.

(3) Application *denial*. If the application is denied, the Administrator shall inform the applicant , in writing, of the reasons for the denial within 10 days of the action. (See § 151.083, Appeals, for more information.)

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.022 COMPLETION OF IMPROVEMENTS.

(A) *Time period*. Upon issuance of a manufactured home park construction permit , the applicant shall have 2 years to complete construction of site improvements as stated in the permit for the park or phase thereof, except as otherwise noted in division (B) below. Extensions may be granted by the Administrator for good cause upon receipt of a written request from the applicant .

(B) *Site improvements*.

(1) Depending on the specifics of the application , a manufactured home park applicant may be required to construct or install the following improvements, in accordance with special provisions, in order to obtain a certificate of completion (see division (C) below).

- (a) Water supply systems ;
- (b) Sewage disposal systems ;
- (c) Fire protection improvements;
- (d) Drainage improvements;
- (e) Internal roads ;
- (f) Park identification signage; and
- (g) Buffers.

(2) Depending on the specifics of the application , a manufactured home park applicant may be required to construct or install the following improvements in accordance with special provisions. The improvements must be completed within 45 days of the date of issuance of a certificate of completion (see division (C) below).

- (a) Parking areas;
- (b) Driveways ; and
- (c) Improvements to common solid waste disposal areas.

(3) A manufactured home park applicant shall not be required to construct or install the following site improvements prior to obtaining a certificate of completion :

- (a) Improvements to common areas ;
- (b) Road name and regulatory signs; and
- (c) Nonresidential uses (such as laundry rooms, community buildings , park offices, and the like).

(C) Certificate of completion (COC) . Once the required site improvements for the park or phase thereof are complete and the applicant has provided evidence that property addresses have been assigned to each manufactured home and other buildings in accordance with § 151.056, the applicant shall apply to the Administrator for a COC (see Appendix C). The Administrator shall conduct a site inspection and either issue a COC or a list of remedial items to be satisfied before a COC will be issued. Once the applicant obtains and maintains a valid COC , he or she may lease spaces and he or she (or the operator or tenants , as applicable) may obtain set-up and building permits for manufactured homes and other buildings within the park.

(D) *As-built drawings*. One as-built drawing, at a scale of 1 inch equals 100 feet, of the completed park (or phase) shall be submitted to the Administrator at the time an applicant applies for a COC .

(E) *Inspection*. The Administrator (or his or her designee) is authorized to make the inspections of manufactured home parks as necessary to ensure compliance with this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.023 AMENDMENTS TO PARK DEVELOPMENT PLAN.

Minor changes in the location, siting or character of manufactured homes or other structures may be authorized by the Administrator if required by engineering or other circumstances not foreseen at the time the plan was approved, provided that the changes are within the minimum or maximum requirements set forth in this chapter. An applicant proposing to increase the number of units or to construct buildings (other than accessory buildings for individual manufactured homes) not originally shown on the site development plan shall submit a revised plan for approval by the Administrator under the terms of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

SITE DEVELOPMENT AND IMPROVEMENT STANDARDS

§ 151.040 PHASING.

Manufactured home parks may be developed in phases of at least 3 units, except when less than 3 spaces remain to be developed.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.041 ROAD FRONTAGE AND OFF-SITE ACCESS.

(A) Any tract of land to be developed as a manufactured home park must either have frontage on a public (state - maintained) road or have a private right-of-way corridor to the property. The minimum required length of the public road frontage or width of the private right-of-way corridor (at its narrowest point) shall be 30 feet.

(B) Off-site access shall have a minimum 20 foot cleared, unobstructed corridor, with a vertical clearance of at least 13 feet, 6 inches, to allow passage of emergency vehicles. The grade of any road, existing or proposed, within an off-site private right-of-way corridor used to access a manufactured home park shall not exceed 18% if the road is paved. If the road is not paved, the grade shall not exceed 15%.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.042 DENSITY.

(A) The maximum permitted overall density for manufactured home parks is 4 units per acre. The applicant shall provide common area, as defined in §151.007 and in accordance with §151.043, and a buffer, in accordance with §151.044.

(B) The acreage of the entire area within the boundary of a manufactured home park, including areas to be designated as common area, shall be used to determine the overall density of a park. Other standards in this chapter as well as requirements of the Henderson County Department of Public Health or other agency may also affect the density.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.043 COMMON AREA.

(A) Manufactured home parks shall contain a minimum of 400 square feet of common area per manufactured home space. Common area shall be accessible for the use and enjoyment of park residents and shall be maintained in good condition by the park applicant. All common area shall be designated as such on the site development plan submitted with the application for a manufactured home park construction permit.

(B) *Conveyance of open space, recreational areas and communally owned facilities.*

(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance improvement, running with the land for the benefit of residents of the manufactured housing development or adjoining property owners or both.

(2) The applicant must submit to the Town Council the legal documents which will produce the aforesaid guarantees and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

(C) *Maintenance.*

(1) Manufactured home parks shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable.

(2) The developer shall either:

(a) Maintain responsibility for maintenance and upkeep of open space, recreational areas, and communally owned facilities as described in this section through a management company or some other similar means, or

(b) Create an owner's association for maintenance and upkeep of open space, recreational areas, and communally owned facilities as described in this section. All lot owners must be part of the owner's association and must be set up before the lots are sold. A copy of the by-laws of the owner's association must be submitted to the Town Attorney for review and approval.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.044 LANDSCAPING AND BUFFERS.

(A) *Landscape plan.* The proposed development shall be designed as a single architectural scheme with appropriate common landscaping. Landscaping shall meet the requirements of §§ 154.230 through 154.237. The applicant shall include with the application for a manufactured home park construction permit a landscape plan, including a general description of the materials to be used and where the materials shall be planted. The required landscaping must be installed for the entire park or phase thereof prior to issuance of a certificate of completion by the Administrator.

(B) *Buffers.* Manufactured home parks shall provide a buffer of planted vegetation which shall serve as a partial visual screen to separate different densities of land use. The buffer shall be provided along the perimeter of the park, except where ingress and egress to the park is provided. Buffers shall be allowed within the building setback from the perimeter of the park. Planted buffers shall not be allowed within the right-of-way of any public road.

(1) *Materials.* Trees and shrubs shall be used with approval of the Administrator. At the time of planting, shrubs shall be at least 1 gallon container plants and trees shall be at least 4 feet in height, measured from ground level.

(2) *Method.* At least 5 trees and 10 shrubs shall be planted around the perimeter of the park for every 100 feet of the perimeter. The materials may be planted in a line or staggered. In addition, for each 100 linear feet of perimeter, up to 50% of the trees and 50% of the shrubs may be grouped; however, the remaining required materials must be evenly distributed along the perimeter.

Retention of existing vegetation which would provide an equivalent buffer is encouraged. The Administrator shall have the authority to determine if existing vegetation fulfills the intent of the buffer requirement or if additional vegetation should be planted.

(C) *Maintenance.* Landscaping shall be placed and maintained in common area as described in § 151.043. Deteriorating materials or materials which are removed or altered shall be replaced in a timely manner. Replacement materials shall conform with the standards of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.045 SEPARATION, DIMENSIONAL, AND DESIGN REQUIREMENTS.

The following separation, dimensional, and design requirements shall apply to manufactured home parks, except that all structures attached to a manufactured home, including storage buildings, carports, covered or open porches, covered or open decks and steps, shall not be considered part of a manufactured home for purposes of determining separation requirements (see definition).

(A) The minimum tract for development of a manufactured home park is 1.5 acres.

(B) The maximum density of a manufactured home park is 4 units per acre.

(C) The minimum lot width for a manufactured home park development is 30 feet of frontage along a public right of way or a 30 foot wide easement to a publicly owned and maintained road.

(D) All manufactured homes and other buildings, including those which are accessory to individual manufactured home units, shall be located at least 50 feet from any frontage and 25 feet from any side or rear property line or other boundary defining the perimeter of the manufactured home park.

(E) All manufactured homes shall be located at least 30 feet from the center line of internal collector roads and at least 25 feet from the center line of internal service roads.

(F) Within a manufactured home park, each manufactured home shall be separated from any other manufactured home by a minimum of 20 feet "short" end to "short" end, 30 feet "short" end to "long" side, and 30 feet "long" side to "long" side.

(G) The separation between buildings and water supply systems and/or sewage disposal systems shall be as required by regulations of the Henderson County Department of Public Health and the State of North Carolina.

(H) The minimum footprint for a manufactured home is 14 feet by 70 feet.

(I) Each footprint must have a permanent foundation.

(J) Underpinning for each unit shall be brick or other approved masonry product.

(K) All accessory buildings (detached from units) for individual manufactured home units shall be located at least 20 feet from any manufactured home or other building on a neighboring space or lot. There is no minimum separation between a manufactured home and its own accessory buildings.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.046 MUNICIPAL WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM CONNECTION REQUIREMENTS.

(A) *Generality.* Manufactured home parks shall be required to connect to existing municipal water supply and municipal sewage disposal systems when the systems are located within the distance equal to that specified herein of the parks. The distance requirements shall be measured along existing public rights-of-way and/or utility easements. New phases of

manufactured home parks existing at the date of enactment of this chapter shall also meet this requirement.

(B) *Municipal water supply system distance requirement.* A park shall connect to a municipal water supply system when the system is located within a distance equal to the product of 100 feet multiplied by the number of spaces proposed for the park. However, if a park is located more than 5,000 feet from an existing municipal water supply system, the connection shall not be required.

(C) *Municipal sewage disposal system distance requirement.* A park shall connect to a municipal sewage disposal system when the system is located within a distance equal to the product of 50 feet multiplied by the number of spaces proposed for the park. However, if a park is located more than 2,500 feet from an existing municipal sewage disposal system, the connection shall not be required.

(D) *Exceptions.* Exceptions to these provisions may be allowed on the basis of terrain, availability or ease of acquiring easements, denial of allocation by the public utility, insufficient capacity of the municipal system or other circumstances that are unusual or unique to the site. Requests for exceptions must be made, in writing, to the Administrator who may ask that the requests be supported by a professional engineer's review of the manufactured home park plans and planned route of the utility extension. Where the Administrator finds that it would not be economically feasible for a manufactured home park to be connected to a municipal water supply and/or sewage disposal system, other systems may be used, subject to approval by the Henderson County Department of Public Health and the appropriate state agencies.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.047 FIRE PROTECTION.

Manufactured home parks proposed to be served by a municipal water supply system shall meet the minimum requirements of the system owner for fire hydrant installation. For a manufactured home park without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system if recommended by the Fire Marshal. The Fire Marshal shall determine the type and location of such a system. A road providing all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.048 UTILITY REQUIREMENTS.

(A) Utilities located in the interior of the manufactured home park must be underground. The applicant should discuss with utility providers whether easements must be provided and, if so, at what size and location. The easements should be shown on the site development plan.

(B) Exterior lighting is required for all manufactured home park developments. Street lights shall be shown on the development plan and shall be in accordance with local utility provider specifications. All other outdoor lighting must be located, screened, or shielded in order to prevent direct glare onto neighboring lots.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.049 EROSION AND SEDIMENTATION CONTROL.

Where required under the North Carolina Sedimentation Pollution Control Act of 1973, evidence of approval of an erosion and sedimentation control plan by the North Carolina Department of Environment and Natural Resources, Land Quality Division, shall be submitted prior to issuance of a manufactured home park construction permit.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.050 STORMWATER DRAINAGE.

Stormwater drainage improvements shall be designed and constructed to minimize erosion and downstream sedimentation, to follow natural drainage where possible, to minimize flooding or standing water conditions, to maintain desirable groundwater conditions and to avoid excessive stormwater discharge to sensitive natural areas. Points of stormwater discharge shall be within the manufactured home park site unless otherwise approved by the Administrator and adjoining property owners. Stormwater control devices shall be properly maintained by the park applicant. A detailed drainage plan shall be submitted as part of the site plan application for manufactured home parks. The plan shall show the general drainage patterns of the manufactured home park. Where the drainage of the manufactured home park does not follow the natural drainage of the property, the applicant shall design the new drainage systems, including swales, ditches, pipes, culverts, detention ponds, lakes or similar devices, to minimize any adverse effect on the proposed manufactured home park and on adjacent and downstream properties. The plan shall include the location, type and size of existing and proposed stormwater drainage improvements.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.051 PARKING.

Two off-street parking spaces shall be provided and maintained for each manufactured home space. Parking spaces shall, at a minimum, be constructed using 3 inches of crushed stone on a well-compacted subbase.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.052 DRIVEWAYS.

No more than 2 spaces may be served by a common driveway . Driveways shall be at least 10 feet in width and shall be constructed using a minimum of 3 inches of crushed stone on a well-compacted subbase.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.053 INTERNAL ROAD CONSTRUCTION STANDARDS.

(A) Access to all manufactured homes and other structures within a park shall be made using internal roads . The maintenance of internal roads and drainage facilities shall be the responsibility of the manufactured home park applicant . For the purpose of this chapter, the location of the driveway entrance for a manufactured home space determines which type of road, collector or service, serves the unit.

(B) Construction standards are as follows:

Table 1

Internal Road **Construction Standards**

<i>Road Classification</i>		
<i>Item</i>	<i>Collector</i>	<i>Service</i>
<i>Road Classification</i>		
<i>Item</i>	<i>Collector</i>	<i>Service</i>
Number of spaces/units served	25 +	1 to 24
Maximum grade stone surface	12%	15%
Paved (asphalt) surface	16%	18%
Minimum road width	18 feet	18 feet
Shoulder width	4 feet	4 feet
Stone base (ABC*) compacted	8 inches	
Minor parks	4 inches	
Major parks	6 inches	
Asphalt	Not required**	Not required**
Cut and fill slope	2:1	1.5:1
Ditch slope	4:1	3:1
Notes: * ABC = Aggregate Base Course, No. 7 stone. ** Paved roads, if used, shall meet the minimum state road standards for local residential subdivision roads.		

(1) *Road construction.* All roads must be constructed with suitable stone and shall be properly compacted. Used asphalt is unacceptable as a base course. The subgrade must be of a soil capable of supporting the road above. The road should be built so that water will drain from the road surface into side ditches. Because of the difficulty of operating vehicles and moving manufactured homes on steep grades and because of the high potential for erosion, roads should be constructed along the contour of the land where possible. Maximum road grades shall be as provided in Table 1. If a combination of paved and stone-based roads is proposed, the paved sections must extend 50 feet from any point where the grade exceeds the minimum for a stone-based road. The Administrator may require that a professional engineer or surveyor certify on an as-built drawing that no portion of any internal roads have grades exceeding the maximum allowed by this chapter.

(2) *Road drainage and culverts.* All internal roads shall be provided with appropriate drainage facilities (see also § 151.050). Road drainage structures shall be constructed in accordance with minimum state road standards . Road drainage side ditches shall have sufficient depth and width to carry the expected volume of stormwater runoff. Where roads cross streams or minor watercourses, culverts shall be designed and installed in accordance with minimum state road standards .

(3) *Turnarounds.* A cul-de-sac or other turnaround approved by the Administrator is required on any internal road which serves 10 or more spaces. Culs-de-sac shall have a minimum radius of 35 feet. Culs-de-sac and other approved turnarounds shall be surfaced with the same material required on the road they serve.

(4) *Vertical clearance.* All internal roads , including shoulder areas, shall have a minimum vertical clearance of 13 feet, 6 inches, to allow for the passage of emergency vehicles.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.054 ROAD NAMES.

The site development plan shall show names, approved by the Henderson County Property Addressing Office, for all proposed internal roads which serve 3 or more spaces.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.055 ROAD NAME SIGNS AND OTHER REGULATORY SIGNS.

The applicant shall provide road name signs in accordance with the Henderson County Property Addressing Ordinance and regulatory signs (such as "stop" signs) in accordance with applicable state and county policies.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.056 PROPERTY ADDRESSING.

Prior to issuance of a certificate of completion by the Administrator, the applicant shall provide evidence that each manufactured home space and other building, as necessary, has been assigned a property address number by the Property Addressing Office. The address (number) shall be affixed to the manufactured home so that it is clearly visible from the internal road or driveway serving the space.

(Ord. passed, 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.057 PARK IDENTIFICATION SIGN.

Major parks shall provide at least 1 sign displaying the name of the park at each entrance. The park name shall not duplicate or closely resemble the name of any existing housing development located in Henderson County. Park name signs shall be at least 1 foot in height by 3 feet in width. Park identification signs shall not be located within the right-of-way for any road.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.058 MANUFACTURED HOME PARK NAME.

In order to avoid possible confusion for emergency services personnel, the applicant shall choose a name for the manufactured home park which does not duplicate or closely resemble the name of any existing road, subdivision, existing manufactured home park or other housing development located in Henderson County.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.059 SETUP.

All manufactured homes within a manufactured home park shall be set up in accordance with the standards set by the North Carolina Department of Insurance Regulations for Manufactured/Mobile Homes.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.060 NONRESIDENTIAL USES.

(A) Convenience establishments of a commercial nature, such as coin-operated laundries, food stores, common storage units, and the like, may be permitted in manufactured home parks subject to the following conditions:

- (1) The uses shall be subordinate to the residential use and character of the park.
- (2) The uses shall present no visible evidence of their commercial character to adjacent properties.
- (3) The uses shall be designed to serve the needs of park residents only.
- (4) The uses shall be designed to be in harmony with the development, including traffic flow, parking, and the like.
- (5) The uses shall be shown on the site development plan at the time of application.

(B) Model manufactured home units may be located in a manufactured home park if they are set up properly as dwelling units and if they conform to all other standards of this chapter. The standards in divisions (A)(1), (2) and (4), above, shall also apply to model units.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.061 SOLID WASTE DISPOSAL.

Each manufactured home park shall provide a suitable method of solid waste disposal and collection consisting of either private collection from individual manufactured homes or the use of bulk containers (dumpsters). The method shall be in conformance with the Henderson County Solid Waste Ordinance, and a description of the method shall be submitted as part of the application process.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.062 UNIT TYPE.

No more than 25% of the spaces in a newmanufactured home park or in an expansion to an existing manufactured home park shall be occupied by mobile homes , as defined in this chapter. For purposes of determining the percentage ofmobile homes allowed in an expansion, only the units added as a result of the expansion are used in the calculation.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.063 BEGINNING A PARK.

It is specifically noted that the establishment of 2 spaces and/ormanufactured homes on a tract of land is not considered a manufactured home park and the development is not subject to the requirements of this chapter. However, if the development is expanded and results in 3 or more spaces and/or manufactured homes on a tract of land, the development, including the first 2 spaces and/or units, shall be considered a manufactured home park as defined by this chapter and shall be subject to the standards in this chapter. In zoned areas, the development shall be subject to the applicable standards of this chapter and to the standards of the Town of Mills River Zoning Ordinance. Compliance with the standards of this chapter, and the Zoning Ordinance if applicable, is therefore encouraged if there is any possibility that a manufactured home park will be established. In no case, however, shall either of the first 2 units be required to be moved in order to achieve compliance with standards of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.064 EXPANSION OF MINOR PARK TO MAJOR PARK.

If expansion of a minor park developed under this chapter results in 11 or more spaces and/or manufactured homes on a tract of land, the development, including the first 10 spaces and/or manufactured homes , shall be considered a major park as defined by this chapter and shall be subject to all of the standards in this chapter, including those for major parks . Compliance with the major park standards of this chapter is therefore encouraged if there is any possibility that a major park will be established. In no case, however, shall any of the first 10 units be required to be moved in order to achieve compliance with standards for major parks in this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

ADMINISTRATION

§ 151.080 PREEXISTING/NONCONFORMING MANUFACTURED HOME PARKS.

(A) Any manufactured home park , as defined by this chapter, existing on the effective date of this chapter or any subsequent amendment thereto may continue to operate without being subject to the requirements of this chapter, unless expansion is proposed (see § 151.081).

(B) Manufactured home parks existing prior to the effective date of this chapter (“preexisting manufactured home parks ”) must have registered with the Henderson County Planning Department before January 1, 2000. Any preexisting manufactured home park which is not registered may be subject to the provisions of this chapter. Preexisting manufactured home parks registered with the Planning Department may be expanded, provided that any such expansion shall be in accordance with the requirements of this chapter.

(C) A manufactured home park space shall be considered preexisting if, on the effective date of this chapter, the space:

- (1) Contains an occupied manufactured home ; or
- (2) Is defined on the ground by the presence of 2 of thefollowing :
 - (a) A water supply system service connection;
 - (b) A sewage disposal system service connection; and
 - (c) Electric service equipment.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.081 EXPANSION OF EXISTING MANUFACTURED HOME PARKS.

The addition of any new spaces to amanufactured home park existing prior to enactment of this chapter, except as provided in division (A) below, shall be considered an expansion of the park and shall be subject to the requirements of this chapter.

(A) *Infilling.* If a preexisting manufactured home park is to be expanded but the expansion does not require the construction of new internal roads to serve the new spaces, the development will not be required to comply with the requirements of this chapter, provided that all of the following conditions are met:

- (1) The development must occur within the boundaries of the existing park;
- (2) The number of new spaces shall not exceed more than 33% of the existing spaces; and
- (3) The setbacks for manufactured home units set up on newly created spaces shall not exceed the average setbacks

of existing units located wholly or in part within 100 feet on each side of the new space and which front on the same road as the new space.

(B) *Other expansions.* If expansion of a preexisting manufactured home park involves new internal road construction, the new development will be considered a new phase and shall comply, to the extent possible, with the requirements of this chapter. The compliance shall be determined by the Administrator on a case-by-case basis; however, compliance will not require that any existing units be relocated.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.082 WAIVER OF REQUIREMENTS.

Town Council may approve variations or modifications of any regular provision of this chapter as part of the Major Special Use Permit process defined in § 154.180.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.083 APPEALS.

Appeals from decisions of the Mills RiverTown Council shall be made to the Superior Court of Henderson County in the nature of certiorari. An applicant shall file an appeal by giving written notice to the Administrator within 30 days of the decision of the approval authority. A petition for writ of certiorari in the Superior Court must be filed with the Clerk of Superior Court within 30 days after a decision of the Town Council. Unless otherwise ordered by a court of competent jurisdiction, this chapter may be enforced pursuant to §§ 151.084 and 151.085 while any appeal under this section is pending.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.084 REVOCATION OF CERTIFICATE OF COMPLETION.

(A) Failure to comply with any of the requirements of this chapter or with any permit issued pursuant to this chapter may subject the manufactured home park applicant to revocation of the certificate of completion (COC) in accordance with this section.

(B) If the Administrator finds a park to be in violation, he or she shall notify the applicant, in writing. The notice shall state the specific violations and set reasonable time limits for corrective actions and subsequent inspections. In the event that the applicant takes no action to correct violations, the Administrator shall notify him or her, by certified mail, that the COC for the park will be revoked at the close of 10 business days from the date of the written notice. Should the applicant correct the violations prior to the COC being revoked, he or she shall request that the Administrator conduct an inspection. If the Administrator finds that the park is no longer in violation, he or she shall notify the applicant that the COC will continue to be valid. If the violations have not been remedied, the COC shall be revoked. The revocation and the reasons for such shall be made in writing to the manufactured home park applicant.

(C) If a COC has been revoked:

(1) The applicant shall not rent or lease any vacant spaces until the violations have been corrected and the COC is reinstated.

(2) The applicant shall notify each renter/lessee of a space within the park within 10 days after receiving written notification that the COC has been revoked. The applicant shall provide the Administrator with a signed statement from each renter/lessee indicating that notice from the applicant has been received. Any lease that is renewed after revocation of the certificate of completion shall be at the renter's/lessee's own risk.

(D) The Administrator may revoke a COC for violations of any part of this chapter, except for those regulated by the Henderson County Health, Inspections or Solid Waste Departments. In these cases, the Administrator shall work with the other departments regarding the revocation of a COC.

(E) A COC may be reinstated if the manufactured home park applicant applies to the Administrator and the Administrator finds that the park is in compliance with the regulations for which the COC was revoked.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.085 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.086 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.087 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.088 FORMS.

Any forms or checklists listed in the Appendices of this chapter are general in nature and may be modified by the Administrator, Planning Board or Town Council as necessary.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.089 FEES.

Reasonable fees for applications and revisions thereto, certificate of completion inspections, reinspections and variances under this chapter may be set by the Mills River Town Council. See fee schedule posted in Mills River Town Hall.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

§ 151.090 AMENDMENTS.

The Mills River Town Council may, from time to time, amend the terms of this chapter, but no amendments shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have 2 regularly scheduled meetings from the time a proposed amendment is submitted to it within which to submit its recommendation. No amendment shall be adopted by the Town Council until it has held a legislative hearing on the amendment. Notice of the legislative hearing shall comply with the provisions of G.S. § 160D-601, as amended.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

§ 151.999 PENALTY.

The construction of a manufactured home park in violation of this chapter, or failure to comply with any of the requirements of this chapter or with any permit issued pursuant to this chapter subject the applicant, the manufactured home park owner and/or developer to revocation of the permit (See §81-11.) and the penalties and enforcement provisions pursuant to G.S. § 160A-175, including, but not limited to, the following :

(A) *Equitable remedies.* This chapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this chapter may be enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

(1) *Injunction.* Where necessary to effectuate compliance with this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this chapter. The action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions herein.

(2) *Order of abatement.* Where necessary to abate a condition existing upon land in violation of this chapter or a use made of land in violation of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this chapter. The action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this chapter.

(3) *Other equitable remedies.* This chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

(B) *Civil penalties.* Any individual who is found in violation of this chapter may be subject to a civil penalty of \$50 or other amount as established by Town Council. Each day's violation shall be treated as a separate offense.

(1) *Notice of violation.*

(a) Upon making a determination that a person is in violation of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances shall issue a notice of violation to the owner of the property in violation of this chapter in accordance with § 154.999. The notice shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. The notice shall further identify the action which is necessary to comply with this chapter. The notification shall state that if the violator does not comply within a reasonable time, not to exceed 30 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 30 days, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may grant an extension of time after which the individual will be subjected to a criminal penalty commensurate with the magnitude of the violation. The notice of violation shall further state that failure to comply with the terms of the notice of violation will subject the violator to a civil penalty and shall further state the amount of the civil penalty.

(b) Failure to comply with the terms of a notice of violation issued by the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances within the time stated in the order shall subject the violator to a civil penalty of \$50 or other amount as established by Town Council. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to an additional civil penalty for each separate offense.

(2) *Civil action.* When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties by the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances.

(C) *Criminal penalties.* Unless otherwise provided by this chapter or other applicable law, violation of this chapter shall constitute a Class 3 misdemeanor punishable by a fine not to exceed \$500. Each day's violation shall be treated as a separate offense.

(1) *Warning ticket.* Upon the initial violation of a particular provision of this chapter, an individual may be issued a warning ticket or notice of violation. The warning ticket shall identify the particular practice which is in violation of this chapter and shall state the time, date and place of the violation. The warning ticket shall further state that if the individual commits further similar violations within the 6 months following the date of the warning ticket, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may issue a notice of violation or cause a warrant to be issued for the individual's arrest.

(2) *Warrant.* If an individual violates this chapter within the 6 months following the issuance of a warning ticket or notice of violation in a manner that is similar to the violation specified in the warning ticket or notice of violation, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may cause a warrant to be issued for the arrest of the individual.

(3) *Enforcement.* Notwithstanding any other provisions of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may issue a notice of violation or cause a warrant to be issued without having first issued a warning ticket where he or she deems it necessary to effectively enforce the terms of this chapter.

(D) *Revocation of development approvals.* In addition to initiation of enforcement actions, development approvals may be revoked by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable element of this chapter; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable state law or local ordinance may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. § 160D-405.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016; Am. Ord. 2021-03, passed 3-25-2021)

APPENDIX A: MANUFACTURED HOME PARK SITE DEVELOPMENT PLAN REQUIREMENTS

Section

Per § 151.021(B) of the Manufactured Home Park Ordinance, a manufactured home park developer shall submit 8 legible copies of the proposed site development plan, drawn at a scale of 1 inch equals 100 feet. The following information shall be indicated on the proposed site development plan or presented in supporting documents, if necessary. Each document submitted must be clearly labeled with the name of the developer, the manufactured home park name (including phase number, if applicable), and the date. Applicants for minor parks shall not be required to provide items marked below with an asterisk ().*

(A) General Legend:

- (1) Scale (1 inch = 100 feet).
- (2) North arrow.
- (3) Property owner's name and address.
- (4) Applicant's name and address (if different from property owner).
- (5) Vicinity map showing general location of project site in relation to surrounding area road network.
- (6) Phase map showing location of subject phase within the overall development (if applicable).
- (7) Key to symbols, lines and other features used on plan.

(B) Title Block:

- (1) Park name (including phase number and range of space numbers, if applicable).
- (2) Title of plan (site development plan).
- (3) Name, address and phone number of individual or firm preparing plan elements.
- (4) Date of plan (and revision dates, if applicable).
- (5) Tax parcel identification number for each parcel within the manufactured home park or phase thereof.

(C) Plan Details and Site Characteristics:

- (1) Boundary lines of the proposed manufactured home park or phase thereof.
- (2) Topographic contours at 20 foot whole intervals or as otherwise available from United States Geologic Survey (USGS) or Tennessee Valley Authority (TVA) maps*.
- (3) Location, names and state road numbers (if applicable) of existing streets /roads (including rights-of-way) inside the manufactured home park .
- (4) Location, names and state road numbers (if applicable) of existing streets /roads (including rights-of-way) within 100 feet of the boundaries of the manufactured home park *.
- (5) Location of existing and proposed bridges, easements and railroad or other rights-of-way within the manufactured home park .
- (6) Location of existing and proposed bridges, easements and railroad or other rights-of-way within 100 feet of the boundaries of the manufactured home park *.
- (7) Location of proposed roads and off-site access corridors, indicating width and approximate finished grade.
- (8) Proposed names of internal roads and, if needed, off-site access corridors.
- (9) Location of driveways and parking spaces.
- (10) Cross sections of typical roads, turnarounds, off-site access corridors, driveways and parking spaces with proposed construction standards noted*.
- (11) Location of existing and proposed utilities with line sizes noted (public water supply and sewage disposal systems only).
- (12) Names of adjoining property owners , manufactured home parks and subdivisions within 100 feet of the boundaries of the manufactured home park , if available through the Henderson County Land Records Office*.
- (13) Approximate location of 100 year flood hazard boundary line (if applicable)*.
- (14) Locations and approximate dimensions of existing manufactured home spaces and manufactured homes (if applicable).
- (15) Proposed locations and approximate dimensions of new manufactured home spaces or manufactured homes .
- (16) Locations of existing and proposed (non-manufactured home) structures (it is not necessary to show locations for accessory buildings for individual manufactured home units).
- (17) Building setback line(s) from manufactured home park boundary per § 151.045(B).
- (18) Building setback line(s) from external streets , rights-of-way or access easements per § 151.045(C).
- (19) Building setback line(s) from internal roads per § 151.045(D).
- (20) Approximate location and dimensions of proposed common areas (if applicable), including outdoor play areas, community buildings , walking paths, and the like (common areas shall be designated as such on the plan per § 151.043).
- (21) Fire hydrant locations, if public water supply system proposed.
- (22) Dry hydrant locations, if applicable.
- (23) Zoning district boundaries, water supply watershed boundaries, fire district boundaries and political boundaries*.
- (24) Location of mail delivery points and solid waste collection points (if applicable).
- (25) Location and dimensions of park identification signs.
- (26) Location of existing and proposed ponds, lakes and watercourses (with names noted, if applicable).
- (27) Location of existing and proposed drainage improvements in accordance with §151.050.

(D) Project Summary:

- (1) Total project or phase area in acres.
- (2) Number of proposed manufactured home spaces in the park or phase thereof (if a phase , also include total number of spaces proposed in park).
- (3) For parks with preexisting spaces, the number of existing spaces in park or phase thereof.
- (4) Dwelling unit density, in units per acre (to nearest 0.1 acre)*.
- (5) Amount of common area provided to nearest 0.1 acre (if applicable).
- (6) Type of proposed water supply system and sewage disposal system .
- (7) Distances to nearest public water supply system and nearest public sewage disposal system .

(8) Current zoning and water supply watershed districts (if applicable)*.

(9) Fire district names*.

(10) For parks without public water supply systems , the distance from the entrance to the park to the nearest water supply source for fire protection or to the nearest fire department if no other source available.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

APPENDIX B

APPENDIX B

Application Number: _____

MR-PL-0016

TOWN OF MILLS RIVER
MANUFACTURED HOME PARK CONSTRUCTION PERMIT APPLICATION FORM

Manufactured Home Park Name _____ Phase (If Applicable) _____

Property Owner's Name _____

Address _____

City/State/ZIP _____ Telephone Number _____

Applicant's Name (if different from Property Owner) _____

Address _____

City/State/ZIP _____ Telephone Number _____

Parcel Identification Number(s): _____

Location and Description of Property to be Developed: _____

Size of Property to be Developed: Entire Park: _____ This Phase: _____

New Park: () Yes () No OR Expansion to Existing Park: () Yes () No

If Expansion to Existing Park, Number of Pre-Existing Spaces: _____

Number of New Spaces Proposed: This Phase _____ Entire Park _____

Water Supply Watershed District: _____ Fire District: _____

Proposed Type of Water Supply System: _____

Proposed Type of Sewage Disposal System: _____

I certify that the information contained in this application and supporting materials is true and accurate to the best of my knowledge.

Signature of Property Owner _____ Date _____

Signature of Applicant (if different from above) _____ Date _____

Town Use Only

Application Received By: _____ Date: _____

Application Fee: \$ _____ Date Paid: _____ Method: _____

Date of Action on Variance (if applicable): _____

Comments: _____

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2016-04, passed 7-28-2016)

APPENDIX C

Application Number: _____

MR-PL-0017

TOWN OF MILLS RIVER
MANUFACTURED HOME PARK CERTIFICATE OF COMPLETION APPLICATION FORM

Manufactured Home Park Name _____ Phase (If Applicable) _____

Property Owner's Name _____

Address _____

City/State/ZIP _____ Telephone Number _____

Applicant's Name (if different from Property Owner) _____

Address _____

City/State/ZIP _____ Telephone Number _____

Date Manufactured Home Park Construction Permit Issued: _____

Date(s) of Approval of Any Revised Site Development Plan (s): _____

Number of New Spaces Created: Entire Park: _____ This Phase: _____

New Park: () Yes () No OR Expansion to Existing Park: () Yes () No

Does the park and its improvements (shown on the "as-built" drawing) conform with the site development plan and other materials approved at the time of issuance of the Manufactured Home Park Construction Permit? () Yes () No

If no, please explain: _____

I certify that the information contained in this application and supporting materials is true and accurate to the best of my knowledge.

Signature of Property Owner _____ Date _____

Signature of Applicant (if different from above) _____ Date _____

Town Use Only

Application Received By: _____ Date: _____

Application Fee: \$ _____ Date Paid: _____ Method: _____

Date of Action on Variance (if applicable): _____

Comments: _____

CHAPTER 153: SUBDIVISIONS

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GENERAL PROVISIONS

§ 153.001 TITLE.

This chapter shall be known and may be cited as the "Subdivision Ordinance for the Town of Mills River, North Carolina," and may be referred to as the "Subdivision Ordinance."

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.002 PURPOSE.

The purpose of this chapter is to promote, through proper planning, health, safety and general welfare by providing for the orderly subdivision of land in the Town of Mills River. More specifically, this chapter is deemed necessary to:

- (A) Establish procedures and standards for the subdivision of land;

- (B) Provide for orderly growth and development;
- (C) Promote environmental quality;
- (D) Protect and enhance property ownership and land values;
- (E) Provide for dedication or reservation of road right-of-way ;
- (F) Assure the proper design and installation of roads and utilities; and

(G) To assure proper legal description, identification and recordation of property boundaries to maintain an accurate, up-to-date land records management system.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.003 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00052, passed 6-26-2008)

§ 153.004 AUTHORITY.

The enactment of this chapter is authorized pursuant to G.S. Chapter 160D, Article 8.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.005 JURISDICTION.

This chapter shall apply to and govern each and every lot , parcel or tract of land within the incorporated areas of the town . This chapter shall not apply to existing lots , parcels or subdivisions of record which were properly recorded prior to the effective date of this chapter, or any amendments thereto.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.006 GENERAL APPROVAL FOR SUBDIVISIONS PLATS.

A final plat must be prepared and approved pursuant to this chapter whenever a subdivision of land occurs. No land disturbing or construction activity carried out in conjunction with the development of a subdivision shall be commenced until a development plan has been approved. Prior to recordation, all plats must meet the requirements of G.S. § 47-30.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.007 COMPLIANCE REQUIRED.

All applicants for subdivisions are responsible for complying with the specific standards and requirements stated in this chapter and its appendices.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.008 COMPLIANCE WITH OTHER PROVISIONS.

All proposed subdivisions of land, including all those defined in § 153.045, shall comply, where applicable, with the requirements of the Zoning Ordinance of The Town of Mills River, the Natural Resources Ordinance of the Town of Mills River, the Property Address Ordinance for Henderson County and any other officially adopted plans, maps or ordinances approved by any governmental body or agency having proper jurisdiction.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2022-03, passed 2-10-2022; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.009 TRAFFIC IMPACT ANALYSIS (TIA) REQUIRED.

Developments that are defined as a major subdivision (residential, commercial or industrial), which upon completion will generate 75 or more peak hour vehicle trips (A.M. or P.M.) or 750 or more daily vehicle trips must provide a traffic impact analysis (TIA) prepared by a licensed North Carolina civil engineer. The analysis must be submitted in accordance with the provisions of Town Zoning Code § 154.116.

(Ord. 2018-02, passed 2-8-2018; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-16, passed 9-8-2022)

§ 153.010 PUBLIC NOTICE REQUIRED.

(A) For residential developments that are defined as a major subdivision , the Town of Mills River shall provide mailed public notice to adjacent property owners and a posted public notice sign on the subject property proposed for development in advance of the public meeting of the Planning Board at which the matter will be considered. Public notice is also required for major amendments to subdivision development plans that warrant approval by the Planning Board and can not be approved administratively by the Subdivision Administrator .

(B) *Mailed notice.* Whenever there is an application for a residential major subdivision the owner of that parcel of land as

shown on the Henderson County tax listing and the owners of all parcels of land abutting that parcel of land as well as all properties separated from the subject property by street , reserved right-of-way, railroad, other transportation corridor as shown on the Henderson County tax listing, or separated by a river, stream, pond, or other body of water, shall be mailed a notice of a public meeting of the Planning Board concerning the major subdivision application by first-class mail at the last address listed for the owners on the Henderson County tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public meeting of the Planning Board . The person (s) mailing the notices shall certify to the Planning Board that fact, and the certificate shall be deemed conclusive in the absence of fraud.

(C) *Posted notice.* For any residential major subdivision application, the Town of Mills River shall post a sign in a prominent location on or near the subject property which indicates that a development has been proposed for the subject property . In the event that more than 1 parcel is involved in a particular residential major subdivision application, at least 1 public notice sign shall be posted in a central location; however, the Town of Mills River may post multiple signs. The sign(s) shall be posted during the period between 25 days prior and 10 days prior to the date of the public meeting of the Planning Board .

(Ord. 2022-03, passed 2-10-2022)

DEFINITIONS AND WORD USAGE

§ 153.025 SUBDIVISION DEFINED.

(A) Pursuant to G.S. § 160D-802 the word **SUBDIVISION**, as used in this chapter, means all divisions of a tract or parcel of land into two (2) or more lots , building sites or other divisions for the purpose of sale or building development (whether immediate or future) and includes divisions of land involving the dedication of right-of-way for a new road, whether by easement or dedication of property, or a change in existing roads ; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this chapter:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in its subdivision regulations.

(2) The division of land into parcels greater than 10 acres if no road right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for widening or opening roads .

(4) The division of a tract in single ownership the entire area of which is no greater than 2 acres into not more than 3 lots , if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the town 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. Chapter 29.

(a) A local government may provide for expedited review of specified classes of subdivisions .

(b) 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 division (A)(2) 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.

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.

(B) See also the definitions of **MAJOR SUBDIVISION**, **MINOR SUBDIVISION**, **FAMILY SUBDIVISION** and **NONSTANDARD SUBDIVISION** in § 153.026.

(Am. Ord. 2021-06, passed 4-22-2021)

§ 153.026 DEFINITIONS OF TERMS.

For the purpose of this chapter, the following terms have been defined as follows:

ADMINISTRATIVELY. Review and approval by staff , without formal Planning Board action.

APPLICANT. The legal owner of the subject tract upon whom final responsibility for ensuring compliance with the terms and conditions of this chapter rests. For purposes of submission and review of an application, an agent designated by the legal owner , in accordance with § 153.115, will also be considered an applicant.

BOND. See **IMPROVEMENT GUARANTEE.**

BRIDGE. A structure carrying a pathway or roadway over a depression, obstacle or barrier.

COMMON AREA. Land or a combination of land and water resources within or related to a development for active and/or passive recreation which is reserved for public or private use for the enjoyment of the residents of the development and their guests and may include various man-made features that accommodate such activities. Common areas are not considered lots for the purposes of this chapter. (See also **OPEN SPACE.**)

CUL-DE-SAC. See **ROAD.**

DESIGNATED PUBLIC WATER SUPPLY WATERSHED. An area designated by the North Carolina Environmental Management Commission, delineated on the official map entitled "Watershed Protection Map of the Town of Mills River, North Carolina," and regulated by the Mills River Natural Resources Ordinance and Mills River Zoning Ordinance.

DEVELOPABLE AREA. The portion of a tract of land where development is not hindered by severe slopes, floodplains, unsuitable topography or similar obstructions to development.

DEVELOPER. See **APPLICANT.**

DRIVEWAY. A private passageway providing the principal means of direct vehicular entry and/or exit between a dwelling unit on an individual lot and a road . If the driveway is located entirely on the individual lot , it shall be exempt from all applicable road standards. If, however, the driveway is located entirely or partially outside of the individual lot that it is intended to serve, then that portion which is located outside of the individual lot shall be treated as a road , as that term is defined herein, and shall be subject to all applicable road standards.

EASEMENT. A grant by the owner of property of the use of a strip of land for a specified purpose by the public, a corporation or persons . Easements are typically granted (dedicated) for utility use and for ingress and egress such as a road easement which is commonly referred to as **RIGHT-OF-WAY.**

FAMILY SUBDIVISION. The division of land into 2 or more parcels or lots for the purpose of conveying the resulting parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within 4 degrees of collateral kinship to the grantor, the division to be referred to herein as a **FAMILY SUBDIVISION.** Degrees of kinship shall be computed in accordance with G.S. § 104A-1.

FINAL PLAT. A plat representing a lot , parcel, subdivision or a tract of land showing the boundaries and location of individual properties , street rights-of-way and other information required by this chapter and North Carolina General Statutes. A final plat shall be prepared by a professional land surveyor, currently licensed and registered in the State of North Carolina, in such a fashion as to be suitable for recording by the Henderson County Register of Deeds and in accord with G.S. § 47-30.

IMPROVEMENT GUARANTEE. Cash, letters of credit, trust agreements, bonds or similar financial instruments deposited with the Town or an agreed upon third party to assure that required improvements will be constructed or installed.

LOT. A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for residential or non-residential development, or both.

LOT AREA. The total area within the lot lines of a lot exclusive of property dedicated for street or highway rights-of-way . Areas dedicated for street or driveway right-of-way by easement are included in lot area calculations.

LOT, FLAG. An irregularly shaped lot where the buildable portion of the lot is connected to a road by a narrow extension of the lot .

MAJOR SUBDIVISION. A proposed subdivision of land where 11 or more lots will result after the subdivision is complete.

MINOR SUBDIVISION. A proposed subdivision of land where not more than 10 lots or parcels will result after the subdivision is complete. One phase of a development cannot be considered a minor subdivision unless the entire development does not exceed 10 lots .

NONSTANDARD SUBDIVISION. The proposed subdivision of land for purposes other than individual residential lot development including:

- (1) Facilities such as utility substation sites, meter vaults, pump station sites, signlots , and the like;
- (2) Special use permit requirements;
- (3) Cemetery plots;
- (4) Designated open space or common area sites; and
- (5) Any other subdivision of land which does not fall within a category herein designated.

PLANNING BOARD. The Town of Mills River Planning Board.

OPEN SPACE. Land that is generally left in its natural state and not developed. Roads and parking lots are not considered open space. (See also **COMMON AREA.**)

RECOMBINATION. The combining of previously subdivided and recorded lots or portions thereof where the total number

of lots is not increased and the resulting lots meet the requirements of this chapter.

RECREATION AREA. See **COMMON AREA.**

REVIEW AGENCY. Any local, state or federal government agency qualified to review and comment on subdivision development plans; the agencies may include but not be limited to: the NCDOT, Henderson County Permits and Inspection Department, Fire Marshal's Office, Health Department, County Engineer, Mills River Zoning Board of Adjustment, Mills River Watershed Review Board and Mills River Planning Board .

RIGHT-OF-WAY. A defined and dedicated area by way of permanent easement or public or private ownership of land for the purposes of facilitating access among and between parcels of land. (See also **EASEMENT.**)

ROAD. A dedicated public or private right-of-way for vehicular and pedestrian traffic; roads may be of any of the following types and classifications:

(1) **PUBLIC LOCAL RESIDENTIAL SUBDIVISION ROAD.** Either culs-de-sac , loop roads or roads that do not connect thoroughfares or serve major traffic generators (as defined by State Road Standards).

(2) **PUBLIC RESIDENTIAL COLLECTOR ROAD.** A road which serves as the connecting street between local residential roads and the thoroughfare system (as defined by State Road Standards).

(3) **PRIVATE RESIDENTIAL COLLECTOR ROAD.** A road or a section of a road which provides direct or indirect access from the entrance of the subdivision inward to 25 or more existing or proposed residential lots and/or dwelling units and is designed to be the main travel path for the residential access. **PRIVATE RESIDENTIAL COLLECTOR ROAD** is a road or a section of a road which:

(a) Provides direct or indirect access from the entrance of the subdivision inward to 25 or more existing or proposed residential lots and/or dwelling units and is designed to be the main travel path for the residential access. In calculating residential density, dwelling units having driveway access on the subject road and dwelling units on side roads which feed the subject residential collector road shall be counted. The terminus or **LAST BLOCK** of a residential collector road ending in a dead end may be designed to the standards of a local residential subdivision road as long as the **LAST BLOCK** serves fewer than 25 units.

(b) Is designed to serve, or has the potential to serve in a future phase property in the same ownership of the applicant that, if developed, will meet the 25 dwelling-unit standard.

(c) Connects proposed developments with existing developments where the aggregate sum of dwelling units in both developments is 25 or more.

(d) Serves a nonresidential facility located within a residential development, such as a frequently used recreation area , club house, golf course, public utility site, and the like. (NOTE: See Table 1, "Collector" column.)

(4) **PRIVATE LOCAL RESIDENTIAL SUBDIVISION ROAD.** A road or group of roads which abuts less than 25 residential lots or serves less than 25 existing or proposed residential dwelling units and does not connect thoroughfares.

(5) **PRIVATE LIMITED LOCAL RESIDENTIAL SUBDIVISION ROAD.** A road which abuts no more than three (3) residential lots , each containing or to contain no more than one (1) existing or proposed residential dwelling unit and its associated driveway and which does not connect thoroughfares.

(6) **CUL-DE-SAC.** A short road having only one (1) end open to traffic and the other end permanently terminated with a vehicular turnaround provided.

(7) **MAJOR STREET.** A road whose average daily traffic (ADT) is greater than 4,000 vehicles per day.

Note: Notwithstanding any of the foregoing in the definition of **ROAD**, a driveway , as that term is defined herein, that is not entirely contained on the individual lot that it is intended to serve shall be treated as a **ROAD**.

SECTION (PHASE). A grouping of three (3) or more lots , rights-of-way , common space and associated improvements therein, in a development plan or plat, numbered consecutively and relating to stages of a master plan.

SETBACK. The distance from an established property boundary or other line defined in this chapter that establishes the buildable area on the lot .

SEWAGE DISPOSAL SYSTEM. Any facilities for wastewater (sewage) collection, treatment and disposal. A **SEWAGE DISPOSAL SYSTEM** may be the following types:

(1) **APPROVED PUBLIC OR COMMUNITY SEWAGE SYSTEM.** A single system of sewage collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility, constructed and operated in compliance with applicable requirements of the North Carolina Division of Environmental Management.

(2) **MUNICIPAL SEWAGE DISPOSAL SYSTEM.** An approved public or community sewage system which is owned and operated by a county or municipality.

(3) **SEPTIC TANK.** A subsurface wastewater system consisting of a settling tank and subsurface disposal field.

STAFF. Employees of the Town of Mills River or Mills River Town Council designees.

STATE ROAD STANDARDS. Those standards contained in the most current NCDOT publication *Subdivision Roads - Minimum Construction Standards*.

STREET. See **ROAD**.

SUBDIVISION. See **MAJOR SUBDIVISION**, **MINOR SUBDIVISION**, **FAMILY SUBDIVISION** and **NONSTANDARDS SUBDIVISION** in this section. (See also § 153.025.)

SUBDIVISION ADMINISTRATOR. The official responsible for the overall administration of this chapter. The individual shall be specifically designated as Subdivision Administrator(s) by the Mills River Town Council. Unless other provisions of this chapter or any other applicable law, rule or regulation expressly prohibits, the Subdivision Administrator may delegate duties under this chapter to an individual(s) specifically designated as an Assistant Subdivision Administrator; however the Subdivision Administrator shall remain responsible for the overall administration of this chapter.

TOWNHOUSE. Two or more single-family attached dwelling units within a larger parcel where the land beneath each planned and existing unit, and any area immediately adjacent thereto, is separately owned as lots and an undivided interest in the common elements of the development is vested in the individual lot owners .

TRACT. An area, site, parcel of land or property which is the subject of a subdivision application. A **TRACT** of land may contain one (1) or more smaller parcels or lots all in the same ownership or control.

UNIQUE NATURAL AREA. An area that contains features sensitive to development and is listed in the publication titled *Natural Areas of Henderson County, a Preliminary Inventory of the Natural Areas of Henderson County, North Carolina* by L.L. Gaddy, Ph.D., dated January 1994.

WATER SUPPLY SYSTEM. A system for the collection, treatment, storage and distribution of potable water from the source of supply to the consumer. A water supply system may be of the following types:

(1) **PRIVATE WELL WATER SUPPLY.** Any water supply furnishing potable water to less than 15 residences or 25 persons .

(2) **PUBLIC WATER SYSTEM:**

(a) A system for the provision to the public of piped water for human consumption which services 15 or more service connections or which regularly serves 25 or more individuals. The term includes any collection, treatment, storage or distribution facility under the control of the operator of the system and used primarily in connection with the system and any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

(b) A public water system is either a **COMMUNITY WATER SYSTEM** or a **NONCOMMUNITY WATER SYSTEM** as follows:

1. **COMMUNITY WATER SYSTEM** means a public water system which serves 15 or more service connections or which regularly serves at least 25 year -round residents.

2. **NONCOMMUNITY WATER SYSTEM** means a public water system which is not a community water system.

(3) **MUNICIPAL WATER SYSTEM.** A public water system owned and operated by a local government.

WATERSHED ADMINISTRATOR. An official or designated person responsible for the administration and enforcement of the Natural Resources Ordinance for the Town of Mills River.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-2007; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.027 WORD INTERPRETATION.

For the purpose of this chapter, certain words shall be interpreted as follows:

(A) Words in the present tense include the future tense.

(B) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

(C) The word **PERSON** includes a firm, association, corporation, trust and company as well as an individual.

(D) The words **USED FOR** shall include the meaning **DESIGNED FOR**.

(E) The word **ROAD** includes the words **STREET** and **HIGHWAY**.

(F) The word **LOT** shall include the words **PLOT**, **PARCEL** or **TRACT**.

(G) In creating **NEW LOTS** the remainder of a tract is always counted as a lot .

(H) The word **SHALL** is always mandatory and not merely directory.

(I) The word **MAY** is not mandatory merely suggestive.

(J) The word **COUNTY** shall mean the **COUNTY OF HENDERSON**.

(K) The words **TOWN COUNCIL** or **COUNCIL** shall mean the **MILLS RIVER TOWN COUNCIL**.

(L) The words **PLANNING BOARD** shall mean the **MILLS RIVER PLANNING BOARD**.

(M) The word **TOWN** shall mean the **TOWN OF MILLS RIVER**.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.028 ABBREVIATIONS.

As used in this chapter, the following abbreviations shall have the meanings indicated:

G.S. North Carolina General Statute.

NCDENR. The North Carolina Department of the Environment and Natural Resources.

NCDOT. The North Carolina Department of Transportation.

Ref. Refer to.

ROW. Right-of-way .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

PROCEDURE FOR SUBDIVISION APPLICATIONS

§ 153.045 SUBDIVISION TYPES.

(A) Subdivisions shall be of one of the following types: minor, family, nonstandard or major. The major and minor subdivisions carry subtypes as follows: residential, commercial or industrial. All commercial or industrial subdivisions and residential subdivisions with lots designated for commercial or industrial use shall be so designated and shall be reviewed by the Planning Board under the procedure for major subdivisions , regardless of the number of lots proposed.

(B) *Certificate of understanding.* The following certificate of understanding shall be required to accompany all final plats including the property owner's signature before being approved for recordation by the Zoning Administrator. A certificate of understanding not printed on the face of the final plat and submitted as a separate document must be notarized before approval. The Zoning Administrator or their designee shall record the subdivision file number on all certificates of understanding;

Certificate of Understanding

I (we) hereby certify that I am (we are) the owner (s) of the property located within the subdivision -regulation jurisdiction of the Town of Mills River as shown and described hereon, being on record with the Town of Mills River as File #____, and that I (we) hereby adopt this plan of subdivision . I (we) understand that expansion of this subdivision may result in the upgrading of road infrastructure, utilities and additional right-of-way dedication and other applicable requirements as required by the Subdivision Regulations and Zoning Regulations, Chapter 153 and Chapter 154 of the Town of Mills River Code . All proposed roads in this subdivision will meet the minimum requirements outlined Chapter 153 for the type of subdivision approved.

Date Owner (s)

(C) *Unsealed copies and plan size requirements.* An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one paper copy in 11 inches by 17 inches size or less.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 2018-10, passed 11-8-2017; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2021-16, passed 10-14-2021)

§ 153.046 PROCEDURE FOR REVIEW OF MINOR SUBDIVISIONS.

(A) An application (Appendix 1 and Appendix 3) for a minor subdivision (10 or fewer lots) shall be submitted to the Subdivision Administrator on the required forms along with applicable fees. The applicant must demonstrate to the Subdivision Administrator that the division is in fact a minor subdivision . If the developable area of the remaining parcel is greater than three (3) times the size of the proposed lot or lots and the residual area has the potential for re-division, then the applicant may be required by the Zoning Administrator to reapply under the major subdivision procedure. The applicant for a minor subdivision shall comply with the following :

(1) Expansion.

(a) A minor subdivision may be expanded under the minor subdivision procedure if all of the following conditions are met:

1. The expansion results in a total of 10 or fewer lots within the boundaries of the tract that was the subject of the

original minor subdivision application.

2. The expansion involves no more than a total of three (3) phases, including the original minor subdivision application.

3. The expansion spans no more than three (3) years from the date of approval of the original minor subdivision application.

4. The expansion is designed (at least in preliminary form) and disclosed at the time of approval of the original application.

5. Applications for phased minor subdivisions that will ultimately contain four (4) or more lots must comply with the provisions of § 153.046(A)(5) and (6) at the time the original application is filed.

(b) If a minor subdivision is ever expanded, the Planning Board may require the upgrading of improvements, including road paving, utility upgrading and additional right-of-way dedication. If an expansion of a minor subdivision results in a total of greater than 10 lots, then the applicant will be required to reapply for a major subdivision.

(2) Except in cases of expansions of approved minor subdivisions allowed in division (A)(1)(a), above, the minor subdivision procedure may not be used a second time within three (3) years on property that is less than 1,500 feet from the original property boundaries of the original tract which was the subject of a previously approved minor subdivision application and which has been in common ownership with the original tract at any time within the 3 year period. No person may utilize the minor subdivision procedures for the purpose of evading the requirements of major subdivisions. In the event that a person is found to have used this § 153.046 for purposes other than a bona fide minor subdivision, then the person may be required to comply with any and all applicable requirements for a major subdivision and may be required to re-record a plat. In addition, abuse of this § 153.046 will be deemed a violation of this chapter and may subject the violator to any and all applicable penalties.

(3) The minor subdivision procedure may not be used in conjunction with an application for a major subdivision.

(4) A minor subdivision application may be approved by the Subdivision Administrator or referred to the Planning Board for review under the provisions of this section.

(5) Except as provided in this subsection, minor subdivision roads must be constructed and must be designated as either public or private. If public, the requirements in § 153.069(B) shall apply and, if private, the requirements of § 153.069(C) through (J) shall apply. A minor subdivision of fewer than four (4) lots where private roads are proposed is exempt from all road requirements in this chapter except the requirements for road name approval in § 153.071 and for right-of-way access in § 153.075 shall apply. (See also § 153.046A(1)(a)5).

(6) Applications for minor subdivisions with four (4) or more lots must contain a road development plan that has a scaled drawing of the proposed road cross section and associated drainage improvements, which shall be in conformance with the standards in § 153.069. Upon review and approval of the drawings, the Subdivision Administrator shall issue a conditional approval of the preliminary plat. Upon completion and subsequent inspection and approval by the Subdivision Administrator and upon satisfaction of the applicable requirements in division (A)(7) below, the final plat may be approved by the Subdivision Administrator.

(7) In addition to the requirements above, a minor subdivision must comply (where applicable) with § 153.067 (Sedimentation and Erosion Control Plan), § 153.068 (Water supply and sewer system required), § 153.069 (Roads in general), § 153.070 (Shoulder stabilization), § 153.071 (Road name approval), § 153.072 (Subdivision names and name signs), § 153.073 (Road name signs and regulatory signs), § 153.074 (Conformance with approved thoroughfare plan), § 153.075 (Right-of-way access), § 153.076 (Road frontage and existing off-site access), § 153.077 (Stormwater drainage), § 153.079 (Lot designs), and § 153.082 (Air quality) of this chapter.

(8) The final plat for a minor subdivision shall contain all information required in Appendix 7.

(9) The applicant shall become familiar with the miscellaneous advisory provisions contained in § 153.085.

(B) If the minor subdivision complies with the standards set forth herein and the proposed roads have been completed and inspected or improvement guarantees (such as bonding) have been provided and accepted (ref. § 153.100), the Subdivision Administrator shall provide the approval in writing on the application and on the face of the final plat. Once the plat has been approved, the final plat may be recorded.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.047 PROCEDURE FOR REVIEW OF FAMILY SUBDIVISIONS.

(A) The purpose of the family subdivision is to allow the creation of lots from larger tracts for the use of bona-fide family members. Application does not require submission of a development plan, only submission of the final plat for approval. No application forms are required; however, § 153.116, Fees, shall apply. The applicant, however, must satisfy the Subdivision Administrator that such division is in fact a "family subdivision" by submitting a statement in a form substantially similar to that provided in Appendix 10. Each family member may be deeded only one (1) lot of record per family subdivision. The deed for each lot in a family subdivision must contain an express statement that the conveyance is a conveyance of a lot within a family subdivision and must contain an express grant of a right-of-way to a public road.

(B) If the family subdivision complies with the standards set forth in this section, the Subdivision Administrator shall provide approval in writing on the face of the final plat and shall retain a copy for town records. Once the plat has been approved, the final plat may be recorded and a copy of the recorded plat shall be return to the Town of Mills River for the record.

(C) Within a family subdivision , there must be a minimum of 30 feet right of way to each lot on the face of the plat and reflected on each deed.

(D) No person may utilize this § 153.047 for the purpose of evading the requirements of any applicable provisions of this chapter. In the event that a person is found to have used this § 153.047 for purposes other than a bona-fide family subdivision , then the person may be required to comply with any and all requirements for a major subdivision and may be required to rerecord a plat. In addition, abuse of this § 153.047 will be deemed a violation of this chapter and may subject the violator to any and all applicable penalties.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-2007; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.048 PROCEDURE FOR REVIEW OF NONSTANDARD SUBDIVISIONS.

(A) The procedure for review of a nonstandard subdivision , as defined herein, is as follows: Lots for public utility use, special use lots and cemetery lots , if sufficiently identified and encumbered for all respective uses (i.e., pump station, water tank, sign lot , common recreation area , and the like) may be approved either in conjunction with a major or minor subdivision , development plan review or separately by the Subdivision Administrator , upon submission of a plat describing the subdivision. The lots are not counted in totaling the number of lots in a subdivision for administrative purposes.

(B) Procedure for review of townhouse developments. In cases where townhouse development review is not superseded by other regulations (such as zoning), the townhouse developments, as defined herein, shall be reviewed by the Planning Board . Application for review shall be made to the Subdivision Administrator . Plans for each development shall be prepared in conformance with § 153.049 and with special provisions, general regulations, and exceptions and modifications of this chapter, except that the following sections, upon request, may be modified by the Planning Board : § 153.069(G) (Minimum curve radius), § 153.069(H) (Intersections), § 153.075 (Right-of-way access), § 153.079(A) (Lot dimensions) and § 153.079(D) (Lot configuration and frontage). In such cases, the Planning Board may use discretion in applying subdivision standards.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.049 PROCEDURE FOR REVIEW OF MAJOR SUBDIVISIONS.

Before the plat for a major subdivision (11 or more lots) can be recorded, the applicant shall complete the application for a major subdivision (Appendix 1 and Appendix 6) and comply with the following items.

(A) *Pre-application conference and site analysis sketch.*

(1) A pre-application conference shall be held at least 15 days prior to the submission of any major subdivision application. The conference shall include the applicant and the Subdivision Administrator . The purpose of the conference is to acquaint an applicant with the application process and to review, in general, the proposed development. The applicant should be prepared to discuss the development plans for the entire tract and any adjacent property under the same ownership. The applicant shall bring to the meeting a site analysis sketch (see Figure 1) that shall identify for the entire tract the following features:

- (a) Streams, creeks, ponds and reservoirs;
- (b) Floodplains and wetlands;
- (c) Steep slopes, defined as those greater than 20%;
- (d) Unique natural areas ;
- (e) Rock outcroppings;
- (f) Farmland and pastureland;
- (g) Wooded or forested areas; and
- (h) Cemeteries.

(2) The site analysis sketch shall be prepared based on aerial photography, visual observations and an on-site inspection of the tract . The site analysis sketch need not be professionally prepared. However, it shall be at a scale that is clearly legible and provides sufficient detail to describe the general location of proposed development and the stated features for discussion purposes. It is not necessary at the pre-application conference to have detailed plans with described lots and rights-of-way . The conference is intended for the free exchange of information between the applicant and the Subdivision Administrator and to explore how the applicant intends to design the development, what density levels are contemplated and what areas are proposed for preservation, and the like, before a great deal of time and expense is expended on subdivision design.

(3) Pre-application conferences may be attended by other governmental agencies or staff, Planning Board members or those invited by the applicant. The Subdivision Administrator may waive the conferences for successive sections under an approved master plan.

(B) *Master plan submission.* A master plan developed in conformance with Appendix 4, shall be submitted to the Planning Board through the Subdivision Administrator for review and approval for any major subdivision at least 30 days prior to the date of the regularly scheduled meeting of the Planning Board. The purpose of the master plan is to present the development concept for the entire project. The master plan is intended to provide general information about the proposed development to allow for an assessment of its impact on the orderly growth and development of the town, environmental quality, land values, natural features identified on the site analysis sketch and the town's and governmental services. The applicant shall submit 1 full-sized copy, 1 reduced-sized copy, and 1 electronic copy of the master plan, all at a scale appropriate to clearly depict the property. The master plan may consist of multiple sheets, if needed. The Subdivision Administrator may, upon receipt of the master plan, forward a copy to any review agency for information purposes or for comment. Applicants proposing single section or phase subdivisions may submit a combined master plan and development plan ("master/development plan") that shall be prepared in conformance with this chapter and the requirements of a development plan, as enumerated in Appendix 5. If during the development of the project, the master plan is revised to affect any of the following: increase the number of building lots to be created or units to be constructed; create a substantive change in the subdivision configuration, road layout, and the like; substantially change the use of any portion of the tract; develop or build in areas that were identified as features in the site analysis sketch (see division (A) above) and that were identified in the master plan as open spaces or protected areas, these shall be considered major plan amendments and the applicant shall then submit a revised master plan for Planning Board review and approval in accordance with this section. The Town of Mills River shall provide mailed public notice and posted public notice on the subject property in advance of the Planning Board meeting at which the major amendment to the subdivision master plan will be considered, per § 153.010.

(C) *Development plan submission and review.*

(1) A development plan, prepared in conformance with this chapter as enumerated in Appendix 5, shall be submitted to the Planning Board for review and approval of any major subdivision. A development plan is a graphic representation or map of the tract of land to be developed indicating all proposed divisions of land, their uses, improvements and other information as may be required to fully disclose the applicant's intentions. The purpose of the plan is to provide general and specific information and is not intended to be a recordable document.

(2) The development plan may be submitted for the entire subdivision or any section thereof, Application shall be made and submitted to the Subdivision Administrator at least 30 days prior to the date of a regularly scheduled meeting of the Planning Board. The application, including all drawings, fees and attachments, shall be submitted at 1 time to the Subdivision Administrator. The applicant shall submit 1 full-sized copy, 1 reduced-sized copy, and 1 electronic copy of the development plan, all at a scale appropriate to clearly depict the property. The development plan may consist of multiple sheets, if needed. Formal review of the subdivision shall not begin until the Administrator has verified that the application is complete. The verification should, when possible, be made within 5 business days of its receipt. The Subdivision Administrator shall notify the applicant, in writing, of the application's status.

(3) The Subdivision Administrator shall review the application with regard to all applicable standards and conformity to this chapter. The Subdivision Administrator shall submit to the Planning Board a summary of findings along with comments from review agencies. A copy of the findings shall be given to the applicant prior to the Planning Board's review. Subdivision Administrator shall certify to the Planning Board that mailed public notice was provided to the owner of the subject property proposed for development of a major residential subdivision and to the owners of all property adjacent to the subject property. A public notice sign shall be posted on or near the subject property as described in § 153.010. The Planning Board shall have a maximum of 60 days from the date of its first consideration of the plan within which to take action. In the opinion of the Planning Board, if a development plan application is incomplete, the Planning Board may return the application to the applicant identifying the specific omissions, without invoking the 60 day action requirement. The Planning Board may take the following actions: approve a development plan as submitted; approve the plan with conditions; (if conditions are agreed to in writing by the applicant); table for additional consideration; or deny the plan. The Subdivision Administrator shall, within 10 days after Planning Board review, notify the applicant, in writing, of the Planning Board's action and any conditions imposed by the Board. Unless otherwise stated by the Planning Board, any conditions of development plan approval must be satisfied within the time specified by the Planning Board. If the conditions on the development plan are accepted by the applicant, the development plan shall be approved and the conditions shall be put in writing, signed by both parties, and become binding. Failure to comply with any conditions of approval set by the Planning Board, including failure to meet deadlines, shall result in the development plan approval becoming null and void.

(4) The applicant may, only upon receipt of approval of the development plan from the Planning Board, proceed with the establishment of erosion and sedimentation control measures, clearing and other land disturbing and improvement activities associated with the project. Development plan approval shall be valid for 2 years, and the approval shall be annotated on the plan itself and certified by the Subdivision Administrator. The Planning Board may, for just cause, grant extensions of development plan approval for a maximum of 2 additional years. The plan shall have the date of approval and the date of written notification to the owner or owner's agent specifying the conditions, if any, of the approval. Where the conditions involve the redesign of the plan, annotations shall be made on the "revised development plan" only, and approval shall not be effective until the plan is certified by the Subdivision Administrator. Following development plan approval, if the development plan is revised at a later date to affect any of the following: increase the number of building lots to be created or units to be constructed; create a substantive change in the subdivision configuration, road layout, and the like; substantially change the use of any portion of the tract; develop or build in areas that were identified as features in the site analysis sketch or existing development plan as open spaces or protected areas, these shall be considered major plan

amendments and must be approved by the Planning Board . The applicant shall submit a revised development plan to the Subdivision Administrator for Planning Board review and approval in accordance with this section. The Town of Mills River shall provide mailed public notice and posted public notice on the subject property in advance of the Planning Board meeting at which the major amendment to the subdivision plan will be considered, per § 153.010. Incidental changes or minor amendments may be approved by the Subdivision Administrator for just cause as long as the changes do not constitute a substantial deviation from the approved master plan. Minor amendments to a subdivision development plan that can be approved by the Subdivision Administrator do not warrant public notice.

(D) *Final plat submission and review.* A final plat , developed in conformance with Appendix 7, shall be submitted to the Subdivision Administrator with the required forms and applicable fees. The final plat may include the entire subdivision or any section thereof. The Subdivision Administrator may approve a plat for fewer than the number of lots approved but a surcharge may be assessed. The Subdivision Administrator shall review the final plat for conformance with all applicable standards and conformance to the approved development plan. The final plat may be approved administratively if the plan meets all requirements of the ordinance and satisfies all conditions imposed by the Planning Board . If the final plat is not administratively approved, it must be submitted to the Planning Board for approval. The submission must be made to the Subdivision Administrator 15 days prior to the regularly scheduled meeting of the Planning Board . Upon approval, and before any lots are transferred, the applicant shall record the final plat at the office of the Henderson County Register of Deeds. Incidental changes to the final plat which do not in any way affect the character of the development may be submitted prior to or after recordation and may be approved for recordation by the Subdivision Administrator . No lots governed by this chapter may be sold or conveyed until a final plat is approved and recorded in the office of the Register of Deeds of Henderson County.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-03, passed 2-10-2022)

MINIMUM DESIGN AND CONSTRUCTION STANDARDS FOR MAJOR SUBDIVISIONS

§ 153.065 GENERAL.

All major subdivisions shall be developed in accordance with the minimum design and construction standards set forth in this subchapter unless specifically exempted elsewhere in this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.066 [RESERVED]

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.067 SEDIMENTATION AND EROSION CONTROL PLAN.

Any subdivision of land regulated by the terms of this chapter shall submit to the Subdivision Administrator a written notice from the NCDENR, Land Quality Section, verifying that a soil erosion and sedimentation control plan has been received or a written notice from a professional land surveyor, engineer, landscape architect, architect, or professional planner certifying that no plan is required. The plans are required anytime 1 acre or more of land is disturbed.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.068 WATER SUPPLY AND SEWER SYSTEM REQUIRED.

Every lot within a subdivision shall be served by a water supply and sewer system that is adequate to accommodate the reasonable needs of the proposed use and comply with all applicable health regulations. Where public or community water supply and/or sewer systems are proposed, a letter from each respective agency must accompany the application, whereby the letter states that there is sufficient capacity to make connection to the utility. The applicant must provide evidence that water supply and/or sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other governmental authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from the agencies; however, the final plat shall not be approved until all the final approvals have been obtained.

(A) *Individual water supply and sewer systems (well and septic tanks).* For subdivisions in which the water supply and/or sewer system to be installed is an individual system for each lot , the installation of the systems will not be required prior to final plat approval.

(B) If the subdivision in question is to have a sewer system other than one connected to a municipal system, and other than described in division (A) above, the following required:

(1) The applicant must provide a statement of responsibility for any sewer lines extending beyond the subdivision tract to the point(s) of connection.

(2) The applicant must provide drawings of sewer lines extending beyond the subdivision tract to the point(s) of connection. These drawings should also show all locations with sufficient area for repair, if needed;

(3) Sealed approval of the local Health Department or agency currently in authority; and

(4) Engineered plans, including drawings of sewage lift stations, as to the system.

(5) If the private sewer line is to run along a public road with no recorded easement, a third party agreement with the agency currently in authority of said road, the Town of Mills River, and the subdivision must be reached.

(C) *Public water supply and sewer system connection requirement.*

(1) A subdivision shall be required to connect to a public water supply system when the subdivision is located within a distance from the existing water system equal to the product of 100 feet multiplied by the number of lots proposed for the subdivision. However, if the subdivision is located more than 5,000 feet from an existing water line, such connection is not a requirement.

(2) A subdivision shall be required to connect to a public sewer system when the subdivision is located within a distance equal to the product of 50 feet multiplied by the number of proposed lots; however, the maximum distance required for connection shall be 2,500 feet.

(3) Exceptions to this provision may be allowed on the basis of terrain, availability of acquiring easements, denial of allocation by the public utility, insufficient capacity of the public system or other circumstances which are unusual or unique to this site. Requests for exceptions must be made, in writing, to the Subdivision Administrator who may require that such requests be supported by a professional engineer's review of the subdivision plans and planned route of the utility extension. If the Subdivision Administrator determines that it would not be economically feasible for a subdivision to be connected to a public water or sewer system, another system may be used, subject to approval by the appropriate agencies.

(D) *Fire hydrants.* Any subdivision served by a public water system shall meet the respective State of North Carolina's minimum requirements for fire hydrant installation. For any major subdivision without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system, the type and the location of which is to be determined by the Fire Marshal. A road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-2007)

§ 153.069 ROADS IN GENERAL.

If the tract to be subdivided is located on both sides of an existing, recorded private right-of-way that contains an existing private road, the applicant shall be required to upgrade the portions of the existing private road which are contained on the tract that is being subdivided to meet the road standards found in this chapter. It should be understood that all roads proposed to be public must originate as private roads until there is formal dedication and acceptance by the state or a municipality. All roads proposed to be private may, if designed and constructed to public standards and dedicated by those with the authority to do so, eventually become public. The applicant shall determine at the time of application if the subdivision roads are to be public, private or a combination of both types. The designation shall be subsequently noted on final subdivision plats. The applicant for a commercial or industrial subdivision shall provide roads constructed at no less than state road standards for public residential collector roads, regardless of whether the roads are proposed to be public or private.

(A) *Travel way minimum.* All roads must have a minimum gravel or paved travel way of 12 feet.

(B) *Public roads.* All roads proposed for public use shall be annotated "public" on plans and plats and shall be designed and constructed in accordance with the standards necessary to make the roads eligible to be put on the State Highway Maintenance System at a later date. The standards, hereafter referred to as "state road standards," are contained in a publication of the North Carolina Department of Transportation, Division of Highways, titled "Subdivision Roads - Minimum Construction Standards," a copy of which is available for review in the office of the Subdivision Administrator. Designation as public shall be presumed an offer of dedication to the public.

(C) *Private roads.* All roads not intended for public use shall be designated "private" on plats and plans and shall be designed and constructed in accordance with the standards of this chapter. (See also Table 1 in this section.) Where private roads are proposed as extensions of existing public roads, the developer must clearly justify why existing public roads should not be extended for public use. Roads within family subdivisions are expressly exempt from the provisions of this section and are required only to meet the minimum standards as set forth in § 153.047 of this chapter. Where private road designs are used for approvals of a subdivision, a note shall be placed on the final plat stating: The private roads indicated on this final plat need not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system.

(D) *Standards for private roads.* To be approved, all private roads shall meet the minimum design and construction standards according to the following road classifications:

(1) **PRIVATE RESIDENTIAL COLLECTOR ROAD** is a road or a section of a road which:

(a) Provides direct or indirect access from the entrance of the subdivision inward to 25 or more existing or proposed residential lots and/or dwelling units and is designed to be the main travel path for the residential access. In calculating residential density, dwelling units having driveway access on the subject road and dwelling units on side roads which feed the subject residential collector road shall be counted. The terminus or **LAST BLOCK** of a residential collector road ending in a dead end may be designed to the standards of a local residential subdivision road as long as the **LAST BLOCK** serves fewer than 25 units.

(b) Is designed to serve, or has the potential to serve in a future phase property in the same ownership of the applicant that, if developed, will meet the 25 dwelling-unit standard.

(c) Connects proposed developments with existing developments where the aggregate sum of dwelling units in both developments is 25 or more.

(d) Serves a nonresidential facility located within a residential development, such as a frequently used recreation area, club house, golf course, public utility site, and the like. (NOTE: See Table 1, "Collector" column.)

(2) **PRIVATE LOCAL RESIDENTIAL SUBDIVISION ROAD** is a road or group of roads which abuts less than 25 residential lots or serves less than 25 existing or proposed residential dwelling units and does not connect thoroughfares. (NOTE: See Table 1, "Local" column.)

(3) **PRIVATE LIMITED LOCAL RESIDENTIAL SUBDIVISION ROAD** is a road which abuts no more than three (3) residential lots, each containing or to contain no more than one (1) existing or proposed residential dwelling unit and its associated driveway and which does not connect thoroughfares. (NOTE: See Table 1, "Limited Local" column.)

TABLE 1			
Road Classification			
Item	Collector	Local	Limited Local
Number of residential units served	25 +	1 to 24 (1)	1 to 3 (1)
Right-of-way width			
Roads	50 feet	45 feet	30 feet
Cul-de-sac (radius)	N/A	50 feet(2)	50 feet(2)
Sight distance on vertical curves	150 feet	110 feet	110 feet
Centerline radius	110 feet(3)	90 feet(3)	90 feet(3)
Maximum grade			
Stone only	12%	15%	15%
Paved surface	16%	18%	18%
Road construction			
Minimum travelway width (2 way road)	18 feet	18 feet	14 feet
Minimum travelway width (1 way road)	12 feet	12 feet	12 feet
Minimum travelway (cul-de-sac)	N/A(2) feet	N/A(2) feet	N/A(2) feet
Shoulder width (each side, 2 way road)	6 feet(4)	4 feet(4)	2 feet
Shoulder width (each side, 1 way road)	2 feet	2 feet	2 feet
Stone base (ABC) compacted	8 inches	6 inches	6 inches
Asphalt(5)	1-1/2 inches of I-2 or BST		
Cut and fill slope	2 to 1(6)	1-1/2 to 1(6)	1-1/2 to 1(6)
Ditch slope	4 to 1	3 to 1	3 to 1
Vertical clearance	13 feet	13 feet	13 feet
	6 inches	6 inches	6 inches
NOTES:			

(1) Except for right-of-way width, required standards do not apply to minor subdivisions of fewer than 4 lots. [See § 153.046(A)(5).]

(2) See also § 153.069(I). Alternative culs-de-sac may be approved by the Planning Board (or the Subdivision Administrator for minor subdivisions or for approved major subdivisions if the alternative cul-de-sac does not constitute a substantial change) based on sound engineering design and public safety concerns.

(3) Reductions in the centerline radius are permitted under specific circumstances. (See § 153.069(G).)

(4) On private local residential roads, in cases where the existing cross slope is 20% or greater, a two (2) foot minimum shoulder width shall be permitted. (See also § 153.070.)

On private collector roads, in cases where the existing cross slope is greater than 10% but less than 20%, a four (4) foot minimum shoulder width shall be permitted. (See also § 153.070.)

On private collector roads, in cases where the existing cross slope is 20% or greater, a two (2) foot minimum shoulder width shall be permitted. (See also § 153.070.)

(5) Asphalt or other similar hard surface material is optional except where the Subdivision Administrator requires the material on steep grades, subdivision entrances or road intersections.

(6) In cases where the existing cross slope is 20% or greater, 1 to 1 cut-and-fill slopes shall be permitted. (See also § 153.070.)

Definitions:

ABC - Aggregate base course

I-2 - Asphalt

BST - Bituminous surface treatment (tar and gravel)

(4) If not specifically listed in Table 1 above or elsewhere in this chapter, design and subsequent construction of private roads shall be reviewed by the Planning Board based on the standards and requirements of the NCDOT and with the local NCDOT District Engineer policy modifications. A typical road cross section is shown in the NCDOT publication entitled *Subdivision Roads - Minimum Construction Standards*, a copy of which can be reviewed at the Mills River Town Hall.

(E) *Road drainage and culverts.* All road or drainage structures shall be constructed in accordance with state road standards. Road drainage side ditches shall be constructed with sufficient depth and width to carry the expected volume of stormwater runoff. Where the road crosses streams or minor watercourses, culverts shall be designed and installed in accordance with state road standards. Development plans shall show all the drainage culvert locations, as well as the length, diameter and type of culvert.

(F) *Road construction.* All roads must be constructed with suitable stone and compacted properly. Used asphalt is unacceptable as a base course. The subbase must be of suitable soil capable of supporting the road above. The road should be built so that water will drain from the road surface into side ditches. Because of the difficulty of operating vehicles on steep grades and the high potential for erosion, where possible, roads should be constructed along the contour of the land. No stone-based road may exceed the following grades: 15% local residential road and 12% collector, and no paved road may exceed 18% and 16%, respectively. If combination paved and stone-based road sections are proposed, the paved sections must extend 50 feet from any point a road grade exceeds the minimum for a stone-based road. The Subdivision Administrator may require that a professional engineer or professional land surveyor certify on the final plat that no portion of the road (s) have grades that exceed maximum allowable grade as defined herein or submit a final as-built graded center line profile showing grade and alignment for all roads.

(G) *Minimum curve radius.* Where practical, roads shall be centered in the road right-of-way. The minimum curve radius (the distance measured from the centerline of the road to a fixed point inside the curve) shall be no less than 90 feet except as provided below. The right-of-way must include sufficient width for the travelway and the necessary shoulders, ditches and slopes. Where the existing cross slope on private limited local residential subdivision roads or private local residential subdivision roads is 15% or greater, a minimum centerline radius of 60 feet shall be permitted. Where the existing cross slope on private residential collector roads is 15% or greater, a minimum centerline radius of 80 feet shall be permitted. Curve radii must be noted on development plans.

(H) *Intersections.* The proposed intersection of all roads should conform with the corresponding design standards. Adequate sight distances along the proposed roads shall be provided by choosing a good location for the right-of-way and clearing sight triangles when building the road. When connecting roads, the minimum sight distance is 70 feet along the existing road right-of-way and 10 feet along the new road right-of-way. The intersection of roads must provide an adequate place for vehicles to stop before entering the road. Roads must have an apron design at proposed intersections in order to permit a vehicle to enter when another vehicle is waiting to turn.

(I) *Dead ends, culs-de-sac and turnarounds.* All roads or sections thereof with dead-ends or culs-de-sac should not exceed 2,500 feet in length. Loop roads should be encouraged where possible in lieu of culs-de-sac. The Planning Board may require the installation of a temporary turnaround at the end of a phased project or a partial turnaround along any road that exceeds 1,500 feet in length. Vehicle turnaround areas shall be provided at the end of all dead-end roads that exceed 300 feet. The required turnaround on a dead-end road shall have a roadway radius of not less than 35 feet. Stub roads

shall be designed in locations which will permit the future extension of subdivision roads .

(J) Bridges .

(1) Bridges *on public roads* . Bridges located on proposed public roads in residential, commercial or industrial subdivisions shall be designed according to state road standards for public road bridges . The applicant shall submit a copy of the bridge design plans as part of the development plan application. The plans should include certification from a registered professional engineer indicating that the plans meet state road standards for public road bridges . The Planning Board may approve the development plan contingent on submission of the plans to the Subdivision Administrator . However, prior to final plat approval or release of any improvement guarantee the applicant must submit a copy of documentation indicating plan approval by NCDOT and a copy of an as-built drawing of the bridge with certification from a registered professional engineer that the bridge meets state road standards for public road bridges .

(2) Bridges *on private roads in residential subdivisions* . If bridges on private roads in residential subdivisions are proposed, the applicant must submit a copy of bridge plans showing certification from a registered professional engineer indicating that the bridge plans meet state road standards for public road bridges for drainage, hydraulics and minimum live load. Bridges proposed for private roads shall comply with state road standards for public road bridges for drainage, hydraulics and minimum live load. The proposed bridges must meet the standards for vertical clearance for roads shown in Table 1. The travelway width across the proposed bridge must not be less than the travelway width of the road on either side of the proposed bridge , but in no event shall the bridge travelway be less than 12 feet. If the travelway of a private bridge is less than 18 feet wide and the bridge is proposed to accommodate two (2) way traffic, a paved or gravel turnout shall be provided on each end of the proposed bridge to provide space for at least one (1) vehicle to safely pull over and allow an oncoming vehicle to traverse the bridge . However, prior to final plat approval or release of any improvement guarantee , however, the applicant must submit a copy of an as-built drawing of the bridge with certification from a registered professional engineer that the bridge meets the standards required in this subsection.

(3) Bridges on private roads in commercial or industrial subdivisions . Bridges located on proposed private roads in commercial or industrial subdivisions shall be designed according to state road standards for public road bridges . The applicant shall submit a copy of the bridge design plans as part of the development plan application. The plans should include certification from a registered professional engineer indicating that the plans meet state road standards for public road bridges . The Planning Board may approve the development plan contingent on submission of the plans to the Subdivision Administrator . Prior to final plat approval or release of any improvement guarantee , however, the applicant must submit a copy of an as-built drawing of the bridge with certification from a registered professional engineer that the bridge meets state road standards for public road bridges .

(K) Commercial subdivision entrances. Interior roads in a commercial subdivision shall comply with Table 1 Road Construction Standards with no exemption for less than four (4) lots as granted for residential subdivisions .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-2007; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.070 SHOULDER STABILIZATION.

All areas disturbed by the construction of a private and/or a public road, including cut and fill slopes, shoulders and ditch banks, shall be seeded in permanent vegetation to stabilize the soil and prevent erosion. Seeding should be done as soon as feasible after road construction.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.071 ROAD NAME APPROVAL.

Proposed road names for a private and/or a public road shall be pre-approved by Henderson County in accordance with the Henderson County Property Address Ordinance. Proposed roads which are obviously in alignment with other roads already existing and named shall bear the names of the existing roads . In no case shall names for proposed roads duplicate or be phonetically similar to existing road names in Henderson County, irrespective of the use of the suffix (i.e., road , avenue, boulevard, drive, place, court and the like). Road names shall not exceed 15 characters, including spaces, but not including prefixes and suffixes. For mapping purposes, short roads should have correspondingly short road names.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.072 SUBDIVISION NAMES AND NAME SIGNS.

All major subdivisions may provide for, at the primary entrance, a subdivision name sign to conform with Henderson County sign standards. The signs should be located in dedicated sign easements , which must be shown on the final plat . The name of a subdivision shall not duplicate a name that is identical to or phonetically similar to any other subdivision or named community in Henderson County.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.073 ROAD NAMES SIGNS AND REGULATORY SIGNS.

Each subdivision shall provide road name signs and regulatory signs (speed limit signs, stop signs, and the like) in accordance with the Henderson County Property Address Ordinance and with applicable federal, state and local laws, rules

and regulations.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.074 CONFORMANCE WITH APPROVED THOROUGHFARE PLAN.

No subdivision application shall be approved unless the application preserves all lands proposed as future rights-of-way for any public road as may from time to time be included in an adopted official thoroughfare plan for Town of Mills River.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.075 RIGHT-OF-WAY ACCESS.

All subdivision lots must abut on a private or public right-of-way . The right-of-way shall , for public roads , meet or exceed the minimum width specified in the state road standards or, for private roads , the minimum width specified in Table 1 of § 153.069 and must be capable of supporting a road . The right-of-way standards apply within the boundaries of the property being developed. Proposed subdivisions which abut an existing or recorded public or private right-of-way which do not meet the minimum width requirements of this chapter shall be required to provide additional rights-of-way to conform to the ordinance standards to the maximum extent possible, as provided below. The applicant shall provide up to half (½) of the required right-of-way measured from the center line of the existing right-of-way . If the subdivision is located on both sides of the existing road right-of-way , then the full right-of-way requirement shall be required. (See also § 153.069.) Access to a proposed subdivision through another jurisdiction shall meet or exceed all right-of-way requirements herein. Exceptions to the state road standards for right-of-way or the right-of-way standards shown in Table 1, whichever is applicable, may be provided for lots in conservation areas and for planned unit developments, but the exceptions must be specifically approved by the Planning Board .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.076 ROAD FRONTAGE AND EXISTING OFF-SITE ACCESS.

(A) Any tract of land to be subdivided must either have frontage on an existing public (state -maintained) road or a private right-of-way to a public road . For a proposed minor orfamily subdivision which has less than 30 feet of frontage on an existing public (state -maintained) road or less than 30 feet of right-of-way to a public road , the subdivision shall not be divided into more lots than provided in Table 2. Inadequate frontage or existing off-site access over a private right-of-way shall restrict the maximum number of lots into which a subject tract may be divided, regardless of total acreage.

TABLE 2	
If Road Frontage or Existing Off-Site Access ROW at the Narrowest Point is Less than 30 feet 30 feet or greater	Then, the maximum number of lots allowed is 1 lot per acre No maximum

(B) In the event that 5 or more lots may be created and the grade of the road at any point in the off-site access right-of-way exceeds 18% grade, then the Planning Board will review the application on a case-by-case basis.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-2011)

§ 153.077 STORMWATER DRAINAGE.

(A) All development plans shall show the general drainage patterns of all areas of the subdivision . Where the drainage of the subdivision does not follow the natural drainage of the property , the applicant shall design the new drainage systems, including swales, ditches, pipes, culverts, detention ponds, lakes or similar devices, to minimize any adverse effect on the proposed subdivision and on adjacent and downstream properties . Stormwater drainage improvements shall be designed and constructed to minimize erosion and downstream sedimentation, to follow natural drainage where possible, to minimize flooding or standing water conditions, to maintain desirable groundwater conditions and to avoid excessive stormwater discharge. Points of stormwater discharge shall be within the site unless otherwise approved by the Planning Board and adjoining property owners .

(B) All roads , bridges and major culverts shall be designed according to state road standards .

(C) An easement shall be reserved on-site by the applicant , or otherwise provided, conforming with the lines of any drainageway into which natural runoff has been diverted. Drainage improvements, where applicable, shall be designed in accordance with state road standards .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.078 PEDESTRIAN FACILITIES.

(A) All subdivisions of 100 or more lots shall provide one linear foot of sidewalk or walking trail for every linear foot of proposed roadway.

(B) Sidewalks should be at least five (5) feet in width, made with permanent weather proof material, and located in a road right of way or sidewalk easement .

(C) Maintenance provisions shall be recorded in the homeowner's association covenants at the Henderson County Register of Deeds with a copy submitted for review by the Zoning Administrator prior to final plat .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.079 LOT DESIGNS.

(A) Lot *dimensions*. The lot area , width, depth, shape, orientation and building setback lines shall be reasonable for the location of the subdivision and for the type of development and use contemplated and shall be sufficient to accommodate proposed utilities. The minimum lot area , depth, width and setbacks shall comply with the district requirements of the Town of Mills River Zoning Ordinance and the requirements of the Mills River Natural Resources Ordinance, where applicable. Lot area shall be calculated excluding road right-of-way .

(B) *Special use lots and common areas* . Special use lots that are not intended for sale and have restricted use such as entrance sign lots , common area , recreation areas , water tank or pump station sites, and the like, may be exempted for the purpose of calculating the number of lots in a subdivision . Proposed structures on the lots must, however, meet any applicable zoning or watershed requirements. The special use lots must be clearly identified for their designated use on the development plan and the final plat .

(C) *Future development*. Development plans and master plans should be drawn to show all short-term and long-term plans of the applicant , including the general location of roads , lots and other features. It is expressly acknowledged that long-term plans are subject to change; however, to the extent that an applicant has the long-term plans, they should be disclosed. Areas for which no future phases are known or disclosed should be labeled as "future development" on the master plans and development plans for major subdivisions . Subdivision of any "future development" areas on minor subdivisions must meet § 153.046 of the Subdivision Ordinance. When any "future development" areas of major subdivisions are to be subdivided, the development must comply with this chapter, including review by Planning Board under § 153.049.

(D) Lot *configuration and frontage*. Where possible, side lot lines shall be at right angles or radial to the streets on which the lots face. Flag lots or lots which only have a narrow strip of land fronting the lot on a street may be approved by the Planning Board and/or the Subdivision Administrator (only for minor subdivisions) but only under unusual circumstances. The narrowest width of any lot abutting the right-of-way will be 30 feet. The 30 foot width may be waived for family subdivisions pursuant to § 153.047. Double-fronted lots should be used only when necessary.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.080 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.081 BUFFERS FOR MAJOR SUBDIVISIONS.

(A) Buffers for major subdivision shall be planted per the criteria found in § 154.232.

(B) For residential subdivisions , a buffer strip of no less than 60 feet wide is required adjacent to a street and no less than 10 feet wide is required around the perimeter of the subdivision . For street buffers, the buffer strip area can be reduced to 30 feet with an earth berm.

(C) For commercial or industrial subdivisions , a buffer strip of no less than 10 feet wide is required where lots back up to or are adjacent to a street or between dissimilar uses of land such as a residential area.

(D) Retention of existing vegetation that would provide an equivalent buffer is encouraged. The Planning Board shall have the authority to determine if existing vegetation fulfills the intent of the buffer requirement or if additional vegetation should be planted.

(E) Street and perimeter areas shall be maintained by the developer or by an owner 's association.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2018-01, passed 1-12-2018)

§ 153.082 AIR QUALITY.

As required by G.S. Chapter 143, Article 21, of the North Carolina General Statutes, all subdivisions shall show proof of compliance, if applicable, with air quality guidelines established by the Division of Air Quality and NCDENR.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.083 FARMLAND PRESERVATION PROGRAM.

If the property proposed for subdivision lies within a half (½) mile of any land in a Farmland Preservation District, the applicant must submit an affidavit (see Appendix 11) certifying that the applicant is aware of existing Farmland Preservation Districts as identified on maps provided by the Henderson County office of the Natural Resource Conservation Service. In

addition, a note on the final plat shall state that the property lies within a half (½) mile of land in a Farmland Preservation District.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.084 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.085 MISCELLANEOUS ADVISORY PROVISIONS.

The following provisions shall be followed, if applicable, by the applicant :

(A) *Stream setbacks* . A minimum 30 foot setback for buildings or other structures, excluding bridges or culverts, is required along all perennial streams indicated on the most recent versions of USGS § 1:24,000 (7.5 minute) scale topographic maps. These maps are available for inspection in the Mills River Town Hall. The minimum 30 foot setback from perennial streams, where applicable, must be noted on development plans and final plats .

(B) *Utility easements* . Utility easements are recommended and should be provided, preferably centered on rear or side lot lines, and should be at least 20 feet in total width. The applicant should discuss easement locations with the appropriate utility agency.

(C) *Maintenance of buffers*. All buffer plant materials should be protected and maintained in a healthy and growing condition. Unhealthy or dead plants should be replaced with similar plants within 1 growing season.

(D) *Street disclosure requirements*. North Carolina law, under G.S. § 136-102.6, requires that a developer make certain disclosures to each and every buyer of property , including whether the road serving the buyer's lot is public or private, who owns the road , how the road will be maintained and who shall be responsible for the maintenance. The law further requires certain road maintenance agreements be executed. A summary of G.S. § 136-102.6 is included in Appendix 9.

(E) *Soils map*. Where subdivisions are proposed, with an average lot area of less than one (1) acre, and no public or community sewer is available, the applicant should review a soils map of the property and be knowledgeable of the suitability of ground absorption systems for his or her development.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

SUBDIVISION IMPROVEMENT GUARANTEES

§ 153.100 GENERAL.

In accordance with G.S. § 160D-804.1, when the required improvements have not been completed, prior to the submission of the final plat for approval, the approval of the plat shall be subject to the applicant guaranteeing the installation of the improvements within a two (2) year period of time with extensions possible within a timeframe established by the Subdivision Administrator. Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the applicant to the Subdivision Administrator together with any required fee and a schedule indicating time of initiation and completion of the work, as a whole or in stages (see improvement guarantees application in Appendix 8) . Estimates must be prepared by a professional engineer, professional land surveyor or landscape architect at the applicant's expense. The applicant shall guarantee the installation of the improvements by either of the methods described below:

(A) Filing a performance or surety bond , an irrevocable standby letter of credit, or other form of guarantee that provides equivalent security to a surety bond or letter of credit in the amount of 125% of the cost to complete the work as determined by cost estimates. Portions of the guarantee may be by authorization of the Subdivision Administrator released as work progresses.

(B) Depositing or placing in escrow a certified check or cash in an amount equal to 125% of the cost to complete the work as determined by cost estimates amount. Portions of the guarantee may be released by authorization of the Subdivision Administrator as work progresses.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.101 AMOUNT AND TERMS OF GUARANTEE; TIME LIMITS.

All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. Following receipt of an improvement guarantees application, the Subdivision Administrator shall prepare formal recommendations as to amount and terms of the guarantees for improvements, including time of initiation and completion of the work, to the Mills River Town Council for approval. The Town Council may , upon proof of difficulty, grant extension of completion dates set forth in its approval for a maximum of one (1) additional year , but the time between initiation and the completion of the required improvements shall not exceed two (2) years . Where the cost of uncompleted work is determined in the manner above to be less than \$10,000, the Subdivision Administrator may administratively approve security guarantees as provided for in this section. The amount of the guarantee shall be sufficient to provide adequate funds to the Town of Mills River to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All guarantees for improvements shall comply with applicable statutory requirements and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

APPLICATION, ENFORCEMENT AND LEGAL STATUS PROVISIONS

§ 153.115 DESIGNATION OF AGENT.

The applicant for any subdivision review or approval procedure may submit, along with any initial application, an affidavit (see Appendix 2) specifying an agent who may represent the owner in all matters.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.116 FEES.

The applicant shall pay plan and plat review fees and, if applicable, an extension fee in an amount as may be set from time to time by the Mills River Town Council and posted at the Town Hall.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.117 APPROVAL PREREQUISITE TO PLAT RECORDATION.

Pursuant to G.S. § 160D-804, and except where otherwise provided in this chapter, no final plat of a subdivision within the jurisdiction of this chapter shall be recorded by the Register of Deeds of Henderson County until it has been approved by the Subdivision Administrator, the Mills River Planning Board or as provided herein. The Register of Deeds shall not file or record a plat of the subdivision of land, any part of which is located within the jurisdiction of this chapter that has not been approved in accordance with these provisions. In addition to meeting the requirements of this chapter, subdivisions proposed within designated watershed areas shall be subject to the provisions of the Natural Resources Ordinance, and the Watershed Administrator or his or her designee shall certify on the plats that the subdivision complies with the provisions of the Natural Resources Ordinance of Mills River. Subdivisions proposed within zoned areas of Mills River shall be subject to the appropriate zoning ordinance, and the Administrator of the ordinance shall certify that the subdivision complies with the applicable zoning regulations.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-03, passed 2-10-2022; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.118 CERTIFICATION OF EXEMPTIONS.

(A) Any plat of property exempted from the regulations of this chapter shall be certified by the Subdivision Administrator and a professional land surveyor as exempt, prior to the plat being recorded. The plat is not exempt from the Zoning Ordinance, Natural Resources Ordinance or any other local ordinances. Pursuant to G.S. § 47-30(f)11 (Duty of the Surveyor), a professional land surveyor may certify that the plat represents an exception to the definition of subdivision and is not subject to the provisions of the Subdivision Ordinance. Any exemption from the regulations of this chapter shall not be deemed an exemption from any other applicable ordinance.

(B) Any court-ordered subdivision should comply, to the maximum extent possible, with the provisions of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2022-03, passed 2-10-2022; Am. Ord. 2022-18, passed 12-8-2022)

§ 153.119 PLAT APPROVAL REQUIRED FOR BUILDING PERMIT.

No zoning permit or building permit may be issued for any construction on any proposed lot shown on a development plan until a final plat has been approved and recorded, except that a building permit may be issued for one (1) structure on one (1) lot shown on any approved development plan prior to recordation of a final plat. The Henderson County Permits and Inspections Department shall deny building permits for subdivision lots created in violation with the terms and conditions of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-03, passed 2-10-2022)

§ 153.120 LAND AUCTIONS.

Where application for major or minor subdivisions is made with the intent that the divided property will be sold at land auction, the final plat shall clearly state the following: "The property herein is to be sold by auction. Any further subdivisions must meet applicable standards set forth in the Mills River Subdivision Ordinance." In addition, restrictive covenants regarding road maintenance for any dedicated rights-of-way must be approved in advance by the Planning Board and recorded prior to the auction.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.121 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.122 VARIANCES.

The Mills River Board of Adjustment may authorize a technical variance from these regulations, per § 154.179(B). An application for a variance must be made in conjunction with an application for subdivision approval. In considering a request for a variance, the Mills River Board of Adjustment shall determine that an undue hardship may result from strict compliance with the terms of this chapter. The Board of Adjustment shall consider the physical characteristics of the land, adjacent land uses and the intensity of the proposed development. In determining an undue hardship, the Board of Adjustment shall consider unique conditions peculiar to the site and design flexibility to preserve and protect the site's natural features. The variance shall constitute the minimum variance necessary to mitigate the hardship and shall not violate the intent of this chapter, nor shall it constitute a detriment to the health, safety and welfare of other properties within and adjacent to the subdivision. Any modifications thus authorized must be entered, in writing, in the minutes of the Mills River Board of Adjustment and on the face of the final plat. In addition, a written decision must be prepared and delivered to the applicant stating the reasons on which the departure from the terms of the ordinance was justified.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2022-03, passed 2-10-2022)

§ 153.123 LIMITATIONS ON APPLICATIONS PENDING.

Only one (1) application for a subdivision may be reviewed by any board or agency at any one (1) time on any of the original property boundaries.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.124 AMENDMENTS.

(A) The Mills River Town Council may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation.

(B) No amendment shall be adopted by the Mills River Town Council until it has held a legislative hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Henderson County at least once a week for 2 successive calendar weeks before the hearing. The initial notice shall appear not less than 10 days nor more than 25 days before the hearing date. In computing the period, the date of publication is not to be counted, but the date of the hearing shall be counted. Notice shall be provided as described in § 154.199.

(C) Any modifications to the appendices of this chapter made necessary by changes in local, state or federal laws may be made administratively by the Subdivision Administrator, as necessary, without a public hearing being required. The applications, forms and appendices attached to this chapter may be modified by the Subdivision Administrator, with Planning Board approval.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-03, passed 2-10-2022)

§ 153.125 APPEALS.

Appeals from decisions of the Subdivision Administrator shall be taken to the Mills River Board of Adjustment through an evidentiary hearing process; appeals from decisions of the Town Council shall be taken to the appropriate court of record as provided by law. Appeals must be filed, in writing, within 30 days from the date of the respective order or decision is issued.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 153.126 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.127 EFFECTIVE DATE.

This chapter shall take effect and be in force from and after 12:01 a.m. on March 1, 2004.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 153.999 PENALTY.

The construction or development of a subdivision in violation of this chapter, or failure to comply with any of the requirements of this chapter or with any application or plan submitted pursuant to this chapter may subject the applicant and/or the owner /developer to revocation of plan or plat approval and the penalties and enforcement provisions pursuant to G.S. § 160A-175, including, but not limited to, the following :

(A) *Equitable remedies.* This chapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this chapter may be enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

(1) *Injunction.* Where necessary to effectuate compliance with this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this chapter. The action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions herein.

(2) *Order of abatement.* Where necessary to abate a condition existing upon land in violation of this chapter or a use

made of land in violation of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this chapter. The action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this chapter.

(3) *Other equitable remedies.* This chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

(B) *Civil penalties.* Any individual who is found in violation of this chapter may be subject to a civil penalty as established by Town Council in the most recent version of the annual fee schedule. Each day's violation shall be treated as a separate offense.

(1) *Notice of violation.*

(a) Upon making a determination that a person is in violation of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances shall issue a notice of violation to the owner of the property and/or owner /developer of the property in violation of this chapter in accordance with § 154.999 . The notice shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. The notice shall further identify the action which is necessary to comply with this chapter. The notice shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 15 days, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may grant an extension of time after which the individual will be subjected to a criminal penalty commensurate with the magnitude of the violation. The notice of violation shall further state that failure to comply with the terms of the notice of violation will subject the violator to a civil penalty and shall further state the amount of the civil penalty.

(b) Failure to comply with the terms of a notice of violation issued by the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances within the time stated in the order shall subject the violator to a civil penalty of \$50 or other amount as established by Town Council. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to an additional civil penalty for each separate offense.

(2) *Civil action.* When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties by the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances.

(C) *Criminal penalties.* Unless otherwise provided by this chapter or other applicable law, violation of this chapter shall constitute a Class 3 misdemeanor punishable by a fine not to exceed \$500. Each day's violation shall be treated as a separate offense.

(1) *Warning ticket.* Upon the initial violation of a particular provision of this chapter, an individual may be issued a warning ticket or notice of violation. The warning ticket shall identify the particular practice which is in violation of this chapter and shall state the time, date and place of the violation. The warning ticket shall further state that if the individual commits further similar violations within the six (6) months following the date of the warning ticket, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may issue a notice of violation or cause a warrant to be issued for the individual's arrest.

(2) *Warrant.* If an individual violates this chapter within the six (6) months following the issuance of a warning ticket or notice of violation in a manner that is similar to the violation specified in the warning ticket or notice of violation, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may cause a warrant to be issued for the arrest of the individual.

(3) *Issue.* Notwithstanding any other provisions of this chapter, the Ordinance Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may issue a notice of violation or cause a warrant to be issued without having first issued a warning ticket where he or she deems it necessary to effectively enforce the terms of this chapter.

(D) *Revocation of development approvals.* In addition to initiation of enforcement actions under G.S. § 160D-404, development approvals may be revoked by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable element of this chapter; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable state law or local ordinance may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. § 160D-405.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

APPENDIX 1: SUBDIVISION APPLICATION FORM

Town of Mills River

SUBDIVISION APPLICATION FORM

Date of Application Subdivision Name Application Number
 Major Subdivision Minor Subdivision Other

Property Owners Name: __

Address: __

City, State , Zip: __

Owner's Agent: __

Telephone No: __

PIN _____ Deed Book/Page __

Zoning District _____ Fire District _____ Watershed __

Location of property to be divided: __

Type of Subdivision : () Residential () Commercial () Industrial Present Use __

No. Lots Created _____ Original Tract Size _____ New Tract Size _____ No. New Lots __

Road System: () Public () Private () Combination Public and Private

Water System: () Individual () Community () Municipal

Sewer System: () Individual () Community () Municipal

Fee: \$ _____ Paid _____ Method __

I certify that the information shown above is true and accurate and is in conformance with the Town of Mills River Subdivision Ordinance.

APPLICANT (OWNER OR AGENT) DATE

TOWN USE ONLY

Received by: _____ Date: __

Fee Paid: _____ Received by: _____ Date: __

Development Plan Approval / Conditions __

Final Plat Approval: _____ Plat Recorded __

APPENDIX 2: APPOINTMENT OF AGENT FORM (OPTIONAL)

I _____ owner of property located on _____,
(name) (street name)

recorded in _____ and having a parcel identification number (PIN) of _____ ,
(deed book / page)

located in the Town of Mills River, North Carolina, do hereby appoint __
(agent's name)

to represent me in an application for subdivision of land and authorize him/her to act as my agent in all matters, formal and informal except as stated herein, and authorize him / her to receive all official correspondence. I however understand that as the listed property owner , I must sign all affidavits and statements required by this Ordinance.

Property Owner date

TOWN USE ONLY

Received by: _____ Date: __

Comments: __

APPENDIX 3: SUBDIVISION PLAN CHECKLIST FOR MINOR SUBDIVISIONS

SUBDIVISION PLAN CHECKLIST FOR MINOR SUBDIVISIONS

An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size or less.

Please check appropriate space. If item does not apply, mark "N/A" in the YES column. Attach this checklist to your application for Minor Subdivisions being considered under § 153.046 of the Town of Mills River Subdivision Ordinance. Note : this is not a complete list of requirements; its purpose is to expedite the review process.

Name of Subdivision : __

Yes No

- __ Is road development Plan attached? (Plan should shown road and drainage improvements and a road cross section).
- __ Are streets marked "Public" or "Private" as proposed?
- __ Have street names been approved by the Town of Mills River Property Address Office?
- __ Have drainage improvements been designed according to NCDOT standards?
- __ Do public roads meet minimum NCDOT design standards and have they been approved by NCDOT?
- __ Have the road plans been approved by NCDOT?
- __ Do private roads meet minimum private road standards?
- __ Has the applicant familiarized himself with street disclosure requirements?
- __ Is a road plan submitted showing location and type construction?
- __ Is the plan in conformance with latest approved Thoroughfare Plan?
- __ Does existing off-site access meet Town standards?
- __ Does the development meet the minimum access requirements?
- __ Are minimum setbacks shown on the plats?
- __ Have road and drainage improvements be completed?
- __ Will improvement guarantees be provided in lieu of completing road and drainage improvements?
- __ Is the application form signed by the property owner or agent?
- __ Are application fees included?
- __ Are any other attachments included? If so, please list below:

To whom should all official correspondence regarding review of this subdivision be sent:

Application completed and submitted by: __

Date: _____

TOWN USE ONLY

Received by: _____ Date: __

Comments: _____

(Am. Ord. 00066, passed 4-28-2011)

APPENDIX 4: MASTER PLAN REQUIREMENTS

Town of Mills River

MASTER PLAN REQUIREMENTS

A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or Professional Planner may prepare the Master Plan. The following information shall be shown on the plan for information and discussion purposes unless not applicable or specifically waived by the Subdivision Administrator *. **If the Master Plan does not contain the required items by the submittal deadline, the application will be considered incomplete and the plan will not be presented to the** Planning Board . Combined Master and Development Plans must be prepared in accordance with Appendix 5 [per Section § 153.049(B)]. For each item below, please indicate whether the requested information has been provided

General Legend

Yes No

- Scale (written and graphic): Scale for full-sized and reduced copies should be appropriate to clearly depict property
- North arrow
- Owner's and applicant's name(s) and address(es)
- Vicinity map

If no was checked for any above, please explain:

—

Title Block

Yes No

- Project name
- Title of map (must state "Master Plan")
- Date
- Name, title, address, and phone number of individual, firm, or corporation preparing the plan If no was checked for any above, please explain:

Plan Details

Yes No

- Contours at maximum of twenty-foot (20') intervals
- Location of existing ponds, lakes or watercourses with direction of flow
- Boundaries of the proposed project
- Approximate location of the 100-year flood hazard line, if applicable
- Location of existing street /roads , bridges, culverts, utilities, or other major elements affecting the property
- Water supply watershed boundaries, zoning district lines, fire district boundaries and municipal, county , state boundaries (except townships lines), if applicable
- General layout of proposed road system
- General lot layout
- Location of utility sites (if known)
- Names of adjoining property owners or subdivisions
- Proposed project phasing lines, if applicable

Project summary containing the following information:

- Total project area in acres
- Number of proposed lots /units by type
- Approximate length of road system (public; private)
- Type of Water system _____ (public/private/individual)
- Type of Sewer system _____ (public/private/individual)

If no was checked for any above, please explain:

Other Master Plan Application Requirements

The following information or other items shall be provided or otherwise addressed in writing by the submittal deadline of the application for Master Plan approval unless not applicable or specifically waived by the Subdivision Administrator *, otherwise the application will be considered incomplete and will not be presented to the Planning Board .

An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size or less.

Yes No

- Application Form

Fee

Master Plan (3 full-sized copies and 1 reduced copy per §153.049(B))

If no was checked for any above, please explain:

Application completed and submitted by:

Date:

TOWN USE ONLY

Received by: Date

Received by: Date:

Comments:

(Am. Ord. 00066, passed 4-28-2011)

APPENDIX 5: DEVELOPMENT PLAN REQUIREMENTS

Town of Mills River

DEVELOPMENT PLAN REQUIREMENTS

A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or Professional Planner may prepare the Development Plan. The following information shall be shown on the plan for information and discussion purposes unless not applicable or specifically waived by the Subdivision Administrator *. **If the Development Plan does not contain the required items by the submittal deadline, the application will be considered incomplete and the plan will not be presented to the Planning Board.** Combined Master and Development Plans must be prepared in accordance with Appendix 5 [per § 153.049(B)]. For each item below, please indicate whether the requested information has been provided.

General Legend

Yes No

Scale (written and graphic):

Scale for full-sized and reduced copies should be appropriate to clearly depict property

North arrow

Owner's and applicant's names and addresses

Legend provide appropriate symbols

Vicinity map

Phase map showing location of phase in the entire development (if applicable)

If no was checked for any above, please explain:

Title Block

Yes No

Project name (include phase number, if applicable)

Title of map (must state "Development Plan" or "Combined Master & Development Plan," as applicable)

Name, address, and phone number of individual or firm preparing the various elements of the plan

Date and revision date(s), if required

If no was checked for any above, please explain:

Plan Details

Yes No

Contours at no more than five foot (5') intervals

Location of existing ponds, lakes or watercourses and directions of flow

Outside boundaries of the proposed project with bearings and distances

- __ Approximate location of the 100-year flood hazard line, if applicable
- __ Location of existing roads with rights-of-way , easements , bridges, water features, culverts (showing size), utilities, structures, etc.
- __ Cross-section of typical street for each proposed road classification used (collector, local, etc.) and/or cul-de-sac with indication of design standards of paving/base to be met, road width, right-of-way width, shoulder width, cut and fill slope, and ditch slope
- __ All roads or sections thereof with dead-ends or culs-de-sac no more than 2,500 feet in length
- __ Location of proposed streets /roads (with rights-of-way , approximate finished grades and approximate curve radii), bridges, and easements
- __ Proposed road (s) named and received name(s) approval from Henderson County Property Addressing and are designated as public/private
- __ Location of proposed ponds and lakes shown with approximate elevation, and proposed alterations to existing water courses, if applicable
- __ Names of adjoining property owners or subdivisions
- __ Proposed locations of multi-family units shown, if applicable
- __ Proposed lot lines and approximate length
- __ Proposed lot numbers shown
- __ Size of lots to 0.1 acres (not including road right-of-way)
- __ Proposed open space or common area
- __ Location of proposed project sign(s), if applicable
- __ Water supply watershed boundaries, zoning district lines, fire district lines and municipal, county , or state boundaries, if applicable
- __ Location and approximate layout of recreation areas , club houses, mail delivery points or other project features
- __ Location of water supply point for fire protection as described in §153.068(C)
- __ Proposed buffers (location and type), if applicable
- __ Proposed drainage improvements (designed according to NCDOT standards) including culvert locations, length, diameter (minimum 18 inches), type, and drainage easements
- __ Location of lots or parcels reserved for future development, utility stations, public parks, schools, churches, etc. if applicable

Project summary containing the following information:

- __ Total project (or phase) area in acres
- __ Number of proposed lots /units by type
- __ Minimum lot size in square feet
- __ Maximum lot size in square feet
- __ Length of proposed public roads (must meet NCDOT minimum road standards)
- __ Length of proposed private roads (must meet Town of Mills River minimum roads standards § 153.069)
- __ Water system _____ (public/private/individual)
- __ Sewer system _____ (public/private/individual)
- __ Distance to public water system
- __ Distance to public sewer system
- __ Current zoning and proposed or required building setbacks
- __ Setback from perennial stream(s), if applicable (see § 153.085(A))
- __ Site triangles conforming to § 153.069(H)

If no was checked for any above, please explain:

—

Other Development Plan Application Requirements

The following information and/or other items shall be provided or otherwise addressed in writing by the submittal deadline of the application for Development Plan approval unless not applicable or specifically waived by the Subdivision Administrator *, otherwise the application will be considered incomplete and will not be presented to the Planning Board .

An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size or less.

Yes No

- Application Form: Filled-out and signed by property owner
- Agent Form: Filled-out and signed by property owner , if applicable
- Fee
- Development Plan (or combined Master and Development Plan [3 full-sized copies & 1 reduced copy per Section § 153.049(C))
- Where connection to a public or community water and/or sewer system is required or otherwise proposed, the applicant shall submit a letter from the appropriate review authorities for the water and/or sewer system indicating that water and/or sewer system has sufficient capacity for the proposed development.
- List any additional attachment(s) below: (if applicable)
- To whom should all official correspondence regarding review of this subdivision is sent

If no was checked for any above, please explain:

The following information shall be provided or otherwise addressed in writing by submittal deadline of the application for Development Plan approval; however, the Planning Board may conditionally approve the Development Plan subject to receipt of such information if it is not available at the time of the Planning Board review:

Yes No

- Additional information as required to adequately explain the character or services of the proposed development
- Approval of intermediate water and sewer systems to be used, if applicable
- Final Approval of plans for proposed water and sewer systems
- Erosion and sedimentation control plan approval from NCDENR, evidence of submission from NCDENR, or certification that no plan is required in accordance with § 153.067
- Any other approvals as required by Federal, State , or Local agencies
- Bridge design plans, if applicable
- Affidavit of Understanding of Farmland Preservation District (if applicable)

If no was checked for any above, please explain:

Submitted by: _____ Date: __

TOWN USE ONLY

Received by: _____ Date: __

Comments: _____

(Am. Ord. 00066, passed 4-28-2011)

APPENDIX 6: SUBDIVISION PLAN CHECKLIST FOR MAJOR SUBDIVISIONS

Town of Mills River

SUBDIVISION PLAN CHECKLIST FOR MAJOR SUBDIVISIONS

An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size or less.

Please check appropriate space. If item does not apply, mark "N/A" in the YES column. Attach this checklist to your application for Major Subdivisions being considered under § 153.049 of the Town of Mills River Subdivision Ordinance. Note : this is not a complete list of requirements; its purpose is to expedite the review process.

Name of Subdivision : _____ Section __

Yes No

- __ Master Plan attached or on file? (3 blue line copies plus 1 reduced copy required)
- __ Development Plan attached? (3 blue line copies plus 1 reduced copy)
- __ This Development Plan includes vicinity map, contour map, drainage improvements, lot sizes, setbacks , project summary, adjacent owner's names, required R-O-W widths, road & cul-de-sac cross sections, etc.?
- __ Are streets marked "Public" or "Private" as proposed?
- __ Have street names been approved by the Henderson County Property Address Office?
- __ Are all cul-de-sacs less than 2500 feet in length?
- __ Have drainage improvements been designed according to NCDOT standards?
- __ Do public roads meet minimum NCDOT design standards and have they been approved by NCDOT?
- __ Do private roads meet minimum private road standards?
- __ Has the applicant familiarized himself with street disclosure requirements?
- __ Is the plan in conformance with latest approved Thoroughfare Plan?
- __ Are any off-site road or utility improvements required?
- __ Does the development meet the minimum access requirements?
- __ Are proposed subdivision covenants and restrictions attached?
- __ Does the property require a US Army Corps of Engineers "Section 404" permit for filling wetlands?
- __ Is any of the property within the 100-year flood hazard area?
- __ Are any common areas marked accordingly?
- __ Are there any Farmland Preservation Districts within one half mile?
- __ Are there any natural areas on the property , as identified in the publication titled: Preliminary Inventory of the Natural Areas of Henderson County?

Yes No

- __ Is a letter attached from the appropriate review authority (MDS, City of Hendersonville Sewer Dept., private sewer company, etc.) indicating that sewer is available for the project?
- __ Is a letter attached from the appropriate review authority (Hendersonville City Water Dept.) indicating that water is available for the project?
- __ Is the application form signed by the property owner or owner's agent?
- __ Are application fees included?
- __ Are any other attachments included? If so, please list below:

To whom should all official correspondence regarding review of this subdivision be sent? __

Submitted by: _____ Date __

TOWN USE ONLY

Received by _____ Date ____

Comments: _____

APPENDIX 7: FINAL PLAT REQUIREMENTS

Town of Mills River

FINAL PLAT REQUIREMENTS

The Final Plat shall be designed to provide for the legal conveyance of all lands or buildings shown thereon, and to provide information to any public body and to any subsequent owner as to the physical dimension and shape of the land and the type and location of the improvements to be built or installed thereon.

A professional land surveyor providing the appropriate seals shall prepare the plat.

An unsealed copy of all plats shall be submitted in addition to requirements for sealed plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size or less.

The following information shall be required on the Final Plat , which shall be prepared in accordance with the G.S. § 47-30, as amended.

General

Yes No

- All visible and apparent right-of-way , easements , utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line and easement line, including dimensions, bearings or deflection angles, radii, central angles and tangent curved property lines that are not boundary of curved streets .
- Building setback lines are to be annotated.
- The accurate locations and descriptions of all monument markers and control points.
- The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block.
- Street names and right-of-way lines of all streets . Streets are to be designated as public or private.

If private roads are shown, the plat must include a note stating: **The private roads indicated on this Final Plat may not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system.**

- The location and dimension of all rights-of-way , utility or other easements , riding trails, natural buffers, pedestrian or bicycle paths, and areas to be dedicated to public use with the purpose of each stated.
- All parcels proposed for either general or limited public use, such as parks, playgrounds and building sites with a statement of the purpose of each (if applicable).
- Farmland Preservation District note (see § 153.083), if applicable

If no was checked for any above, please explain: __

REQUIRED CERTIFICATES

The following certificates are to appear on the Final Plat in such a manner as to ensure that the said certificate will be legible on any prints made therefrom or are to be submitted with, and recorded with the Final Plat in accordance with the provisions of this chapter(if applicable).

Yes No

- Certificate of Survey and Accuracy signed by the Surveyor
- Certificate of Compliance to Construction Standards of Public Roads by NCDOT Engineering Certificate of Compliance by the Subdivision Administrator or Planning Board as applicable
- Certificate from officials of other jurisdictions if the subdivision includes property that falls in multiple planning jurisdictions
- Certificate for Plat Review Officer
- Certificate of Understanding

If no was checked for any above, please explain:

Submitted by: _____ Date: __

TOWN USE ONLY

Received by: _____ Date: ____

Comments: _____

(Am. Ord. 00066, passed 4-28-2011)

APPENDIX 8: APPLICATION FOR IMPROVEMENT GUARANTEES

**TOWN OF MILLS RIVER
APPLICATION FOR IMPROVEMENT GUARANTEES**

Name of Subdivision __

Name of Owner __

Address __

_____ Phone: __

Agent _____ Phone: __

Date of Preliminary Plan Approval by Planning Board __

Significant Conditions Imposed: __

Type of improvement requested:

Cash on Deposit (Certified Check)

Bank Escrow Account

Irrevocable Letter of Credit

Surety Performance Bond

Trust Agreement

Name of bank or bonding company __

Amount of guarantee (including 25% overhead) \$ _____

Projected completion date _____

Are cost estimates attached (with quantities and unit costs)? yes no

Have engineering and design work been completed? complete partially complete incomplete

I have read and understand all requirements stated in Article V of the Town of Mills River Subdivision Ordinance regarding subdivision improvement guarantees .

Owner's Signature _____ Date _____

Submitted By _____ Date _____

TOWN USE ONLY

Received by: _____ Date: __

Comments:

APPENDIX 9: SUMMARY OF G.S. 136-102.6

COMPLIANCE OF SUBDIVISION STREETS WITH MINIMUM STANDARDS OF THE [NORTH CAROLINA] BOARD OF TRANSPORTATION REQUIRED OF SELLERS

(Includes Street Disclosure Statement Requirements)

- (a) Requires that subdivision plats be recorded where new streets are dedicated.
- (b) On such plats, right-of-way must be designated either "public" or "private." Streets designated "public" shall be considered as an offer of dedication.
- (c) Public streets shall meet minimum NCDOT construction standards. A plat for subdivision with such streets [public] must have both Town approval and NCDOT District Engineer approval on the plat itself before it may be recorded.

- (d) Public streets shall have right-of-way , construction plans (including street drainage) reviewed by NCDOT prior to recording the subdivision plat. Such approval by the State (plat certification) shall not be deemed acceptance of the roads by the State .
- (e) Written approval (enforcement agreement) is required for public utilities proposed to be located in NCDOT right-of-way .
- (f) Requires a Street Disclosure Statement be executed by both buyer and seller at closing anytime a subdivision lot is sold. Such statement shall fully disclose whether the abutting street right-of-way is public or private. If the street is public, the seller shall certify that the right-of-way and design is NCDOT approved. If the street is private, the seller shall disclose how the street shall be constructed and maintained, who will be responsible for such maintenance and that the street is not constructed to NCDOT minimum standards.
- (g) States that these provisions apply to all subdivisions outside municipal limits.
- (h) Exempts certain subdivision in Catawba County.
- (i) States the purpose of the State rules.
- (j) States that subdivisions located in roadway corridors approved by NCDOT are affected by these rules.
- (k) A violation of these rules is a Class 1 misdemeanor.

Note: This summary is for general information only. It reflects changes made to the law through 1997.

APPENDIX 10: A STATEMENT OF UNDERSTANDING - REGARDING FAMILY SUBDIVISIONS

- 1. I understand that all subdivisions of land are regulated and must comply with the Town of Mills River Subdivision Ordinance.
- 2. I have read and understand the definition of a Family Subdivision as stated in § 153.026 of the Town of Mills River County Subdivision Ordinance and is as follows:

The division of land into two or more parcels or lots for the purpose of conveying the resulting parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within four (4) degrees of collateral kinship to the grantor, such division to be referred to herein as a "family subdivision ." Degrees of kin-ship shall be computed in accordance with G. S. 104A-1.

- 3. I understand the procedure for review of a Family Subdivision as stated in § 153.047 of the Town of Mills River Subdivision Ordinance.
- 4. I understand that to meet the requirements of §153.047 that any and all lots subdivided must be conveyed to a bonafide family member as defined in North Carolina General Statute 104A-1. Examples are as follows:

An example of lineal kinship for a man would include: his parents, children, grandparents, and grandchildren. An example of four degrees collateral kinship would include brothers/sisters, aunts/uncles, first cousins, and their respective spouses.

- 5. I understand that any further subdivision of this property shall be reviewed in accordance with the provisions set forth in the Town of Mills River Subdivision Ordinance.
- 6. I have read and understand § 153.99 of the Town of Mills River Subdivision Ordinance regarding penalties for violations.

(Signature of Property Owner / Agent) (Date)

Witness (Date)

TOWN USE ONLY

Received by: _____ Date: __

Comments:

APPENDIX 11: AFFIDAVIT OF UNDERSTANDING OF FARMLAND PRESERVATION DISTRICT

I hereby certify that I acknowledge that the Henderson County Board of Commissioners on December 18, 1991, did adopt the HENDERSON COUNTY VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE whose purpose is to establish and identify designated agricultural districts to encourage the economic and financial well being of farming areas, to increase protection from nuisance suits, undesirable non-farm development and other negative impacts on participating farms, and to increase the identity and pride in the agricultural community and its way of life.

I further certify that the property I intend to develop is within ____ feet of Farmland listed in the Farmland Preservation Program and is identified as the _____ district on maps provided by the Henderson County Office of the Natural Resources Conservation Service.

Name of Owner

Date

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

Witness by hand and official seal, this the ___ day of _____, 19__.

Notary Public

My Commission Expires: _____

TOWN USE ONLY

Received by: _____ Date: __

Comments:

CHAPTER 154: ZONING

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- 154.053 (Reserved)
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- 154.060 (Reserved)
- 154.061 (Reserved)
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- 154.064 (Reserved)
- 154.065 (Reserved)
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GENERAL PROVISIONS

§ 154.001 TITLE.

This chapter shall be known and may be cited as the "Zoning Ordinance of the Town of Mills River, North Carolina." (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.002 STATUTORY AUTHORITY.

In pursuance of the authority conferred by the G.S. Chapter 160A and 160D, the Town Council of Mills River, North Carolina, hereby ordain and enact into law the following subchapters and sections.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.003 PURPOSE.

The provisions set forth in this chapter are designed to ensure that development within the planning jurisdiction of the Town of Mills River will be orderly, attractive and economically sound.

- (A) An adequate highway system will be facilitated by regulating building setbacks from existing and proposed roads.
- (B) Adequate light and air will be ensured by regulating the width and depth of yards .
- (C) Healthful sanitary conditions will be maintained by regulating lot sizes in accordance with soil characteristics in the town.
- (D) Certain specialized developments, such as planned unit developments and manufactured home parks , may be permitted under specific conditions. These developments must be constructed in full accordance with an approved site plan and general development criteria which are intended to give latitude and flexibility in design and, at the same time, ensure the protection of surrounding properties .
- (E) By regulating the uses permitted in an established zoning district, areas can be developed to their full potential without fear of nearby incompatible development within zoned areas.
- (F) The neighborhood impact from certain uses will be mitigated through the use of minimum specific site standards

combined with general standards which provide the flexibility to impose a higher level of specific site standards, dependent upon the degree of neighborhood impact.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.004 JURISDICTION.

The provisions of this chapter shall apply to the incorporated areas of the Town of Mills River.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.005 FARM EXEMPTION.

This chapter shall in no way regulate, restrict, prohibit or otherwise deter any bona fide farm and its related uses, except that any use of the property for non-farm purposes shall be subject to such regulations.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.006 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.007 WORD USAGE AND DEFINITIONS.

(A) Word interpretation. Except as specifically defined herein, all words used in this chapter have their customary dictionary definitions. For the purpose of this chapter, certain words or terms used herein are defined as follows:

(1) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

(2) The word **COUNTY** shall mean Henderson County, North Carolina.

(3) The word **TOWN** shall mean the Town of Mills River, North Carolina.

(4) The words **TOWN COUNCIL** shall mean the Town Council of Mills River, North Carolina.

(5) The words **PLANNING BOARD** shall mean the Planning Board of the Town of Mills River.

(6) The word **MAY** is permissive.

(7) The word **SHALL** is mandatory.

(8) The word **BUILDING** includes the word **STRUCTURE**.

(9) The word **STREET** includes the words **ROAD** and **HIGHWAY**.

(10) The word **PERSON** or **APPLICANT** includes a firm, association, organization, partnership, corporation, company, trust and individual or governmental unit.

(11) The words **ZONING MAP** or **MILLS RIVER ZONING MAP** shall mean the Official Zoning Map of the Town of Mills River, North Carolina.

(12) Provisions contained within the MR - Mixed Use District, §154.066, shall not be used to interpret the meaning of the remainder of the provisions of this chapter unless the other provisions of this chapter specifically reference § 154.066.

(B) Definitions. For the purpose of this chapter, the following words shall have the meanings indicated:

ACCESSORY USE. A use customarily incidental and subordinate use to a principal use or building and located on the same lot with the principal use or building .

ACCOMMODATION. All or part of a building consisting of a room or rooms intended, designed or used as a residence by an individual or family .

ADMINISTRATIVE DECISION. A decision made in the implementation, administration, or enforcement of the Mills River Town Code that involves the determination of facts and the application of objective Code standards. Administrative decisions may include proceedings to gather facts needed to make an administrative decision.

ADULT DAY CARE CENTER. A non-residential facility certified by the State of North Carolina which provides an organized program of services for adults during the day in a community group setting for the purpose of supporting adults' personal independence. Care is provided for more than 6 but less than 24 hours per day.

ADULT DAY CARE HOME. A non-residential facility certified by the State of North Carolina which provides an organized program of services for adults during the day in a community group setting for the purpose of supporting adults' personal independence out of the provider's home. There may be between 4 and 16 unrelated participants in an adult day care home. Care is provided for more than 6 but less than 24 hours per day.

ADULT DAY HEALTH CENTER. An **ADULT DAY CARE CENTER** also provides health care services.

ADULT DAY HEALTH HOME. An **ADULT CARE HOME** which also provides health care services.

ADULT ESTABLISHMENTS. Any establishment which would be considered an adult bookstore, adult motion-picture theater, adult mini-motion-picture theater or adult live entertainment business as each is defined in G.S. § 14-202.10. This definition does not include bona-fide massage parlors.

AGRICULTURE. The use of land for the tilling of soil; the growing of crops or plants, including truck farming, field crops, vegetables, fruit, nut, sod, seed or tree production; pasturage, including pasture for cattle, horse, sheep or goats and other farm animals; forestry (silviculture) and other forms of food and fiber production for human and/or animal consumption; greenhouses, nurseries and ornamental horticulture; the raising, breeding, working and use of farm animals; aquaculture; beekeeping; associated processing and packing of agricultural commodities produced exclusively on one's own property; and the use of waters for stock watering, irrigation and other farm purposes.

ALLEY. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

ALTERNATIVE STRUCTURE. A structure which is not primarily constructed for the purpose of holding antennas but on which 1 or more antennas may be mounted. **ALTERNATIVE STRUCTURES** include, but are not limited to, buildings, water tanks, pole signs, billboards, and electric power transmission towers.

AMUSEMENT PARKS. Establishments of the type known as **AMUSEMENT PARKS, THEME PARKS** and **KIDDIE PARKS**, which group together and operate in a whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands and picnic grounds and all associated activities. This definition specifically excludes camps, motion picture theaters, museums, art galleries, arboreta and botanical and zoological gardens. For purposes of the MR - Mixed Use District, amusement parks less than 200 acres in size, inclusive of all land used for park purposes, shall not be regulated.

ANTENNA. Any exterior transmitting or receiving device which radiates or captures electromagnetic waves.

APARTMENT. The same as **ACCOMMODATION**.

APARTMENT, GARAGE. A part of a garage consisting of a room or rooms intended, designed or used as a self-contained residence by an individual or a single family.

ASPHALT PLANT. An establishment, whether portable or non-portable, engaged in petroleum refining, manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials; and the recycling of old asphalt into asphalt-type material.

BED-AND-BREAKFAST INN. Any preexisting, owner-occupied, residential structure with historical significance or which is architecturally unique, used primarily as overnight guest quarters and providing meals only for the guests and allowing the sale of incidental gifts and notions, where the use of the residence is not incompatible with adjacent uses and the total number of guest rooms does not exceed 8, where the lot area provides a minimum of 10,000 square feet for each guest room, where 2 on-premises signs may be permitted but neither can exceed 4 square feet in area in accordance with an approval design and where buffering may be required.

BOATHOUSE, PRIVATE. A single-family residential accessory structure whose principal purpose is waterfront mooring or storage of small boats. The structure shall have no more than one (1) enclosed level above the boat storage area, and the enclosed level shall be no greater than the boat storage below, but open decks, docks and stairways shall not be counted for this purpose.

BOATHOUSE, PUBLIC. A structure or marina whose principal purpose is waterfront mooring or storage of boats for commercial purposes. A public boathouse may include boat slips, docks, boat-launching ramps, gas sales, boat repair and service and the sale of boating supplies.

BUFFER STRIP. Unless otherwise stated in this chapter, a buffer strip consists of a planted strip at least 10 feet in width, composed of evergreen trees, spaced not more than 20 feet apart and not less than one (1) row of dense shrubs, spaced not more than five (5) feet apart.

BUILDING. Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels. Two buildings connected by a common roof shall be considered as one (1) building, provided that the width of the connecting roof shall be at least 20% of the principal building width, but in no case less than six (6) feet in width. The connection of two (2) buildings by means of an open porch, breeze way or passageway without a roof, or with a roof less than six (6) feet in width, shall not be deemed to make them one (1) building.

BUILDING, ACCESSORY. A detached building subordinate to a main building on a lot and used for purposes customarily incidental to a main or principal building and located on the same lot therewith.

BUILDING, CIVIC AND CULTURAL. That physical plant or facility that is erected or used exclusively for the general betterment of the citizenry of the community.

BUILDING HEIGHT. The distance measured from the highest ground level at the structure foundation to the highest point of the roof or facade, whichever is greater.

BUILDING, PRINCIPAL. A building in which is conducted a principal use of the lot on which the building is located.

BUILDING SETBACK LINE. A line measured horizontally delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. If the property line extends into a roadway or highway itself, then the setback line shall be measured from the outside edge of pavement of the traveled way when computing setback requirements on lots abutting highways. For purposes of measuring setback lines, lines extended vertically from overhanging roofs which do not extend beyond 30 inches from the foundation wall of a building shall not be used for establishing building location. This definition shall not be applicable in the MR - Mixed Use District.

CAMP. Include those organized camp establishments which provide food or lodging accommodations of tents or cabins for groups of children or adults engaged in organized recreational or educational programs. The term **CAMP** shall include, but shall not be limited to, camps with special program emphasis, such as horseback riding, conservation, music and sports. The term **CAMP** shall not include manufactured home parks, migrant labor camps or recreational vehicle parks.

CEMETERY, HUMAN PUBLIC. Land used or intended to be used for the burial of the human dead. This definition does not include cemeteries established or operated by churches, governmental agencies or families.

CHILD CARE CENTERS. A child care provider licensed by the state for care of six or more children in a residence or when three or more children are in care in a building other than a residence. Religious sponsored programs that are not licensed by the state such as parent morning out programs providing child care on a weekly basis are not to be included.

CHIP MILLS. Any non-portable wood-chipping facility that stands alone and apart from a sawmill or a pulpmill, and whose purpose is to provide wood chips to an off-site fabricating facility including but not limited to a papermill or oriented strand board (OSB) mill. For purposes of the MR Mixed-Use District, specifically excluded from this definition are those facilities that produce less than 50,000 tons of wood chips or other materials per year.

CLINIC. A facility for provision of professional medical services to persons on an outpatient basis.

COLLOCATION. The placement of an additional antenna on an existing tower, including required support equipment and buildings at the base of the tower and any necessary modification to the structure of the existing tower.

COMMERCIAL WASTE CONTAINER. Any container for storing waste pending removal or recycling.

COMMUNICATIONS TOWER (or TOWER). Any tower, pole or similar structure, 50 feet or more in height, used to support one (1) or more antennas, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers and alternative structures.

CONCRETE PLANT. An establishment, whether portable or non-portable, primarily engaged in manufacturing hydraulic cement, including portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink-mixed concrete and truck-mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

CONDITIONAL USE. Conditional uses are those approved under a specific procedure that was removed from the Mills River Town Code following the adoption of G.S. Ch. 160D updates in 2021. Approved conditional uses remain in effect. Updates, expansions or revocations of conditional uses shall be handled under the Special Use process as defined in this chapter.

CONFERENCE CENTER. One or more buildings or structures whose primary purpose is to provide professional or religious training activities, typically with facilities that accommodate overnight guests. The centers may include but are not limited to recreational facilities, incidental retail sales, food service, indoor and outdoor recreation, group assembly and maintenance, the center buildings and activities being set back no less than 100 feet from any residential use.

CONSTRUCTION RELATED WASTE CONTAINER. A waste container on site prior to issuance of the certificate of occupancy for the project for purposes of construction or remodel related waste collection.

DENSITY. The number of dwelling units permitted per acre of land.

DEVELOPMENT. Development includes the construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure; the excavation, grading, filling, clearing, or alteration of land; the subdivision of land; and the initiation or substantial change in the use of land or the intensity of use of land.

DUPLEX. A building arranged or designed to be occupied by two (2) families living independently of each other.

DWELLING. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used. The term **DWELLING** does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

DWELLING, MULTIFAMILY. A building or portion thereof used or designed as a residence for three (3) or more families living independently of each other and doing their cooking therein, including apartments, apartment hotels and group houses.

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one (1) family.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. A grant by a property owner of the use of a strip of land for specified purpose by the public, a corporation or persons.

ELECTRONIC GAMING OPERATIONS. Any business enterprise, whether as a principal or accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. **ELECTRONIC GAMING OPERATIONS** may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations, or cybercafés. This does not include any lottery approved by the State of North Carolina or any nonprofit operation that is otherwise lawful under state law (for example, church or civic organization fundraisers).

EXTENDED CARE FACILITY. A licensed medical care facility that provides domiciliary and continuing services to its residents.

(a) This term shall include the following :

1. **COMBINATION HOME.** A nursing home offering one (1) or more levels of care, including any combination of skilled nursing, intermediate care and domiciliary home.

2. **CONTINUING CARE FACILITY.** A facility furnishing to an individual, other than an individual related by blood, marriage or adoption to the person furnishing the care, of lodging, together with nursing services, medical services or other health-related services, pursuant to an agreement effective for the life of the individual or for a period in excess of one (1) year .

3. **DOMICILIARY HOME FOR THE AGED AND DISABLED.** A facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the sheltered or personal care their age or disability requires. Medical care in a domiciliary home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the residents' needs may be provided under the direct supervision of a physician, nurse or home health agency. **DOMICILIARY HOMES** are to be distinguished from nursing homes as defined in this chapter.

4. **HOSPITAL.** Any facility which has an organized medical staff and which is designed, used and operated to provide health care, diagnostic and therapeutic services and continuous nursing care primarily to inpatients where the care and services are rendered under the supervision and direction of physicians licensed under G.S. Chapter 90, Article 1, to 2 or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under G.S. Chapter 122C, Article 2, nursing homes licensed under G.S. § 131E-102 and domiciliary homes licensed under state law.

5. **NURSING HOME.** A facility, however named, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for 3 or more persons unrelated to the licensee or operator. A **NURSING HOME** is a home for chronic or convalescent patients who, on admission, are not as a rule acutely ill and who do not usually require special facilities, such as an operating room, X-ray facilities, laboratory facilities and obstetrical facilities.

A **NURSING HOME** provides care for persons who have remedial ailments or other ailments for which medical and nursing care are indicated, who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

(b) These terms shall not include ambulatory surgical facilities, clinics, chemical dependency treatment facilities or other facilities unless they are an integral part of the licensed facility identified above, both of which are located within an approved medical, institutional care development.

EVIDENTIARY HEARING. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision relative to the Mills River Town Code .

FAMILY. One or more persons living as a single housekeeping unit and using cooking facilities and certain rooms in common. A **FAMILY** shall not include a group occupying a boardinghouse, lodging house, club or fraternity house or similar dwelling.

FAMILY CARE HOME. An adult care home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than 6 resident handicapped persons and licensed by the state of North Carolina as a family care home. For zoning purposes, a **FAMILY CARE HOME** shall be deemed a residential use of property and shall be a permitted use in all residential districts.

FAMILY CHILD CARE HOME. A child care provider licensed by the state to provide child care for five or fewer preschool aged children, and an additional three school age children. Care is provided at the licensed care provider's residence.

FARM, BONA FIDE. All land on which agricultural operations are conducted.

FENCING. The use of a translucent, opaque or perforated barrier extending from the surface of the ground to a uniform height at all points around the portions of the property containing the regulated principal use, including but not limited to storage or use of inventory, materials or equipment associated with the principal use, if the use(s) is unenclosed. The fencing must be constructed of wood, wire, steel or of any substance of a similar nature and strength, but which perforations or openings are not larger than 16 square inches.

FIRE PROTECTION. The design, construction and installation of buildings and facilities, equipment, appliances and infrastructure or the protection of the facilities and buildings, and the occupants thereof, from the effects or potential effects of fire. All uses requiring fire protection in this chapter shall be required to comply with the standards of the National Fire Protection Association.

GARBAGE. All putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

GOLF COURSE. A tract of land laid out, landscaped and used primarily for the playing of golf but may additionally include swimming pools, tennis courts and other facilities for outdoor recreation normally associated with tournament-type 18 hole golf courses. The term shall include buildings and structures located on a golf course tract which are incidental to outdoor recreation, such as rain shelters, maintenance and storage sheds, swimming pool shower and dressing rooms and also clubhouses and/or other buildings having facilities for the sale, rental and storage of sports equipment, serving of food and beverages and accommodations (including lodging) for members of private golf clubs and their guests, which buildings and structures are normally associated with tournament-type 18 hole golf courses, provided that no single 18 hole course shall have more than 20 units of lodging; and provided, further, that any commercial activity permitted by this sentence shall terminate if the golf course served by it shall cease to operate as a golf course as defined in the preceding sentence. Public commercial hotels, motels, restaurants, stores, snack bars and beverage service bars and lounges are not permitted. This definition does not include illuminated golf facilities.

GRAVEYARD. Any vehicle graveyard or mobile/manufactured home graveyard; this definition specifically excludes all cemeteries, including public human cemeteries, church cemeteries, family cemeteries and pet cemeteries.

GROSS FLOOR AREA. The total floor area of all buildings in a project, including basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building, such as boiler rooms and maintenance shops.

GROUP DEVELOPMENT. A group of 2 or more principal structures built on a single lot, tract or parcel of land not subdivided into the customary streets and lots and which may not be subdivided, and designed for occupancy by separate families, businesses or other enterprises. Examples would be school campuses and hospitals, shopping centers and industrial parks.

HANDICAPPED PERSON. A person with a temporary or permanent physical, emotional, or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. § 122C-3(11)b.

HAZARDOUS WASTE DISPOSAL FACILITY. Any hazardous waste disposal facility whose operations or facility must be permitted by or is regulated by the federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, or the North Carolina Solid Waste Management Act (G.S. §§ 130A-290 *et seq.*), as they may be amended or replaced.

HEALTHCARE FACILITY. Any residential or in-patient medical facility, whether public or private, including but not limited to the following: general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; nursing homes, including skilled nursing facilities and intermediate care facilities; and facilities for continuing care of the elderly and infirm.

HOURS OF OPERATION. The times of day during which an establishment may conduct its principal operations.

INCIDENTAL HOME OCCUPATION. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof; provided, further, that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes and that not over 25% of the total floor space of any structure is used for a home occupation. No home occupation shall be conducted in any accessory building. Incidental home occupations permitted as accessory uses in a residence include, but are not limited to, dressmaking, cooking, baking, music instruction, woodworking, arts and crafts, personal care services, family child care homes, internet retail sales and the practice of the professions as insurance, medicine, artistry, architecture and accounting. This definition shall not be used to regulate home schools in any way. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, non-illuminated, and mounted flat against the wall of the principal building.

INCINERATOR.

(a) Any enclosed device that burns more than 250 pounds of any material per hour other than the classic boiler fossil fuels, such as natural gas, coal or fuel oil, is a principal use on any lot or parcel, and:

1. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

2. Meets the definition of **INFRARED INCINERATOR** or **PLASMA ARC INCINERATOR**.

(b) This definition does not apply to afterburners, flares, fume incinerators and other similar devices used to reduce process emissions of air pollutants. Specifically excluded from this definition and any regulation under this chapter are those incinerators that are constructed and/or operated by or on behalf of any federal, state or local governmental entity; provided, however, that this exclusion from regulation only applies to those incinerators not operating as a hazardous waste disposal

facility or radioactive waste disposal facility (which are prohibited in all zoning districts).

INDUSTRIAL USE. Entails manufacturing, assembling, processing, fabricating, machining and/or warehousing. **INDUSTRIAL USE** includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. These establishments are usually described as plants, factories or mills and characteristically use power-driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered industrial if the new product is neither a structure nor other fixed improvement. Also included is the blending of materials, such as lubricating oils, plastics, resins or liquors. The materials processed by industrial establishments include products of agriculture, forestry, fishing, mining and quarrying as well as products of other industrial establishments. [This definition is based upon excerpts from the Standard Industrial Classification Manual (SIC), 1987. Specific examples of industrial uses as listed in the SIC are not considered to be a limitation on this definition.]

JUNK. Any discarded or scrapped copper, brass, metal, rope, rags, batteries, appliances, paper or rubber; discarded, dismantled or wrecked automobiles or other vehicles or parts thereof; dismantled or abandoned mobile/manufactured homes or RV's or travel trailers or parts thereof; discarded, dismantled or wrecked motorized or non-motorized equipment or parts thereof; discarded or scrapped iron, steel or other scrapped ferrous material; or any other materials, items or equipment similar to those listed herein. This definition specifically excludes solid waste.

JUNKYARD. Any land parcel having a principal use consisting of the storing, keeping, buying or selling of junk. This definition excludes any vehicle graveyard or any mobile/manufactured home graveyard.

LANDFILL. A disposal facility or part of a disposal facility where solid waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

LANDOWNER, or OWNER. The holder of the title of a property in fee simple. Absent evidence to the contrary, the county tax records are used to determine who is a landowner. A landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

LARGE WIND ENERGY SYSTEM. A wind energy conversion system consisting of one or more wind turbine(s), a tower (s), and associated control or conversion electronics, which has a rated capacity of more than 20 kW.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LIGHT INDUSTRY. Any use which is listed as permitted by right in the MR - Light Industrial District, § 154.055 of this chapter.

LIGHTING. Outdoor lighting fixtures installed and operated in such a manner as to provide for the safety of those persons residing or working on the property and which protect the streets and neighboring properties from direct glare or hazardous interference of any kind.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings as regulated by the Town of Mills River Code, together with the customary accessories and open spaces belonging to same.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

LOT OF RECORD. A lot which is part of a subdivision, a plat of which has been recorded in the Register of Deeds office of Henderson County, or a lot described by metes and bounds, the description of which has been so recorded.

LOT WIDTH. The distance between side lot lines measured at the building setback line.

MAJOR PARK. Any manufactured home park consisting of 11 or more manufactured homes and/or spaces.

MAJOR STREET. The following are classified major streets in the Town of Mills River for purposes of this chapter: Boylston Highway (NC 280), Haywood Road (NC 191).

MANUFACTURED HOME. A single-family residential dwelling built in accordance with the Federal Manufactured Housing Construction and Safety Standards Act 1974 (which became effective June 15, 1976). For purposes of this chapter, however, the term includes **MOBILE HOMES**.

MANUFACTURED HOME PARK (PARK). A tract of land designed to accommodate 3 or more manufactured or mobile home spaces, 3 or more manufactured or mobile homes or any combination of such for rent or lease. This definition shall not apply to approved seasonal agricultural worker developments in the MR - Mixed Use District. Notwithstanding the foregoing, manufactured home parks which consist of no more than 10 manufactured or mobile homes and in which all of the units provide or are intended to provide migrant housing subject to and in accordance with the Migrant Housing Act of North Carolina (G.S. § 95-222) are specifically exempted from all provisions of § 154.080 of this chapter.

MANUFACTURED HOME PARK, MAJOR. Any manufactured home park consisting of 11 or more manufactured homes and/or spaces; may be referred to as **MAJOR PARK** in this and other ordinances duly adopted by the Mills River Town Council.

MANUFACTURED HOME PARK, MINOR. Any manufactured home park consisting of 10 or fewer manufactured homes and/or spaces; may be referred to as **MINOR PARK** in this and other ordinances duly adopted by the Mills River Town Council.

MATERIALS RECOVERY FACILITY. An establishment primarily engaged in:

- (a) Operating facilities for separating and sorting recyclable materials from nonhazardous waste streams (i.e. garbage); and/or
- (b) Operating facilities where commingled recyclable materials such as paper, plastics, used beverage cans and metals are sorted into distinct categories.

MINING AND EXTRACTION OPERATION. Any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing and grading of coal; the crushing and breaking of stone; and the crushing, grinding or otherwise preparing of sand, gravel and nonmetallic chemical and fertilizer minerals. Specifically excluded from this definition are:

- (a) Those establishments or businesses with a principal use of the extraction of sand if that operation is not required to obtain a mining permit from the North Carolina Department of Environment and Natural Resources; and
- (b) Those establishments or businesses with a principal or accessory use of the grading or extraction of soils.

MINOR PARK. Any manufactured home park consisting of 10 or fewer manufactured homes and/or spaces.

MOBILE HOME. A transportable, factory-built home designed to be used as a single-family residential dwelling and manufactured prior to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976).

MOBILE HOME PARK. See **MANUFACTURED HOME PARK**.

MOBILE/MANUFACTURED HOME GRAVEYARD. Any parcel of land having an accessory use consisting of the storage or keeping of 3 or more wrecked, dismantled, scrapped, ruined or dilapidated mobile/manufactured homes, RV's or travel trailers, which are not occupied by humans.

MODULAR HOME. A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code (NCSBC) and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of 2 or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the NCSBC) or may consist of a series of panels or room sections transported on a truck and erected or joined together on the site.

MOTOR SPORTS FACILITY. Any facility, track or course upon which racing events are conducted.

MOTOR SPORTS FACILITY, MAJOR. A motor sports facility having a seating or standing capacity of 1,000 or more persons. For purposes of this definition, standing capacity shall be computed based on 3 persons for each 200 square feet of space directed to patron use.

MOTOR SPORTS FACILITY, MINOR. A motor sports facility having a seating or standing capacity of less than 1,000 persons. For purposes of this definition standing capacity shall be computed based on 3 persons for each 200 square feet of space directed to patron use.

MOTOR VEHICLE. Any vehicle which is, or is designed to be, self-propelled or is designed or used for transporting persons or property. This definition includes watercraft, but excludes airplanes or aircraft.

NEIGHBORHOOD. Any area impacted by a principal use.

NOISE MITIGATION. A good-faith effort to reduce the noise effects, if any, that the principal use may have on the neighborhood.

NONCONFORMING USE. Any lot, use of land, building, structure or sign lawfully existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use requirements, dimensional or other requirements of the district in which it is located.

OCCUPIED BUILDING. Any residential dwelling or other building which is inhabited on a regular basis by one (1) or more persons. The buildings include, but are not limited to, residences, schools, churches, other buildings for public assembly, hospitals and clinics, commercial and industrial entities, and the like. The buildings must have been in existence, or otherwise be under a validly issued building permit, at least 30 days prior to the date of a tower permit application in order to be considered an occupied building as defined in this chapter.

OFFAL. The waste or by-product of a process, especially the viscera and trimmings of a butchered animal removed in dressing.

OPEN SPACE, ACTIVE. Any park and recreational area that is not dependent upon a specific environmental or natural resource, which is developed with recreation and support facilities that can be provided anywhere for the convenience of the user. Areas include, but are not limited to, playgrounds, golf courses, baseball or softball fields, football or soccer fields, basketball courts, swimming pools, clubhouses, equestrian facilities, and tennis courts.

OPEN SPACE, PASSIVE. Area in and located due to the presence of a particular natural or environmental setting. Areas include, but are not limited to, boating, fishing, camping, nature trails, and nature study. Farms and land designated for agricultural use may be considered as passive open space.

PARK. Those areas developed for both passive and active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multiuse courts, swimming and wading pools, amphitheaters, and the like. The term **PARK** shall not include zoos, recreational vehicle parks , manufactured home parks , amusement parks or vehicle, equestrian or dog racing facilities.

PARK MODEL HOME. A recreational vehicle consisting of one (1) or more sections, typically built in accordance with the construction requirements of the HUD Housing Code but not in accordance with the standards set forth in the NCSBC; the vehicles have 480 square feet or less of living space and are used as temporary dwelling units designed to be easily transported.

PERENNIAL STREAM. A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local government studies), unless other provisions have been made.

PERMIT. The permit issued by the Zoning Administrator as designated by this chapter, to an individual, corporation, partnership or other entity to construct a communications tower , to collocate an antenna on an existing tower , to locate an antenna on an alternative structure or to replace an existing tower as required by this chapter.

PLANNED UNIT DEVELOPMENT. A land use designed to provide for developments incorporating a single type or a variety of residential and accessory uses which are planned and developed as a unit. The development may consist of individual lots and common building sites. Common land and facilities may be an element of the plan related to affecting the long-term value of the entire development . A planned unit development must conform to the requirements of §§ 154.080 and 154.180.

POULTRY/SMALL GAME. All chicken, waterfowl and rabbits and other similar species raised domestically for meat or eggs. This definition specifically includes, but is not limited to, quail, turkey, chicken, ducks and geese.

PRINCIPAL USE. A primary purpose for which land or a building is arranged, designed, intended or used, including the storage or use of inventory, materials or equipment associated therewith.

PROPERTY. All real property subject to regulation under the Mills River Town Code , including land and improvements or structures thereon.

PROTECTED MOUNTAIN RIDGE. A ridge with an elevation of 500 feet or more above the elevation of an adjacent valley floor.

PUBLIC LIBRARY. Any library established by the state ; a county , city, township, village, school district or other local unit of government or authority or combination of local units of governments and authorities; community college or university; or any private library open to the public.

PUTRESCIBLE WASTES. Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisance from odors and gases, such as kitchen wastes, offal and carcasses.

QUASI-JUDICIAL DECISION. A decision involving the finding of facts regarding a specific development approval that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits , and appeals of administrative determinations.

RACING EVENT. Any time, speed or distance competition using motor vehicles , whether or not conducted under the auspices of a recognized sanctioning body, including but not limited to events on the surface of land and water. **RACING EVENTS** shall be deemed to include any practice sessions, time trials, qualification rounds or any other similar activity.

RADIOACTIVE WASTE DISPOSAL FACILITY. Any disposal facility for low-level radioactive materials, high-level radioactive materials or special nuclear materials. Specifically included, but without limitation, are any disposal facilities whose operations or facility must be permitted by or are regulated by one (1) or more of the following (as they may be amended or replaced): United States Nuclear Regulatory Commission, or its successors; the Atomic Energy Act of 1954; the Low-Level Radioactive Waste Policy Amendment Act of 1985 (42 U.S.C. §§2021b *et seq.*); or the North Carolina Radiation Protection Act (G.S. §§ 104E-1 *et seq.*).

RECREATIONAL VEHICLE (RV). A vehicular-type unit primarily designed as temporary and mobile living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on and drawn by another vehicle. The units do not satisfy the dimensional requirements of a manufactured home .

RECREATIONAL VEHICLE PARK. Any grouping of no fewer than 2 units on a tract of land in single ownership, catering to temporary parking of park model homes or recreational vehicles . Recreational vehicle parks may include buildings and structures ancillary to such use.

RECYCLING. The collection, separation and/or processing and reuse or return to use in the form of raw materials or products of those materials which would otherwise become solid waste .

RECYCLING CENTER, DROP-OFF. A facility designed to be a collection point where only recyclable materials are collected and/or temporarily stored prior to delivery to a permanent disposal site or shipment to others for reuse or processing.

RECYCLING FACILITY. A facility having a principal use consisting of recycling .

REFUSE. All non-putrescible waste .

RELIGIOUS INSTITUTION. Any church, ecclesiastical or denominational organization, or any established physical place for worship at which nonprofit religious services and activities are regularly conducted.

REPLACEMENT TOWER. A new communications tower intended to replace an existing tower where the new tower is sited as close to the existing tower as is reasonably feasible, but in no event more than 100 hundred feet from the base of the existing tower , and no higher than the height of the original tower .

RETAIL BUSINESS. Includes establishments engaged in selling merchandise directly to residential, business or institutional customers and rendering services incidental to the sale of the goods. The establishment is usually a place of business which is engaged in activities to attract the general public to buy. Processing incidental or subordinate to selling often is conducted at retail businesses. Buying of goods for resale to customers on site is a characteristic of retail trade establishments that particularly distinguishes them from wholesaling operations, industrial production, and the agricultural and extractive industries. Specifically excluded from this definition are adult establishments. [This definition is based upon excerpts from the Standard Industrial Classification Manual (SIC), 1987. Specific examples of retail uses as listed in the SIC are not considered to be a limitation on this definition.]

RETAIL SERVICES. Includes establishments primarily engaged in providing a wide variety of services for individuals, business and government establishments and other organizations. Includes establishments providing personal, business, repair, health, legal, engineering and other professional services; membership organizations; and other miscellaneous services. Specifically excluded from this definition are adult establishments . [This definition is based upon excerpts from the Standard Industrial Classification Manual (SIC), 1987. Specific examples of services as listed in the SIC are not considered to be a limitation on this definition.]

RUBBISH. Solid or liquid waste from residences, commercial establishments or institutions.

RURAL ACCESSORY BUSINESS. A business which is traditionally found in rural settings and which is established as follows:

(a) A building containing a rural accessory business shall be located according to the dimensional requirements specified for the zoning district.

(b) A rural accessory business shall be contained entirely within one (1) building separate from a residential dwelling with a maximum floor area of 2,500 feet. Outside storage of materials and equipment shall be restricted to areas adjacent to the building with the areas under shed-roof cover and not exceeding 20% of the floor area of the business.

(c) One rural accessory business shall be permitted per lot.

(d) The operator of the rural accessory business must reside on the same lot or on an adjoining parcel of land in the same ownership upon which the rural accessory business is located.

(e) The rural accessory business shall not create smoke, odor, dust or noise which would cause a health hazard or a nuisance to surrounding property .

(f) Rural accessory businesses shall include those uses typically defined as **INCIDENTAL HOME OCCUPATIONS**.

(g) This definition shall not be used to regulate home schools in any way.

SCHOOL. Any elementary or secondary school, whether public or private, established under Chapter 115C of the North Carolina General Statutes, and any community college established under the provisions of G.S. Chapter 115D.

SCHOOL, CHARTER. Any school authorized and operating under G.S. Chapter 115C, Article 16, Part 6A.

SCHOOL, HOME. A nonpublic school in which 1 or more children of not more than 2 families or households receive academic instruction from parents or legal guardians or a member of either household. The schools must be qualified in accordance with G.S. Chapter 115C, Article 39, Part 3. **HOME SCHOOLS** shall be considered a permitted use of property in all zoning districts listed in § 154.025.

SCHOOL, PUBLIC. A school operated under the jurisdiction of the Henderson County Board of Education and supported by tax revenue, or any charter school .

SCREENING. The use of any device or natural growth, including but not limited to fencing , walls, berms, vegetation, or any combination thereof, that serves as a barrier of vision between adjoining properties . Screening may be partial or full as may be required by this chapter.

SEPARATION. Where separation restrictions are required no portions of the property containing the regulated principal use , including but not limited to storage or use of inventory, materials or equipment associated with the principal use , shall be situated within the stated distance from the approximate center (centroid as determined by the Henderson County Assessor's office) of the property on which a protected use is located, whether the protected use(s) is (are) located within the municipal boundaries of the Town of Mills River

SHOPPING CENTER. A group of commercial establishments located on a tract of land that is planned, developed, owned or managed as a unit, with off-street parking provided on the property , and related in its location, size, and type of shops to the trade area which the unit serves.

SIGN, BUSINESS. An attached or freestanding structure on which are announced the business use or uses of the premises and/or the name of the operator of the premises.

SIGN, OUTDOOR ADVERTISING. An attached or freestanding structure conveying some information, knowledge or idea to the public.

SITE PLAN. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. A site plan shall include site-specific details that are depicted to show compliance with all legally required development regulations that are applicable to the project and the applicable compliance or development decision review.

SLAUGHTERING PLANT. An establishment primarily engaged in slaughtering animals or poultry/small game . For the purpose of the MR - Mixed Use District, this definition includes slaughtering plants that conduct processing of animals or poultry/small game , including dressing, packing, freezing, canning, cooking and/or curing animals or poultry/small game or their by-products or processing or manufacturing products from the animals or poultry/small game or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry/small game or their carcasses. This definition specifically excludes: slaughtering and processing activities performed for personal use only; and those plants slaughtering less than 450 animals per month for other than personal use and those plants slaughtering less than 500 poultry/small game per day for other than personal use.

SOLAR ENERGY GENERATION FACILITY. Any nonresidential solar collection applications designed to facilitate the capture and conversion of solar energy for the purpose of supplying electricity to utility companies. This definition does not include solar panels accessory to a principal use .

SOLAR PANEL HEIGHT. The measurement of a solar panel from the pivot point of the panel to the ground.

SOLAR PANELS. A solar collection application designed to facilitate the capture and conversion of solar energy for the purpose of supplying power to a specific site or set of equipment.

SOLID WASTE. Any hazardous or nonhazardous garbage or other refuse, rubbish , litter, trash, tires and other discarded solid materials and solid or semisolid waste materials resulting from industrial, commercial and agricultural operations and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved materials in irrigation return flows or other common water pollutants. As used herein, **SOLID WASTE** shall refer collectively to any or all of the aforementioned waste materials, unless otherwise specified.

SOLID WASTE MANAGEMENT FACILITIES.

(a) Land, personnel and equipment used in the management of solid waste . Incinerators and drop-off recycling centers are specifically excluded from this definition. Solid waste management facilities include the following :

1. Transfer station ;
2. Landfill ; or
3. Materials recovery facility .

(b) Specifically excluded from this definition and any regulation under this chapter are those solid waste management facilities that are constructed and/or operated by or on behalf of any federal, state , or local governmental entity; provided, however, that this exclusion from regulation only applies to those solid waste management facilities not operating as a hazardous waste disposal facility or radioactive waste disposal facility (which are prohibited in all zoning districts).

SPECIAL USE. A use that is not permitted by right, but is permitted after an evidentiary hearing, finding by the Town Council for a Major Special Use Permit and by the Board of Adjustment for a Minor Special Use Permit that the use will meet all of the required general standards (see § 154.138) and the applicable specific site standards or site conditions, and issuance of a Special Use Permit by the Town.

SPECIAL USE PERMIT. A permit issued to authorize structures or uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits.

STREET. A dedicated public or private right-of-way, either by easement or ownership, for vehicular traffic which affords the principal means of access to abutting properties .

STRUCTURE. Anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having permanent location on the ground; however, anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of buildings), site stabilization, on-site utilities and lighting or property fencing shall not be considered a structure for the purposes of this chapter. Solar panels and wind turbines shall be considered a structure for the purpose of this zoning code .

STRUCTURED ENVIRONMENT HOMES. A residential setting within which persons, progressing from relatively intensive treatment for crime, delinquency, mental or emotional illness, alcoholism, drug addiction or similar conditions to full participation in community life, are provided professional staff services, as well as board, lodging, supervision, medication and other treatment.

SMALL WIND ENERGY SYSTEM. A wind energy conversion system consisting of a single wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of not more than 20 kW.

TINY HOME. A vehicular-type unit primarily designed as temporary and mobile living quarters for recreational, camping or travel use, which is mounted on or drawn by another vehicle. These type units are not required to meet standards set forth in the NCSBC.

TINY HOME PARK, PARK MODEL PARK, RECREATIONAL VEHICLE PARK. Any group of 2 or more units on a tract of land in single ownership, catering to temporary parking of tiny homes, park model homes, or recreational vehicles. Said parks may include buildings and structures ancillary to such use.

TOWER. See **COMMUNICATIONS TOWER.**

TOWER BASE. The foundation, usually concrete, on which the tower and other support equipment is situated. For measurement calculations, the tower base is that point on the foundation reached by dropping a perpendicular from the geometric center of the tower.

TOWER HEIGHT. The vertical distance measured from the bottom of the tower base at ground elevation to the highest point of the tower, including any antenna, lighting or other equipment affixed thereto.

TOWER, REPLACEMENT. See **REPLACEMENT TOWER.**

TOWER SITE. The land area which contains or will contain a proposed tower, support structures and other related buildings and improvements.

TRANSFER STATION. A permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

TRAVEL TRAILER. See **RECREATIONAL VEHICLE.**

TRAVEL TRAILER PARK. See **RECREATIONAL VEHICLE PARK.**

TRAVELWAY. The portion of a road, street, highway, driveway, access road corridor, right-of-way, and the like, that is designed and maintained for the purpose of accommodating vehicular passage. Specifically excluded are sidewalks, multi-use side paths, road shoulders, ditches, curb and gutter systems, other drainage facilities and unimproved road rights-of-way not intended to be driven on by vehicles.

UNIQUE NATURAL AREA. An area that meets the criteria for qualification as a natural heritage area as prescribed in Chapter 15A-12H, Section .0202 of the North Carolina Administrative Code.

VEHICLE GRAVEYARD. Any parcel of land having an accessory use consisting of the storage or keeping of 5 or more wrecked, scrapped, ruined, dismantled or inoperable unlicensed motor vehicles, including but not limited to cars, trucks, tractor trailers, boats, motorcycles or jet skis, or other motorized equipment located on a land parcel or adjacent land parcels under the same ownership or control, if the storage or keeping is not enclosed within a structure (s) or building (s).

WATER SYSTEM, PUBLIC. A public water supply is a system which provides piped water for human consumption to 15 or more connections or at least 25 people for at least 60 days per year. A community public water supply is defined as one (1) which serves 15 or more year-round residences or at least 25 year-round residents. A non-community public water supply is any system that fits the definition of a public water supply but is not a community system. Restaurants, motels, schools, parks and industries are examples of non-community supplies.

WIND TURBINE HEIGHT. The height above grade to the top of the turbine blade when it reaches its highest elevation.

YARD. A space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from ground to sky, except where encroachments and accessory buildings are expressly permitted. This definition shall not apply in the MR - Mixed Use District.

YARD, FRONT. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street-adjacent property line, or edge of pavement of travelway of adjacent street where applicable, and the front line of the building, projected to the side lines of the lot. In no case shall the front yard be less than side yard requirements.

YARD, REAR. An open, unoccupied space on the same lot with a principal building, situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

YARD SALES. Includes garage sales, porch sales, carport sales and estate auctions and are informal sales held by occupants of private households at their dwelling premises. Items sold are household articles and clothing used and accumulated over several years as part of everyday living. Minor, obsolete or worn small business items may be included. **YARD SALES** may be conducted no more than four (4) times per year but not more than a total of 12 days in one (1) calendar year. Yard sales which continue over a longer period of time shall be considered as a commercial use. **YARD SALES** are an incidental use in all residential districts.

YARD, SIDE. An open, unoccupied space on the same lot with a principal building situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard.

ZONING ADMINISTRATOR. The official charged with enforcing this chapter.

ZONING DETERMINATION. A written determination prepared by the Zoning Administrator , the Zoning Administrator's designee or the Mills River Town Council 's designee that clarifies the intent, nature or applicability of this chapter or other chapters in Title XV of the Mills River Town Code . A zoning determination is made in conjunction with a permit, legislative process, quasi-judicial process and/or at the request of a property owner or affected party seeking determination. Zoning determinations are delivered by personal delivery, electronic mail, or first-class mail. Zoning determinations may be appealed to the Zoning Board of Adjustment, unless otherwise provided by state law or the Mills River Town Code , within thirty days of their receipt by the affected party.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 00079, passed 4-25-2013; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2018-03, passed 3-8-2018; Am. Ord. 2021-06, passed 4-22-2021)

ESTABLISHMENT OF DISTRICTS

§ 154.025 USE DISTRICTS.

For the purpose of this chapter, the zoning districts of the Town of Mills River, as delineated on the Official Zoning Map of the Town of Mills River, North Carolina, which shall include all maps designated and adopted by the Town Council , may be divided into the following designated use districts:

- (A) MR-30 Low-Density Residential District.
- (B) MR-LI Light Industrial.
- (C) *(Reserved)*
- (D) MR-GB General Business.
- (E) MR-NC Neighborhood Commercial.
- (F) MR-MU Mixed Use.
- (G) MR-R-CD Residential Conditional Zoning District.
- (H) MR-C-CD Commercial Conditional Zoning District.
- (I) MR-I-CD Industrial Conditional Zoning District.
- (J) MR-M-CD Mixed Use Conditional Zoning District.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2023-04, passed 9-14-2023)

§ 154.026 DISTRICTS BOUNDARIES.

The boundaries of these districts are hereby established as shown on the Official Zoning Map of the Town of Mills River, North Carolina, dated March 1, 2004, and subsequent amendments thereto.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.027 ZONING MAP.

A zoning map entitled the "Official Zoning Map of the Town of Mills River, North Carolina," dated March 1, 2004, and subsequent amendments thereto, clearly setting forth all approved use districts and their respective boundaries is hereby made a part of this chapter and shall be maintained by the Zoning Administrator of the Town of Mills River. This map shall be available for inspection by interested persons during normal business hours of the Mills River Town Hall. It shall be the duty of the Zoning Administrator of the Town of Mills River to maintain the map and post any changes thereto as they may be made.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.028 INTERPRETATION OF DISTRICT BOUNDARIES.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map of the Town of Mills River, the following shall apply:

(A) Boundaries indicated as approximately following the center lines of streets , highways, alleys , streams, rivers or other bodies of water shall be construed to follow the lines.

(B) Boundaries indicated as approximately following platted lot lines shall be construed as following the lot lines.

(C) Where district boundaries are so indicated that they are approximately parallel or perpendicular to the center lines of streets , highways, railroads or rights-of-way of same, the district boundaries shall be construed as being parallel or perpendicular thereto and at the distance therefrom as indicated on the Zoning Map of the Town of Mills River. If no distance is given, the dimension shall be determined by the use of the scale shown on the Zoning Map of the Town of Mills River.

(D) Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of the lot shall be deemed to apply to the whole thereof, provided that the extensions shall not include any part of the lot more than 35 feet beyond the district boundary line.

(E) Where physical features existing on the ground are at variance with those shown on the Official Zoning Map of the Town of Mills River, or in other circumstances not covered by Subsections A through D, the Board of Adjustment shall interpret the district boundaries.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

USE DISTRICTS

§ 154.045 USE REQUIREMENTS.

Within the districts indicated on the Official Zoning Map of the Town of Mills River, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or in part for any use other than those listed as permitted for that district in this article. The Zoning Administrator or his or her designee shall make a determination if a use not mentioned can be reasonably interpreted to fit into a use category where similar uses are described.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2015-07, passed 12-10-2015; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.046 CORRIDOR OVERLAY DISTRICT.

Publisher's Note: This Section has been **AMENDED** by new legislation (Ord. [2021-20](#), adopted 11-18-2021). The text of the amendment will be incorporated below when the ordinance is codified.

(A) *Purpose.* The purpose of the Town of Mills River Corridor Overlay District is to preserve the aesthetic rural character of the community. Prior to incorporation, the Mills River community was predominately agricultural and rural in nature. These guidelines attempt to incorporate design elements that preserve that heritage even as the town continues to grow and develop.

(B) *Development standards and uses.* Dimensional requirements and all other development standards shall be the same as for underlying zoning district(s) except as modified herein.

(1) *Pre-existing structures.* Any structures already permitted at the time of this section adoption shall not be required to comply; however, any additions made to those buildings must meet the design criteria listed herein.

(2) *Permitted uses.* The following are the permitted uses within the Corridor Overlay District.

(a) *Permitted uses.* Same as for underlying zoning district(s).

(b) *Uses allowed by Special Use Permit.* Same as for underlying zoning district(s).

(c) *Prohibited uses.* Same as for underlying zoning district(s).

(3) *Applicability.* All non-residential and multifamily structures located within the 500 feet of the following roads shall be required to comply with these design requirements:

(a) NC-191;

(b) NC-280;

(c) Ray Hill Rd.;

(d) School House Rd.;

(e) Banner Farm Rd.;

(f) Butler Bridge Rd.;

(g) Old Fanning Bridge Rd.;

(h) North Mills River Rd.;

(i) Jeffress Rd.;

(j) South Mills River Rd.;

(k) Old Turnpike Rd.; and

(l) Turnpike Rd.

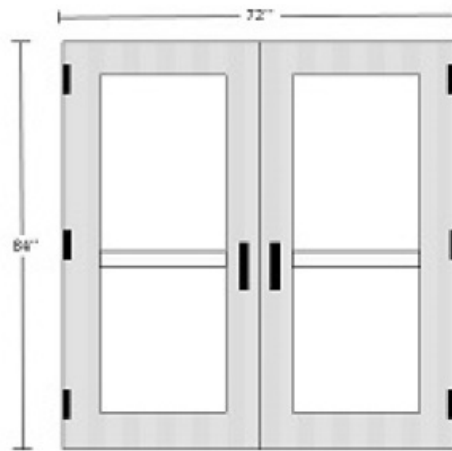
(C) *Design requirements.* Each applicable structure shall meet the following design criteria and show compliance on elevation drawings submitted to scale:

(1) *Materials.*

(a) Walls visible from the right-of-way of any of the roads listed in division (B)(3) above shall use at least 75%

acceptable materials. Walls not visible from the right-of-way of any of the roads listed in division (B)(3) shall use at least 40% acceptable materials. The calculation of acceptable materials includes functional windows as well as doors designed for human passage. Loading dock doors, bay doors, cargo doors, loading ramps, freight doors, garage doors, or similar are not considered acceptable materials as defined below.

Example: Human Door



Example: Loading Dock Doors



**These drawings are examples only; dimensions may vary depending upon final designs.*

(b) Acceptable materials, rock, artificial natural looking rock, timber, artificial wood grain look, brick, natural stone, artificial natural stone look, wood shingle or artificial shingle look, or other material as approved by the Zoning Administrator that has the appearance of a natural material. Unfaced concrete block, vinyl siding, corrugated metal siding, or similar are not acceptable as natural materials.

(2) *Elements to be included.* Every 20 feet of the building shall include one of the following design elements: windows, porches, awnings, cupolas, material changes, façade depth changes of six inches or more, or doors.

(D) *Parking requirements.* All development within this district shall be required to comply with §§ 154.106 and 154.107 of the Zoning Ordinance.

(E) *Landscaping requirements.* All development within this district shall be required to comply with the applicable landscaping requirements beginning at § 154.230 of the Zoning Ordinance.

(F) *Exemptions.* Accessory structures 20% or less of the total floor area of principal structure.

Example: Principal structure is 5,000 square feet. An accessory structure of 1,000 square feet may be constructed without complying with the acceptable materials standard of this section.

(G) *Expansion of use.* If an accessory structure is transferred to different ownership, converted to a principal use, subdivided from the original lot, or is expanded beyond the allowable 20% exemption, the entire structure shall be brought

into compliance with the standards of this section.

(Ord. 2020-07, passed 3-13-2020; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2021-07, passed 4-22-2021; Am. Ord. 2021-20, passed 11-18-2021)

§ 154.047 MR-30 RESIDENTIAL DISTRICT.

This district is intended to be a quiet neighborhood consisting of single-family residences.

(A) MR-30 Residential District. Within the MR-30 Residential District, the following uses are permitted:

- (1) Single-family dwellings.
- (2) Churches, provided that:
 - (a) The structures are placed not less than 50 feet from any property line.
 - (b) They are located with access to a street , as shall be determined by the Zoning Administrator .
 - (c) There is a planted buffer strip along the side and rear property lines, except where the lines run parallel and contiguous with streets , streambeds, lakes and railroad tracks.
- (3) Church cemeteries on property contiguous to or adjacent to the principal church assembly building , provided that all plots shall be set back at least 20 feet from any property line.
- (4) Church bulletin boards not exceeding 12 square feet in area.
- (5) Signs not more than 4 feet square in area advertising the sale or rental of property on which they are located.
- (6) Customary accessory buildings , including private garages, noncommercial greenhouses and workshops.
- (7) Family care homes .
- (8) Family Child Care Homes .
- (9) Child Care unregulated by the State of North Carolina.
- (10) Incidental Home Occupations .
- (11) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by Minor Special Use Permit as approved by the Board of Adjustment. Application for a special use permit shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall be extend more than 5 feet above the building . Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer. Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.
- (12) Wind turbines shall be allowed in all districts under a Major Special Use Permit under § 154.138. Wind turbines shall be required to have a setback from all property lines of 2 times the fall radius of the wind turbine.

(B) *Uses allowed under a Major Special Use Permit* . The following uses shall be permitted, subject to a finding by the Mills River Town Council that both the conditions in the definition of **SPECIAL USE** in § 154.007(B) and those conditions listed below will be met:

- (1) Planned unit developments , subject to the conditions listed under §154.080 of this chapter.
- (2) Residential duplexes, subject to meeting the lot size and dimensional requirements for lot area and dwelling unit area:
 - (a) A duplex , as defined in §154.007, is a structure consisting of two families living*independently* (emphasis added) of each other.
 - (b) A dwelling unit , as defined in §154.007, is a single unit providing complete, *independent* (emphasis added), living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Example: A duplex is planned for construction in a district requiring a 30,000 square foot minimum lot size and 30,000 square feet for each dwelling unit . Since a duplex consists of two dwelling unit s the minimum lot area applies to each unit. Therefore, a duplex consisting of two dwelling unit s requires a total of 60,000 square feet of lot size.

- (3) Multi-family development, subject to the conditions listed under §154.082 of this chapter.
- (4) Medical, institutional care development, subject to conditions listed under §154.084 of this chapter.
- (5) Group 1 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.
- (6) Group 2 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(7) Group 6 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(8) Transformer and public stations, provided that:

(a) Transformer stations:

1. The structures are placed not less than 75 feet from any property line.
2. The structures are enclosed by a woven-wire fence at least 8 feet high.
3. No vehicle or equipment is stored on the premises.
4. There is an evergreen planted buffer strip along the side and rear property lines of residential zoned property .

(b) Public utility stations:

1. The structures are located on sufficient land to meet all setback requirements of this chapter.
2. The stations are completely enclosed, either by a building or a wire fence at least 8 feet high.
3. There is an evergreen planted buffer strip along the side and rear property lines of residential zoned property .

(9) Structured Home Environments, subject to the conditions listed under §154.085.

(C) *Uses allowed under a Minor Special Use Permit* . The following uses shall be permitted, subject to a finding by the Board of Adjustment that both the conditions in the definition of SPECIAL USE in § 154.007(B) and those conditions listed below will be met:

(1) Parks, camps , tennis and racquet clubs and golf courses . (Miniature golf courses and practice driving tees and illuminated golf courses operated for commercial purposes are not allowed.)

(2) Libraries.

(3) Bed-and-breakfast inns .

(4) Civic and cultural buildings , including auditoriums, theaters for the performing arts, museums, art galleries, symphony and concert halls and historical societies, provided that:

(a) The structures are placed not less than 50 feet from any property line.

(b) They are located with access to a street , as shall be determined by the Zoning Administrator .

(c) There is a planted buffer strip along the side and rear property lines, except where the lines run parallel and contiguous with streets , streambeds, lakes and railroad tracks.

(d) The facility is operated not for profit and satisfactory proof of the tax-exempt status of the organization is exhibited to the Zoning Administrator .

(e) One parking space is provided for each 2 seats in auditoriums, theaters and symphony and concert halls.

(f) One parking space for each 100 feet of gross floor space directed to patron use shall be provided for museums, art galleries and historical societies.

(5) Child Care Centers , public schools having multiple curricula and private schools having curricula approximately the same as ordinarily given in public schools provided that:

(a) The structures are placed not less than 50 feet from any property line.

(b) Play areas shall be placed not less than 20 feet from any property line.

(c) There is a planted buffer strip along the side and rear property lines, except where the lines run parallel and contiguous with streets , streambeds, lakes and railroad tracks.

(d) The property has at least 45 feet of frontage on a publicly owned and maintained road.

(6) Adult Day Care Centers and Adult Day Health Centers provided that:

(a) The structures are placed not less than 50 feet from any property line.

(b) There is a planted buffer strip along the side and rear property lines, except where the lines run parallel and contiguous with streets , streambeds, lakes and railroad tracks.

(c) The property has at least 45 feet of frontage on a publicly owned and maintained road.

(7) Adult Day Care Homes and Adult Day Health Homes provided that:

(a) There is a limit of 10 clients per day.

(D) *Dimensional requirements*. Within the MR-30 Residential District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

- (1) Minimum lot area: 30,000 square feet¹.
- (2) Minimum lot area per dwelling: 30,000 square feet¹.
- (3) Maximum building size: N/A.
- (4) Maximum building height : 50 feet.
- (5) Minimum front yard setback from major street : 75 feet².
- (6) Minimum front yard setback from all other streets : 60 feet
- (7) Minimum rear yard setback: 30 feet.
- (8) Minimum side yard setback for every principal building : 30 feet.

NOTE:

¹This minimum lot size shall not apply to existing residential lots nor lots which have been platted and recorded as residential lots with the Henderson County Register of Deeds as of 31 July 2004. In cases where the Watershed Protection Ordinance requires a larger lot size, the Henderson County Water Supply Watershed Ordinance shall prevail.

²Where the major street is more than 2 lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the subject property .

(E) *Buffer/Screening Requirements.*

(1) Whenever any MR30 - Residential District non-residential rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-30 Residential District shall comply with applicable landscaping and screening requirements in the Town of Mills River Landscape Ordinance.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.048 WATER SUPPLY WATERSHED PROTECTION OVERLAY DISTRICT.

(A) *Purpose.* The purpose of the Water Supply Watershed Protection Overlay District (the "Watershed Protection District") is to define the Water Supply Watershed Protection Areas within the Town of Mills River and regulate the use of land, average lot size and development density and intensity in order to maintain a high quality of surface water and limit the impact from existing or potential sources of contamination in the Public Water Supply Watershed as designated by the N.C. Environmental Management Commission.

(B) *Establishment of areas.* Water Supply Watershed Protection Areas ("Watershed Protection Areas") shall be defined and established on the map entitled, "Watershed Protection Map of the Town of Mills River, North Carolina" (the "Watershed Map"). The Watershed Map and all explanatory matter contained thereon accompanies and is hereby adopted as part of the Mills River Town Code. For purposes of this section, areas of the town may be divided into the following areas as depicted on the Watershed Map and amendments thereto:

WS-I

WS-II-CA (Critical Area)

WS-II-BW (Balance of Watershed)

WS-III-CA (Critical Area)

WS-III-BW (Balance of Watershed)

WS-IV-CA (Critical Area)

WS-IV-PA (Protected Area)

(C) *Application of regulations.* No structure or land shall hereafter be used and no development shall take place in the Watershed Protection District except in conformity with this section for the Watershed Protection Area in which it is located. The following exceptions shall be made in the application of the Watershed Protection District regulations.

(1) Expansions to structures classified as existing development must meet the requirements of this section. However, the built-upon area of the existing development is not required to be included in density calculations.

(2) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(3) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this section if it is developed for single-family residential purposes.

(4) Any lot or parcel created as part of a family subdivision after the effective date of this section shall be exempt from this section if it is developed for 1 single-family detached residence. Any lot or parcel created as part of any other type of subdivision that is exempt from the Subdivision Ordinance shall be subject to the requirements of this section.

(5) Any lot created for a cemetery plot shall be exempt from this section.

(D) *Watershed Protection Areas requirements.*

(1) *WS-I Watershed Protection Areas.* The intent is to provide maximum protection for water supplies within natural and undeveloped watersheds in public ownership by allowing only low intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.

(a) *Allowed uses.*

1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

3. Water withdrawal, treatment and distribution facilities.

4. Restricted road access.

5. Power transmission lines.

(b) Density and built-upon area limits do not apply.

(2) *WS-II Watershed Protection Areas - Critical Area (WS-II-CA).* In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of 1 dwelling unit per 80,000 square foot lot. All other residential and non-residential development shall be allowed at a maximum 6% built-upon area. New residuals application sites and landfills are specifically prohibited.

(a) *Allowed uses.*

1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

3. Residential development .

4. Non-residential development , excluding landfills and sites for land application of residuals or petroleum contaminated soils.

(b) *Density and built-upon limits.*

1. No single-family residential lot shall be less than 80,000 square feet excluding roadway right-of-way, except within an approved cluster development .

2. All other residential and non-residential development shall not exceed 6% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(3) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW).* In order to maintain predominantly undeveloped land use intensity, single family residential uses shall be allowed at a maximum of 1 dwelling unit per 40,000 square foot lot. All other residential and non-residential development shall be allowed a maximum of 12% built-upon area. Non-discharging landfills and residuals application sites are allowed.

(a) *Allowed uses.*

1. Agriculture , subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

3. Residential development .

4. Non-residential development excluding discharging landfills .

(b) *Density and built-upon limits.*

1. No single-family residential lot shall be less than 40,000 square feet excluding roadway right-of-way, except within an approved cluster development .

2. All other residential and non-residential development shall not exceed 12% built-upon area on a project by project basis. For the purpose calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(4) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain low to moderate land use intensity, single family residential uses are allowed at a maximum of 1 dwelling unit per 40,000 square foot lot. All other residential and non-residential development shall be allowed to at a maximum of 12% built-upon area. New residuals application sites and landfills are specifically prohibited.

(a) *Allowed uses.*

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

3. Residential.

4. Non-residential development, excluding landfills and sites for land application of residuals or petroleum contaminated soils.

(b) *Density and built-upon limits.*

1. No single family residential lot shall be less than 40,000 square feet excluding roadway right-of-way, except within an approved cluster development.

2. All other residential and non-residential development shall not exceed 12% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

(5) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. In order to maintain a low to moderate land use intensity, single-family detached uses shall develop at a maximum of 1 dwelling unit per 20,000 square foot lot. All other residential and non-residential development shall be allowed at a maximum of 24% built-upon area. Non-discharging landfills and residuals application sites are allowed.

(a) *Allowed uses.*

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

3. Residential development.

4. Non-residential development excluding discharging landfills.

(b) *Density and built-upon limits.*

1. No single-family residential lot shall be less than 20,000 square feet excluding roadway right-of-way, except within an approved cluster development.

2. All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(6) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Only new development activities that require an erosion/sedimentation control plan under state law or approved local program are required to meet the provisions of this section when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses are allowed at a maximum of 1 dwelling unit per 20,000 square foot lot. All other residential and non-residential development shall be allowed at a maximum of 24% built-upon area. New residuals application sites and landfills are specifically prohibited.

(a) *Allowed uses.*

1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

3. Residential.

4. Non-residential development, excluding landfills and sites for land application of residuals or petroleum contaminated soils.

(b) *Density and built-upon limits.*

1. No single-family residential lot shall be less than 20,000 square feet excluding roadway right-of-way, except within an approved cluster development .

2. All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(7) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this section when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single-family residential uses shall develop at a maximum of 1 dwelling unit per 20,000 square foot lot. All other residential and non-residential development shall be allowed at a maximum of 24% built-upon area. A maximum of 3 dwelling units per acre (3 du/ac) or 36% built-upon area is allowed for projects without a curb and gutter street system.

(a) *Uses allowed.*

1. Agriculture , subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

3. Residential development .

4. Non-residential development .

(b) *Density and built-upon limits.*

1. No single-family residential lot shall be less than 20,000 square feet excluding roadway right-of-way, except within an approved cluster development .

2. All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis. For residential projects without a curb and gutter street system and with natural drainage and filtering design elements, development shall not exceed 36% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(E) The Watershed Administrator may approve high density development proposals consistent with the following standards. High density development shall meet the requirements of the Mills River Town Code.

(1) *WS-II Watershed Areas - Critical Area (WS-II-CA)*. Where new development exceeds either 1 dwelling unit per 2 acres or 6% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 24% built-upon area.

(2) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. Where new development exceeds either 1 dwelling unit per acre or 12% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 30% built-upon area.

(3) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. Where new development exceeds either 1 dwelling unit per acre or 12% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 30% built-upon area.

(4) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. Where new development exceeds either 2 dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.

(5) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Where new development exceeds either 2 dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.

(6) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Where new development requires a sedimentation/erosion control plan and exceeds either 2 dwelling units per acre or 24% built-upon area or 3 dwelling units per area or 36% built-upon area for projects without curb and gutter street systems, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

(F) *Mixed-use development* . In cases where both residential and non-residential uses are proposed for 1 lot in single ownership, such mixed-use developments may be permitted without further subdivision of the lot. However, each use must adhere to its respective density /built-upon area requirements. For purposes of this section, home occupations shall, be considered as residential uses.

(G) *Existing development*. Existing development as defined in this chapter, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this section. However, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

(1) *Uses of land*. This category consists of uses existing as of the effective date of this section where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued

except as follows:

- (a) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
- (b) Such use of land shall be changed only to an allowed use.
- (c) When such use ceases for a period of at least 1 year, it shall not be reestablished.

(2) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the requirements of this section that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

(a) Repair or reconstruction is initiated within 12 months and completed within 2 years of such damage.

(b) The total amount of space devoted to built-upon area may not be increased unless stormwater control measures that equal or exceed the previous development are provided.

(3) *Existing vacant lots.* Existing vacant lots are lots for which plats or deeds have been recorded as of May 23, 1994 in the office of the Register of Deeds of Henderson County. An existing lot may be used for any of the uses allowed in the Watershed Protection Area in which it is located provided that where the lot size is less than the minimum specified in this section, the project requires the issuance of a permit or permits as required by the Mills River Town Code.

(H) *Buffer requirements.* All uses within Watershed Protection Areas shall be required to maintain a minimum 30 foot vegetated buffer from perennial stream banks; provided, however, that where development is approved as a high-density development, the setback from perennial stream shall be 100 feet. Perennial streams shall be identified as indicated on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Where USGS topographical maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. Water-dependent structures and public projects, such as road crossings and greenways, may be allowed where no practical alternative exists. The activities shall minimize built-upon surface area and maximize the use of stormwater best management practices.

(I) *Cluster development.* Cluster development is allowed in designated Watershed Protection Areas in accordance with § 154.080 of this chapter, and under the following conditions.

(1) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in § 303. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, whichever applies.

(2) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(3) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainageways.

(4) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(5) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(J) *Density averaging.* An applicant may average development density on up to 2 noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

(1) The properties are within the same water supply watershed. If 1 of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.

(2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B.0200.

(3) Vegetated setbacks on both properties meet the minimum statewide water supply watershed protection requirements.

(4) Built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.

(6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat,

in homeowners' covenants, and on individual deed and shall be irrevocable.

(7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the Watershed Ordinance and that potential owners have record of how the watershed regulations were applied to the properties .

(K) *Calculation of project density* . The following requirements shall apply to the calculation of project density :

(1) Project density shall be calculated as the total built-upon area divided by the total project area;

(2) A project with "existing development," as that term is defined in 15A NCAC 02B.0621, may use the calculation method in division (K)(1) or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.

(3) Expansions to existing development shall be subject to 15A NCAC 02B.0624 except as excluded in Rule 15A NCAC 02B.0622(1)(d).

(4) Where there is a net increase of built-upon area, only the area of net increase shall be subject to 15A NCAC 02B.0624.

(5) Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to 15A NCAC 02B.0624;

(6) Total project area shall I exclude the following:

(a) Areas below the Normal High Water Line (NHWL); and

(b) Areas defined as "coastal wetlands" pursuant to 15A NCAC 07H.0205.

(7) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

(a) Natural drainage area boundaries;

(b) Variations in land use throughout the project; or

(c) Construction phasing.

(L) *Low density projects*. In addition to complying with the project density requirements of the Mills River Watershed Protection Ordinance, low density projects shall comply with the following:

(1) *Vegetated conveyances*. Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this division:

(a) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and

(b) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.

(2) *Curb outlet systems*. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

(a) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;

(b) The longitudinal slope of the swale or vegetated area shall not exceed 5% except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;

(c) The swale's cross section shall be trapezoidal with a minimum bottom width of 2 feet;

(d) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);

(e) The minimum length of the swale or vegetated area shall be 100 feet; and

(f) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H.1061 in lieu of the requirements specified in divisions (a) through (e) of this division (L)(2).

(M) *High density projects.* In addition to complying with the project density requirements of the Mills River Watershed Protection Ordinance, high density projects shall comply with the following:

- (1) Stormwater Control Measures (SCMs) shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02B.0621;
- (2) For high density projects designed to achieve runoff treatment, the required storm depth shall be 1 inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;
- (3) Stormwater runoff from off-site areas and "existing development," as that term is defined in 15A NCAC 02B.0621, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
- (4) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H.1050 through .1062; and
- (5) Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

(N) *Options for implementing project density.* The Town of Mills River has the following options in addition to those enumerated in divisions (D) and (E) above, as appropriate.

(1) The Town of Mills River may allow only low density development in its water supply watershed areas in accordance with this section.

(2) The Town of Mills River may regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.

(3) *10/70 option.* Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, the Town of Mills River may regulate new development under the "10/70 option" in accordance with the following requirements:

(a) A maximum of 10% of the land area of a water supply watershed outside of the critical area and within the Town of Mills River's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70% built-upon area.

(b) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on the Town of Mills River's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on the Town of Mills River's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;

(c) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in division (C) above unless the Town of Mills River allows high density development, in which case the town may require these projects to comply with high density requirements;

(d) The maximum built-upon area allowed on any given new development project shall be 70%;

(e) The Town of Mills River may transfer, in whole or in part, its right to the 10/70 land area to another local government within the same water supply watershed upon submittal of a joint resolution and approval by the Commission; and

(f) When the water supply watershed is composed of public lands, such as National Forest land, the Town of Mills River may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.

(4) New development shall meet the development requirements on a project-by-project basis except the Town of Mills River may submit ordinances that use density or built-upon area criteria averaged throughout the Mills River watershed jurisdiction instead of on a project-by-project basis within the watershed. Prior to approval of the ordinance, the Town of Mills River shall demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements and that a mechanism exists to ensure the planned distribution of development potential throughout the local government's jurisdiction within the watershed.

(5) The Town of Mills River may administer oversight of future development activities in single-family detached residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from 1) all pervious and built-upon surfaces shown on the development plan and 2) any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15% of built-upon area of the project site is figured in.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2022-18, passed 12-8-2022)

§ 154.049 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.050 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.051 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.052 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.053 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.054 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.055 MR-LIGHT INDUSTRIAL DISTRICT.

The MR - Light Industrial District provides a place for the location of industrial and other uses that would be incompatible with general business areas. It is intended to permit , in this district, any use that is not inherently obnoxious to urban and rural areas because of noise, odor, smoke, light, vibration, dust or the use or storage of dangerous chemicals and/or materials.

(A) *MR-LI Light Industrial District.* Within the MR - Light Industrial District, the following uses are permitted:

- (1) Farm machinery assembly.
- (2) Automotive components and parts manufacturing.
- (3) Industrial equipment, sales and repairs.
- (4) Machine and welding shops.
- (5) Milk distribution facilities.
- (6) Pharmaceutical manufacturing.
- (7) Printing, publishing, reproducing establishments.
- (8) Warehouses.
- (9) Trucking terminals.
- (10) Child care centers .
- (11) Family child care homes and incidental home occupations per § 154.105(G).
- (12) Manufacture, processing, distribution or fabrication of the following products:
 - (a) Animal feeds;
 - (b) Bedding, carpets and pillows;
 - (c) Clothing, including hosiery;
 - (d) Electrical and electronic products;
 - (e) Fiber-optic cable;
 - (f) Foods, food products, beverages and beverage products, including bottling of beverages and beverage products;
 - (g) Furniture industries;
 - (h) Glass;
 - (i) Household appliances;
 - (j) Ice;
 - (k) Leather goods, not to include processing or storage of raw hides;

- (l) Machine tools;
- (m) Metals and metal products;
- (n) Paints;
- (o) Paper products, not including the manufacturing or processing of paper;
- (p) Plastics;
- (q) Pottery, porcelain and vitreous china;
- (r) Rubber products, not to include the processing or manufacture of rubber;
- (s) Soap, detergent and washing compounds;
- (t) Textiles.

(13) Group 1 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(14) Group 2 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(15) Group 3 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(16) Solar energy generation facilities subject to the list of uses permitted with standards to § 154.066(E)(1) including subject to § 154.089.

(B) *Secondary uses.* For purposes of this § 154.055, a **SECONDARY USE** is defined as a use which is incidental, supplemental or accessory to the principal use of the property and may include a structure or structures at any location upon the property, which structure is utilized for a secondary use. Within the MR-Light Industrial District, the following secondary uses are permitted:

- (1) Cafeterias, restaurants and pubs, including catering activities.
- (2) The promotion, sale and tasting of products manufactured or processed on site.
- (3) Recreation facilities (indoor and outdoor).
- (4) Assembly, including venues for entertainment and other special events and conferences.
- (5) Facilities for alternative energy sources, including but not limited to solar panels, wind turbines, and converters or processors to recycle materials into usable energy to be used on site.
- (6) Retail facilities (gift shop, sundry shop).
- (7) Sales training and meeting facilities related to the principal use, including overnight lodging.
- (8) Agriculture for production of goods to be used in connection with any permitted principal or secondary use.
- (9) Adult Day Care Centers and Adult Day Health Centers, provided that the structures comply with the District's setbacks.
- (10) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by Minor Special Use Permit as approved by the Board of Adjustment. Application for a special use permit shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall not extend more than 5 feet above the building. Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer. Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.
- (11) Wind turbines shall be allowed in all districts under a Major Special Use Permit under § 154.138. Wind turbines shall be required to have a setback from all property lines of 2 times the fall radius of the wind turbine.

(C) Uses requiring a Minor Special Use Permit.

(1) Gasoline, oil or fuel products. Wholesale storage (including bottled gas and oxygen) above ground, provided permit is obtained from the fire marshal as required by the fire prevention code and all activity complies with applicable federal, state and local laws, rules and regulations.

(2) Uses not otherwise named herein which come within the spirit and intent of this district; subject to a finding by the Board of Adjustment that both the conditions and the definition of SPECIAL USE in § 154.007(B) and those listed below are met.

(a) The proposed use would not involve the manufacture, use in manufacture, storage on, in, or above ground on the premises; any type of chemical, in any form, which due to its nature, is known to be hazardous to human health due to

radiation or toxicity or known to be a carcinogen.

(b) The proposed use must meet all dimensional signage, buffer and parking requirements of this chapter.

(D) *Dimensional requirements.* Within the MR-Light Industrial District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

- (1) Minimum lot size is 1 acre, and building (s) footprint shall cover no more than 50% of the total lot area.
- (2) Minimum mean lot width: 200 feet.
- (3) Minimum front yard setback from major street: 75 feet¹.
- (4) Minimum front yard setback from all other streets : 60 feet.
- (5) Minimum rear yard setback: 20 feet.
- (6) Minimum side yard setback for every principal building : 15 feet.
- (7) Maximum height of building : 80 feet.

NOTE:

1 Where the major street is more than 2 lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the subject property .

(E) *Accessory structures .*

(1) Location of a guard house or security structure (s) may be in any front or side yard , but must be at least 20 feet from any street or highway line, and not within 10 feet of any lot line not a street or highway line. An accessory building or use shall be located in the rear yard provided it is located not less than 10 feet from the property line. In the case of a corner lot with reversed frontage, no accessory building shall extend beyond the front yard line of the lots in the rear.

(2) Whenever the location of an accessory building abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking areas used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(F) *Off-street parking and loading requirement.* Off-street parking as required by this chapter may be permitted in required yards and within the required setback, but shall not be closer than 10 feet from the front property line or any dedicated street right-of-way.

(G) *Buffer/screening requirements.*

(1) Whenever any non-residential MR - Light Industrial District rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-Light Industrial District shall comply with applicable landscaping and screening requirements in the Town of Mills River Landscape Ordinance.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.056 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011)

§ 154.057 MR-GENERAL BUSINESS DISTRICT.

The MR - General Business District provides a place for offices, personal services, and the retailing of durable and convenience goods for the community. Districts are located on major thoroughfares and collector streets . Because these commercial uses are subject to public view and are important to the economy of the community, they shall have ample parking, controlled traffic movement and suitable landscaping.

(A) *Uses.* Within the MR - General Business District, the following uses are permitted:

- (1) Adult Day Care Centers and Adult Day Health Centers .
- (2) Animal hospitals or kennels.
- (3) Automobile parts and suppliers, repair garages, excluding open storage of wrecked or inoperable vehicles.
- (4) Automobile sales, new and used.
- (5) Automobile washing establishments.

- (6) Bakeries and retail.
- (7) Banks, loan offices and agencies.
- (8) Barbershops and beauty shops.
- (9) Building supply and equipment sales.
- (10) Business, professional, government, religious, charitable offices or agencies.
- (11) Child Care Centers .
- (12) Churches.
- (13) Computer, sales and services.
- (14) Convenience stores with gas pumps, provided the pumps are located at least 15 feet from all property lines.
- (15) Customary accessory uses and structures when located on the same zoning lot as the principal structure , excluding open storage.
- (16) Dairy bars and ice cream manufacturing for retail sales on the premises only.
- (17) Dry cleaning or laundry pickup stations.
- (18) Drug stores.
- (19) Electrical and electronic products, retail.
- (20) Electric repair shops.
- (21) Family Child Care Homes and Incidental Home Occupations per § 154.105(G).
- (22) Florists.
- (23) Funeral homes or mortuaries.
- (24) Furniture and household appliance stores.
- (25) Gift shops.
- (26) Greenhouses or horticultural nurseries.
- (27) Grocery, food, fruit and meat stores.
- (28) Hardware stores.
- (29) Jewelry shops.
- (30) Kindergartens and day nurseries, provided that outdoor play area is enclosed by a sturdy fence at least 5 feet in height.
- (31) Laundromats and similar automatic laundries.
- (32) Libraries, art galleries, museums, music or dancing institutions or schools.
- (33) Locksmiths and gunsmiths.
- (34) Newspaper offices.
- (35) Extended care facilities .
- (36) Office supplies and equipment, sales and services.
- (37) Opticians.
- (38) Photographic studios and camera supply stores.
- (39) Physical fitness centers.
- (40) Plumbing supply, retail.
- (41) Printing, publishing and reproducing establishments.
- (42) Public or privately owned medical and dental clinics , and offices where medical or dental services are rendered.
- (43) Radio and television repair shops.
- (44) Restaurants.
- (45) Retail establishments such as a department, clothing, fabric, variety, floor covering, paint, antique, art goods, gift, music, toy, sporting goods, book and stationery, magazine, candy, tobacco, pet, hobby and craft stores, but not excluding similar retail outlets.

(46) Service stations, provided that all gasoline pumps and other stationary equipment shall be located at least 15 feet behind the property line. Furthermore, all sides where the stations abut residential districts, a fence 6 feet in height and suitable landscaping shall be provided.

(47) Shoe repair shops.

(48) Sign making and painting shops.

(49) Tailor and dressmaking shops.

(50) Wholesale and warehouse establishments except for the storage of uncured hides, explosives, oil products, gasoline, harmful or dangerous chemicals or materials, and the like.

(51) Group 1 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(52) Group 2 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(53) Group 3 communications towers and tower activities (as defined in and subject to the requirements in §§ 154.090 through 154.101).

(54) Electronic gaming operations as a secondary use by right to the primary use of indoor retail businesses in the Mills River General Business (MR-GB) District. A maximum of 2 machines shall be allowed per establishment.

(55) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by a Minor Special Use permit as approved by the Board of Adjustment. Application for a special use permit shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall not extend more than 5 feet above the building. Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer. Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.

(56) Wind turbines shall be allowed in all districts under a special use permit under § 154.138. Wind turbines shall be required to have a setback from all property lines of 2 times the fall radius of the wind turbine.

(B) Uses requiring a Minor Special Use Permit .

(1) Commercial uses not otherwise named herein which come within the spirit and intent of this district; subject to a finding by the Board of Adjustment that both the conditions and the definition of SPECIAL USE in § 154.007(B) are met.

(2) Shopping centers .

(3) Hotels, inns, and motels.

(4) Bowling alleys, skating rinks, miniature golf courses , gymnasiums and other private or publicly owned and operated recreational facilities.

(5) Drive-in restaurants.

(6) Assembly halls, auditoriums and similar structures .

(7) Mixed uses, where buildings are erected for both dwelling and business purposes, provided the buildings shall be furnished with side yards on each side of the building measuring not less than 8 feet in width. This regulation shall not apply to the street side of a corner lot.

(8) Retail and wholesale sales and storage of propane, provided permit is obtained from appropriate fire marshal and the conditions and the definition of SPECIAL USE in § 154.007(B) are met.

(9) Structured Home Environments, subject to the conditions listed under §154.085.

(C) *Dimensional requirements.* Within the MR- General Business District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

(1) There is no minimum lot size, however the building (s) footprint shall cover no more than 50% of the total lot area.

(2) Minimum mean lot width: 75 feet.

(3) Minimum front yard setback from major street: 50 feet¹.

(4) Minimum front yard setback from all other streets : 40 feet.

(5) Minimum rear yard setback: 30 feet.

(6) Minimum side yard setback for every principal building : 15 feet.

(7) Maximum height of building : 50 feet.

NOTE:

¹ Where the major street is more than 2 lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the subject property .

(D) *Accessory structures .*

(1) An accessory building or use shall be located in the rear yard provided it is located not less than 10 feet from the property line. In the case of a corner lot with reversed frontage, no accessory building shall extend beyond the front yard line of the lots in the rear.

(2) Whenever the location of an accessory building abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(E) *Off-street parking and loading requirement.* Off-street parking as required by this section may be permitted in required yards , but shall not be closer than 10 feet from the front property line or any dedicated street right-of-way.

(F) *Buffer/screening requirements.*

(1) Whenever any non-residential MR-General Business rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-General Business District shall comply with applicable Landscaping and screening requirements in the Town of Mills River Landscape Ordinances.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.058 MR-NEIGHBORHOOD COMMERCIAL.

The purpose of this district is to provide for compatible residential and commercial uses, which protect and enhance the rural characteristic of Mills River.

(A) *Uses.* Within the MR Neighborhood Commercial district, the following uses are permitted:

- (1) Retail business or service conducted within an enclosed building .
- (2) Retail business making products sold primarily at retail on the premises.
- (3) Other public utilities, public facilities and public buildings .
- (4) Offices: business, professional, medical and public.
- (5) Single-family dwellings.
- (6) Family care homes .
- (7) Adult Day Health Homes , Adult Day Health Centers , Adult Day Care Homes and Adult Day Care Centers .
- (8) Child Care Centers .
- (9) Family Child Care Homes and Incidental Home Occupations per § 154.105(G).
- (10) Customary accessory buildings .

(11) Group 1 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(12) Group 2 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(13) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by a Minor Special Use Permit as approved by the Board of Adjustment. Application for a special use shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall be extend more than 5 feet above the building . Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer. Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.

(14) Wind turbines shall be allowed in all districts under a Major Special Use Permit under § 154.138. Wind turbines shall be required to have a setback from all property lines of 2 times the fall radius of the wind turbine.

(B) *Uses allowed under a Minor Special Use Permit .* The following uses shall be permitted, subject to a finding by the Board of Adjustment that both the conditions in the definition of **SPECIAL USES** in § 154.007(B) and those conditions listed

below will be met:

- (1) Hospitals, clinics , veterinary clinics , libraries, schools and churches, excluding cemeteries.
- (2) Restaurants, bed-and-breakfast establishments.
- (3) Home occupations.
- (4) Civic and cultural buildings , including auditoriums, theaters for the performing arts, museums, art galleries, symphony and concert halls and historical societies. The uses must meet the same site requirements stated in § 154.047(A) (9).
- (5) Structured Home Environments, subject to the conditions listed under §154.085.

(C) *Dimensional requirements—Residential.* Within the MR–Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

- (1) Minimum lot area: 30,000 square feet.¹
- (2) Minimum lot area per dwelling: 30,000 square feet¹.
- (3) Maximum building size: N/A.
- (4) Maximum building height : 50 feet.
- (5) Minimum front yard setback from major street: 75 feet².
- (6) Minimum front yard setback from all other streets : 60 feet.
- (7) Minimum rear yard setback: 30 feet.
- (8) Minimum side yard setback for every principal building : 30 feet.

(D) *Dimensional requirements—non-residential.* Within the MR–Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

- (1) Minimum lot area: 30,000 square feet.¹
- (2) Maximum building size: 10,000 square feet.
- (3) Maximum building height : 30 feet.
- (4) Minimum front yard setback from major street: 75 feet².
- (5) Minimum front yard setback from all other streets : 60 feet.
- (6) Minimum rear yard setback: 30 feet.
- (7) Minimum side yard setback for every principal building : 30 feet.

NOTE:

¹ This minimum lot size shall not apply to existing residential lots nor lots which have been platted and recorded with the Henderson County Register of Deeds as of 31 July 2004. In cases where the Watershed Protection Ordinance requires a larger lot size, the Henderson County Water Supply Watershed Ordinance shall prevail.

² Where the major street is more than 2 lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the subject property .

(E) *Maximum permissible lot coverage.* The total ground area covered by the building in this district shall not exceed 50% of the total lot area.

(F) *Buffer/Screening Requirements.*

(1) Whenever any non-residential MR-Neighborhood Commercial District rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-Neighborhood Commercial District shall comply with applicable landscaping and screening requirements in the Town of Mills River Landscape Ordinance.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.059 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-

2006)

§ 154.060 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.061 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.062 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.063 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.064 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.065 [RESERVED].

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.066 MR-MIXED USE DISTRICT.

The MR-Mixed Use District is established to allow all uses (excluding hazardous waste disposal facilities and radioactive waste disposal facilities and adult establishments) but to regulate certain uses so as to ensure that neighborhood impact is mitigated. The neighborhood impact from the uses listed below will be mitigated through the use of minimum specific site standards combined with general standards which provide the flexibility to impose a higher level of specific site standards dependent upon the degree of neighborhood impact.

(A) *Minimum residential lot size.* In keeping with the intent to enhance and protect the rural character of Mills River, residential lot sizes shall be no less than 30,000 square feet per single-family dwelling. This minimum lot size shall not apply to existing residential lots nor residential lots which have been platted and recorded with the Henderson County Register of Deeds as of 31 July 2004. In cases where the Watershed Protection Ordinance requires a larger lot size, the Henderson County Water Supply Watershed Ordinance shall prevail.

(B) *Definitions.* The following definitions are applicable in this § 154.066 and in other sections of this chapter only as specifically stated in the other sections:

ACCESS ROAD CORRIDOR. A private passageway containing a road, street , driveway, and the like, that provides the principal means of direct vehicular entry and/or exit between a regulated use and a paved, public road, street or highway. An access road corridor shall be located entirely on the subject property or on an easement appurtenant. An access road corridor shall contain a clear and unobstructed travelway , except for any necessary security gates, and shall have a minimum vertical clearance of a least 13 feet, 6 inches.

BUFFER. A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building), in which no development or principal use may occur, but which may contain screening , fencing , interior service roads not intended for patron use, principal use signs , business signs and gate or security houses. Access road corridors may cross the buffer at entrance and exit points only.

EXTREMELY HAZARDOUS FACILITY. Any industrial facility that stores, handles, processes or manufactures any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System.

EXTREMELY HAZARDOUS SUBSTANCE. Any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System.

HEAVY INDUSTRY. Any industrial use establishment that is an extremely hazardous facility as defined in § 154.066(A) of this chapter, or is a large quantity generator of hazardous waste as that term is defined by the North Carolina Department of Environment and Natural Resources. Specifically excluded from this definition are those establishments that are not extremely hazardous facilities that operate in an enclosed building (s) or structure (s) having a total gross floor area of less

than 30,000 square feet; and those uses listed in § 154.066(G)(1)(a) through (k).

SETBACK. A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building) in which no principal structure is permitted. Limited development, including buffers and related development, parking lots and accessory structures and buildings , access road corridors , and interior service roads, may occur within the setback.

(C) *Uses allowed by right.* All uses are allowed by right in the MR-Mixed Use District unless otherwise regulated by this section or other parts of the Mills River Town Code.

(1) Accessory structures and buildings of all uses allowed by right in the MR-Mixed Use District are exempted from those regulations contained in § 154.112.

(D) *Uses governed by other ordinances.* Within the MR-Mixed Use District the following uses will be allowed but will be entirely governed by the specified ordinances adopted by the Mills River Town Council:

(1) Manufactured home parks : subject to compliance with Chapter 151 of the Mills River Town Code , as may be amended.

(2) Communication towers : subject to compliance with Chapter 152 of the Mills River Town Code , as may be amended.

(E) *Uses permitted with standards.*

(1) The following uses shall be permitted with standards:

(a) Vehicle graveyards (See § 154.087).

(b) Mobile/manufactured home graveyards (See § 154.087).

(2) Uses permitted with standards shall require a zoning permit from the Zoning Administrator .

(3) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by Minor Special Use Permit as approved by the Board of Adjustment. Application for a special use permit shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall extend more than 5 feet above the building . Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer . Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.

(4) Wind turbines shall be allowed in all districts under a Major Special Use Permit under § 154.138. Wind turbines shall be required to have a setback from all property lines of 2 times the fall radius of the wind turbine.

(F) *(Reserved)*

(G) *Special uses .*

(1) The following special uses shall be permitted in the MR-Mixed Use District under a Major Special Use Permit , subject to the Mills River Town Council finding that both the general site standards stated in § 154.138 and those specific site standards listed in § 154.087, if any, will be met:

(a) Incinerators .

(b) Solid waste management facilities .

(c) Mining and extraction operations .

(d) Concrete plants .

(e) Asphalt plants .

(f) Junkyards .

(g) Motor sports facilities .

(h) Slaughtering plants .

(i) Amusement parks .

(j) Chip mills .

(k) Heavy industry .

(l) Tiny home parks, park model parks, recreational vehicle parks .

(2) It is expressly acknowledged that the above-referenced uses will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood as long as the site standards as specified in § 154.087 and the general

site standards as specified in § 154.138(D) are met.

(H) *Prohibited uses.* The following uses shall be prohibited in the MR-Mixed Use District:

- (1) Hazardous waste disposal facilities , unless preempted pursuant to G.S. § 130A-293.
- (2) Radioactive Waste Disposal Facilities , unless preempted pursuant to G.S. § 104E-6.2.
- (3) Adult establishments .

(I) *Expansion and alteration of certain uses in the MR-Mixed Use District.*

(1) *Uses having a special use permit .* The following requirements apply to those uses listed in § 154.066(G) which receive a special use permit after the effective date of a Zoning Map of the Town of Mills River amendment applying the MR-Mixed Use District in the applicable area:

(a) *Alteration of a use (without physical expansion).* Alterations of the operations of a use shall be allowed as long as the alterations do not violate any specific standards of this chapter (see § 154.087), general standards of this chapter (see § 154.138) or conditions of the special use permit . If an alteration would result in the violation of any specific standards of this chapter (see § 154.087), general standards of this chapter (see §154.138) or conditions of the special use permit , an amendment to the special use permit shall be required, otherwise the alteration will be deemed a violation of this chapter. This subsection shall not be deemed to allow a use to change to another use listed in § 154.066(G) without applying for a new special use permit . Alterations of operations shall include, but not be limited to, increases in productivity arising from the addition of equipment, the addition of employee shifts or the change of means and methods.

(b) *Physical expansion of a use.* A use may expand its facilities without any additional restrictions and without securing an amendment to the special use permit if the specific standards of this chapter (see § 154.087), general standards of this chapter (see § 154.138), or the conditions of the permit , if any, will not be violated and if the total size of the structures or areas devoted to the principal uses after the proposed expansion would not be increased by more than 10%. Notwithstanding the foregoing, no use may expand in accordance with the terms of this exception on more than 2 occasions without securing an amendment to the special use permit . All other expansions will require an amendment to the special use permit . If any condition of the special use permit will be violated by a proposed expansion to facilities, or the proposed expansion will result in more than 2 expansions to facilities pursuant to the exception contained herein above, or the expansion results in the total size of the structures or areas devoted to the principal use being expanded by more than 10%, then the expansion will be deemed a violation of this chapter.

(2) *Uses for which a special use permit was not required when established.* For those uses of the same type as those listed in § 154.066(G) constructed or established after the effective date of a Zoning Map of the Town of Mills River amendment applying the MR-Mixed Use District in the applicable area, which did not require a special use permit when the use was constructed or established, any expansion or alteration to the operations, or any expansion or alteration to the structures or areas devoted to the principal use , which bring the use within the definition for those uses listed in § 154.066(G) shall require a special use permit . The entire use, including but not limited to the expansion or alteration, shall be required to comply with all applicable standards in the MR-Mixed Use District.

(3) *Preexisting uses.* For those uses of the same type as those listed in §154.066(G) constructed or established before the effective date of a Zoning Map of the Town of Mills River amendment applying the MR-Mixed Use District in the applicable area the following requirements shall apply:

(a) *Alteration of a use (without physical expansion).* Alterations of the operations of a use of the type listed in § 154.066(G) shall be allowed without a special use permit if the use did not meet the definition of 1 of the uses listed in § 154.066(G) when constructed or established, and the alteration does not bring the use within the definition for 1 of the uses listed in § 154.066(G). If, however, the alteration will bring the use within the definition of 1 of the uses listed in § 154.066(G), then a special use permit shall be required. Once a special use permit is obtained for a preexisting use, however, further alterations shall be governed by § 154.066(l)(1)(a) above.

(b) *Physical expansion of a use.* Expansions of the facilities for uses of the type listed in §154.066(G) shall be allowed without a special use permit if the use would not have met the definition of one of the uses listed in § 154.066(G) when constructed or established, and the expansion does not bring the use within the definition for one of the uses listed in § 154.066(G). If, however, the expansion will bring the use within the definition of one of the uses listed in § 154.066(G) or the use would have met the definition of one of the uses listed in § 154.066(G) when constructed or established, then a special use permit shall be required. Once a special use is obtained for a preexisting use, however, further expansions shall be governed by § 154.066(l)(1)(b) above.

(c) *Applicable standards.* Notwithstanding any provisions of this chapter, alterations or expansions to uses required to obtain a special use permit pursuant to this § 154.066(l)(3) [whether or not they are later governed by §154.066(l)(1)(a) or § 154.066(l)(1)(b) above] shall be required to meet the specific site standards listed in § 154.087 to the extent possible for the expanded or altered portion of the facility or operation only. Any the alteration or expansion shall be required to meet the general standards listed in § 154.138 with or without conditions imposed by the Mills River Town Council as allowed by this chapter. The conditions may include, but not be limited to, imposition of specific site standards of the types listed in § 154.087. Notwithstanding anything herein to the contrary, development occurring around a preexisting use will not affect the ability of the use to alter or expand its facilities or operations.

(J) *Subsequent events.* Events occurring subsequent to the date of an application for a special use permit for those uses in the MR-Mixed Use District requiring the permit , including but not limited to the location of a health-care facility or school

within the stated separation or a change in the residential density , shall not operate to invalidate the permit or affect the ability of the use to alter or expand its facilities or operations. In addition, development occurring around a preexisting use or a use for which a special use permit was not required when established will not affect the ability of the use to alter or expand its facilities or operations.

(K) *Dimensional requirements - nonresidential.* Within the MR-Mixed Use District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

(1) Maximum building size: 15,000 square feet. Public Schools as defined in § 154.007(B) are exempt from this provision for building size maximum.

(2) Maximum building height : 40 feet.

(3) Minimum front yard setback from major street: 75 feet. ²

(4) Minimum front yard setback from all other streets : 60 feet.

(5) Minimum rear and side yard setback : 30 feet.

(L) *Buffer /screening requirements.*

(1) Whenever any non-residential MR-Mixed Use rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer , any buildings or parking area used for non-residential shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-Mixed Use District shall comply with applicable landscaping and screening requirements in the Town of Mills River Landscape Ordinance.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23- 2013; Am. Ord. 2018-03, passed 3-8-2018; Am. Ord. 2018-10, passed 11-8-2017; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.067 MR-CONDITIONAL ZONING DISTRICT.

(A) It is recognized that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by-right would not be appropriate for a particular property , even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this chapter and the Making Mills River 2040 Comprehensive Plan.

(B) Establishment of a Conditional Zoning District shall only be considered upon the request of all the owners and/or their representatives of the property to be included. A Conditional Zoning may not be initiated by the Town Council , the Planning Board, the Board of Adjustment, the Town Manager, the Zoning Administrator , or other Town staff.

(C) As authorized under G.S. 160D-703, the following conditional districts are established which require the submission of an application and a master plan as a prerequisite to any development .

(1) A Residential Conditional Zoning District (MR-R-CD).

(2) Commercial Conditional Zoning District (MR-C-CD).

(3) Industrial Conditional Zoning District (MR-I-CD).

(4) Mixed Use Conditional Zoning District (MR-M-CD).

(D) Each district is subject to applicable standards and conditions imposed by the Town Council in the ordinance creating the district. If the ordinance creating a conditional zoning district fails to provide specific standards, any development in the district shall comply with the applicable standards for the corresponding base district contained in this chapter. These conditional districts are not intended to relieve hardships that should be resolved by means of a variance.

(E) The conditional zoning district classification allows projects of innovative design and layout that would not otherwise be permitted under this chapter because of the strict application of conventional zoning district standards or other general development standards. Conditional zoning encourages innovative land planning and design concepts by:

(1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning and development standards that were designed primarily for individual lots ;

(2) Allowing greater freedom in selecting the means to provide access, light, open space, and design amenities;

(3) Allowing greater freedom in providing a mix of land uses in the same development , including a mix of housing types and non-residential uses in a conditional zoning district;

(4) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations, and land uses.

(F) In return for greater flexibility in site design requirements, conditional zoning districts are expected to deliver

exceptional quality community designs that preserve critical environmental resources, provide high quality open space amenities, incorporate creative design in the layout of buildings , open space and circulation; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure.

(1) (a) In order to apply for a rezoning to a conditional zoning district, proposed development projects and subject property must meet both of the following minimum requirements:

(b) Subject property must have *Making Mills River Comprehensive Plan*, Future Land Use Map designation of Community Center, Industrial and Employment, or Community Crossroads districts. Subject property total contiguous acreage: 2 acres.

(2) (a) Uses.

(b) Each conditional zoning district ordinance shall specify allowable uses and associated approval processes as one of the following:

1. Permitted by Right (P). A use which is permitted by right must comply with the development standards mutually agreed to for the conditional district.

2. Permitted with Standards (PS). Same as above except that the use must comply with 1 or more additional standards not required of other permitted uses in the district.

3. Special Use Permit (SUP). Requires issuance of a Major or Minor Special Use Permit from Town Council or the Board of Adjustment, respectively.

(3) Development standards.

(a) Certain development standards may not be altered by means of a conditional zoning district, these include: water supply watershed regulations, stormwater regulations, water supply permitting, wastewater permitting, NCDOT driveway permitting, and any other state or federal requirements, such as sedimentation and erosion control permitting, and stream and wetland disturbance permitting.

1. Residential density in a conditional district must adhere to the Town requirement of a maximum of 1 dwelling unit per 30,000 SF for detached single-family developments , and 4 dwelling units per acre for multifamily developments , tiny home parks , park model parks , and recreational vehicle parks .

2. Residential minimum lot size in a conditional district must adhere to the Town requirement of no less than 30,000 SF for detached single-family developments , and 20,000 SF for single family residential cluster developments s and planned residential developments . Lot size requirements are waived for multifamily developments .

(b) Unless specifically stated in the approving ordinance all developments must comply with existing standards for parking, landscaping, corridor overlay district architectural requirements, road construction standards, yards , and setbacks, as identified in the most closely related conventional zoning district.

(c) Conditional zoning districts may allow for modifications to any or all of the following:

1. Uses.
2. Building height .
3. Building size.
4. Building architectural design.
5. Parking.
6. Landscaping.
7. Setbacks.
8. Open space.
9. Signage.
10. Number of Principle Uses or Buildings .

(Ord. 2023-04, passed 9-14-2023)

SPECIAL PROVISIONS

§ 154.080 SINGLE-FAMILY RESIDENTIAL CLUSTER DEVELOPMENT.

A single-family residential cluster development (SFRCD) may be located in the MR-30, MR-MU, and MR-NC districts as a special use under a Major Special Use Permit , subject to a finding by the Mills River Town Council on the advice and recommendation of the Town of Mills River Planning Board that certain conditions are met. The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building lot size. Densities are calculated on a project basis, thus allowing the clustering of single-family

residential homes in order to create efficient use of land resulting in land conservation.

(A) Land development standards. The following land development standards shall apply for a single-family residential cluster development. Single-family residential cluster developments may be located in the MR-30 , MR-MU, and MR-NC districts as a special use , subject to a finding by the Mills River Town Council on the advice and recommendation of the Planning Board that certain conditions shall be met.

(1) Ownership control. The land in a single-family residential cluster development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) Density requirements. The overall density (dwelling units per acre) of any proposed SFRCD shall be one (1) dwelling unit per 40,000 square feet.

(a) The minimum lot size requirement for a detached single-family dwelling shall be no less than 20,000 square feet.

(b) Streets , street right-of-way, utility station sites, lakes, ponds and other impervious structures , such as club houses, swimming pools and tennis courts may not be included when calculating the total acreage available for a SFRCD.

(c) Open space within an SFRCD must be identified on the plat with the following language: "Natural Area – Not Subject to Development". The plat shall be recorded in the office of the Register of Deed of Henderson County. Open space within a SFRCD shall remain in a vegetated or natural site.

(3) Frontage requirements. Single-family residential cluster developments shall have the main entrance on a paved, public, state -maintained road or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.

(4) Minimum size. The minimum area for a SFRCD shall be 1-1/2 contiguous acres.

(5) Residential uses. Only single-family detached homes shall be allowed in a SFRCD.

(6) Minimum requirements.

(a) The normal 30,000 square feet lot size, setbacks and frontage requirements are hereby waived for the SFRCD, provided that the spirit and intent of this section are complied with in the total development plan as determined by the Town Council . The Town Council shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

1. Height limitations. No building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof or facade whichever is greater.

2. Required distance between buildings . The minimum distance between buildings in a planned unit development shall be as follows:

a. All buildings located or situated end to end (shortest sides) and are less than 20 feet in height shall have a minimum separation of 20 feet between buildings . When one (1) or both buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 30 feet.

b. All buildings located or situated side to side or end to end (longest sides) and are less than 20 feet in height shall have a minimum separation of 30 feet between buildings . When one (1) or more adjacent buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 40 feet separation .

(b) Publicly-owned and maintained water and sewer shall be required for a SFRCD.

(c) Streets within a SFRCD shall be built to meeting NCDOT standards.

(d) Every dwelling unit shall have direct access to an interior road and there shall be provision for adequate vehicular circulation to all development properties in order to insure acceptable levels of access for emergency vehicles.

(e) The location of structures , shown on the development plan, shall be so arranged as not to be detrimental to existing or other proposed structures or to the development of the neighborhood .

(7) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units . Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants , screening of objectionable views or uses, and reduction of noise.

(8) Perimeter requirements. If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Town Council may impose any of the following requirements:

(a) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

(b) The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood .

(9) *SFRCD in more than one (1) district.* If the SFRCD lies in more than one (1) district, the number of allowable dwelling units must 1 dwelling unit per 40,000 square feet.

(10) *Plans and documentation.* Plans and accompanying documentation to ensure that the water and sewer systems proposed for the SFRCD have been designed by a professional engineer, and have been approved by the appropriate local and state agencies, shall be submitted as a part of the application.

(11) *Paths and walkways.* Any pedestrian and bicycle path circulation system and its related walkways shall be insulated as reasonably as possible in order to provide separation of pedestrian and motorized vehicular traffic.

(12) *Areas.* Layout of parking areas, service areas, entrance, exits, yards, courts and landscaping and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the residential character within the SFRCD and the desirable character in any adjoining property.

(B) *Timing.* If no development has occurred pursuant to the issuance of a special use permit 1 year after the date of the special use permit for the SFRCD or upon the expiration of one 90 day extension of time for starting development granted by the Town Council, the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property.

(C) *Staged development (phasing).* After general construction commences, the Zoning Administrator shall review at least once every 6 months all permits issued and compare them to the overall development phasing program. If he or she determines that the rate of construction of residential units substantially differs from the approved phasing program, he or she shall so notify the developer, and the Town Council may issue the appropriate orders to the developer as it sees fit and, upon continued violation of this division, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

(D) *Conveyance of open space, recreational areas and communally owned facilities.*

(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the SFRC development or adjoining property owners or both.

(2) The applicant must submit to the Town Council the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

(E) *Maintenance.* SFRCDs shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he or she makes that membership be mandatory for each home buyer.

(1) The provisions shall include, but not be limited to, the following:

(a) The homeowners' association must be set up before the homes are sold.

(b) The open space restrictions must be permanent not just for a period of years.

(c) The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.

(d) Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property.

(e) The association must be able to adjust the assessment to meet changed needs.

(2) No instrument shall be acceptable until approved by the Town Attorney as to legal form and effect and the Town Council as to suitability for the proposed uses.

(F) *Procedures for application and review.* An applicant desiring to develop a SFRC development shall adhere to the following procedures:

(1) *Pre-application conference.* Prior to submission of an application for a special use permit to the Town Council, the applicant shall arrange a pre-application conference with the Planning Board and its staff.

(a) The applicant shall submit to the Planning Board a sketch development plan and a brief description of the proposed development strategy. The sketch plan and development strategy shall show and describe the layout of the SFRCD, depicting proposed areas and types of residential development, open spaces and recreation areas and streets.

(b) The pre-application conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, non-binding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the pre-application conference stage, the smoother the remaining steps of the review process will be.

(2) *Special use permit.* Upon completion of the pre-application conference with the Planning Board, the applicant shall submit to the Town Council a written application for a special use permit in accordance with § 154.180.

(3) Development plan. After the pre- application conference and upon submission of a written application for a special use permit , the applicant shall submit a development plan to the Town Council . A second copy of the development plan shall be submitted to the Planning Board for review and recommendations. The Town Council shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Town Council may proceed to act upon the application.

(4) The Planning Board shall review the development plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the pre- application conference and the requirements of the development plan which shall include the following information and supporting documentation:

(a) Written documents.

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership.
2. The zoning district or districts in which the project is located.
3. A general statement of objectives to be achieved by the SFRC development through the particular approach proposed by the applicant.
4. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.
5. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the SFRC.
6. Quantitative data for the following : proposed total number of residential dwelling units , parcel sizes, gross residential densities and total amount of open space.
7. Plan for maintenance of common areas, recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

(b) Site plan and supporting maps. A map or maps drawn to an appropriate scale, with the date of preparation and North point, shall include the following information:

1. Existing site conditions, including contours, watercourses, identified flood hazard areas and any unique natural or man-made features.
2. Boundary lines of the proposed development, proposed lot lines and plot designs.
3. Proposed location and use of all existing and proposed structures .
4. Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational areas, school sites and similar public and semipublic uses.
5. The existing and proposed street and/or vehicular circulation facilities, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, notations of proposed ownership of street and/or vehicular circulation facilities (public or private); documentation from Henderson County Emergency Medical Services and the Mills River Fire Chief of the adequacy of the development's facilities for emergency medical and fire services.
6. Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Water and sewer documentation must reflect the current development name and densities, be issued within the past 6 months and state that the public entity intends to accept both flow and maintenance. Documentation of an approved sedimentation and erosion control plan shall also be submitted.
7. Location and/or notation of existing and proposed easements and rights-of-way.
8. The proposed treatment of the perimeter of the development, including materials and/or techniques, such as screens, fences and walls.
9. Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.

(c) Additional information. Any additional information required by the Mills River Town Council in order to evaluate the impact of the proposed SFRC development. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendation of the Planning Board is 1 of an advisory capacity, and the Town Council has final authority on granting or denying a special use permit .

(5) The Town Council shall submit a copy of its decision on a specific SFRC development to the Planning Board.

(6) Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator , if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum

requirements set forth in this chapter. All other changes in the SFRCD, including changes listed below, shall not be made without re-submission of the SFRCD according to the procedures, in this section:

- (a) A change in the use or character of the development.
- (b) An increase in overall density .
- (c) An increase in intensity of use.
- (d) Alteration of the traffic circulation system.
- (e) A reduction in approved open space.
- (f) A reduction of off-street parking and loading space.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.081 PLANNED RESIDENTIAL DEVELOPMENT.

A planned residential development (PRD) may be located in the MR-30, MR-MU, and MR-NC district as a special use under a Major Special Use Permit , subject to a finding by the Mills River Town Council on the advice and recommendation of the Town of Mills River Planning Board that certain conditions are met. The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building lot siting, mixtures of housing types and land use. Densities are calculated on a project basis, thus allowing the clustering of residential uses in order to create useful open spaces and to preserve natural site features.

(A) Land development standards. The following land development standards shall apply for all planned residential developments.

(1) Ownership control. The land in a planned residential development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) Density requirements. The overall density (dwelling units per acre) of any proposed planned residential development shall be one (1) dwelling unit per 40,000 square feet.

(a) The minimum lot size requirement for a detached single-family dwelling shall be no less than 20,000 square feet.

(b) Streets , street right-of-way, utility station sites, lakes, ponds and other impervious structures , may not be included when determining the total number of units available within a PRD.

(c) Planned residential development in more than one (1) zoning district. If the planned residential development lies in more than one (1) district, the allowable density shall be one (1) dwelling unit per 40,000 square feet.

(3) Frontage requirements. Planned residential developments shall have the main entrance on a paved, public, state - maintained road or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet. Minimum size. The minimum area for a PRD development shall be 1½ contiguous acres.

(4) Residential uses. The land uses normally permitted in the district within which a planned residential development is located shall be permitted in the planned residential development with the following modifications: Permitted types of dwelling units shall include townhouses and garden apartments.

(5) Minimum requirements. The normal 30,000 square foot lot size, setbacks and frontage requirements are hereby waived for the planned residential development, provided that the spirit and intent of this section are complied with in the total development plan as determined by the Town Council . The Town Council shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

(a) Height limitations. No building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof or facade whichever is greater.

(b) Required distance between buildings . The minimum distance between buildings in a planned residential development shall be as follows:

1. All buildings located or situated end to end (shortest sides) and are less than 20 feet in height shall have a minimum separation of 20 feet between buildings . When one (1) or both buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 30 feet separation .

2. All buildings located or situated side to side or end to end (longest sides) and are less than 20 feet in height shall have a minimum separation of 30 feet between buildings . When one (1) or more adjacent buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 40 feet separation .

(c) Landscaping. The proposed development shall be designed as a single architectural scheme with appropriate common landscaping.

(d) Publicly-owned and maintained water and sewer shall be required for a PRD.

(e) Streets within a planned residential development shall be built to meet NCDOT Standards.

(7) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units . Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants , screening of objectionable views or uses, and reduction of noise. Multi-family buildings shall be located within a planned residential development in a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings .

(8) Perimeter requirements. A 10-foot evergreen planted buffer strip shall be provided where ever the development adjoins the boundary or property line of a residential use.

(a) If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Town Council may impose any of the following requirements:

(b) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

1. Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the Town Council .

2. The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood .

(9) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned residential development have been designed by a professional engineer, and have been approved by the appropriate local and state agencies, shall be submitted as a part of the application.

(10) Preliminary plans shall include parking provisions for all proposed uses within the planned residential development in accordance with § 154.105.

(11) Any pedestrian and bicycle path circulation system and its related walkways shall be insulated as reasonably as possible in order to provide separation of pedestrian and motorized vehicular traffic.

(12) Layout of parking areas, service areas, entrance, exits, yards , courts and landscaping and control of signs, lighting , noise or other potentially adverse influences shall be such as to protect the residential character within the PRD and the desirable character in any adjoining property .

(B) Timing. If no development has occurred pursuant to the issuance of a special use permit one (1) year after the date of the special use permit for the PRD or upon the expiration of one 90-day extension of time for starting development granted by the Town Council , the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property .

(C) Staged development (phasing). After general construction commences, the Zoning Administrator shall review at least once every 6 months all permits issued and compare them to the overall development phasing program. If he or she determines that the rate of construction of residential units substantially differs from the approved phasing program, he or she shall so notify the developer, and the Town Council may issue such appropriate orders to the developer as it sees fit and, upon continued violation of this division, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

(D) Conveyance of open space, recreational areas and communally owned facilities.

(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned residential development or adjoining property owners or both.

(2) The applicant must submit to the Town Council the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

(E) Maintenance. Planned residential developments shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements , rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he or she makes that membership be mandatory for each home buyer.

(1) The provisions shall include, but not be limited to, the following :

(a) The homeowners' association must be set up before the homes are sold.

(b) The open space restrictions must be permanent not just for a period of years .

(c) The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.

(d) Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a

lien on the property .

(e) The association must be able to adjust the assessment to meet changed needs.

(2) No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect and the Town Council as to suitability for the proposed uses.

(F) Procedures for application and review. An applicant desiring to develop a planned residential development shall adhere to the following procedures:

(1) Preapplication conference. Prior to submission of an application for a special use permit to the Town Council , the applicant shall arrange a preapplication conference with the Planning Board and its staff.

(a) The applicant shall submit to the Planning Board a sketch development plan and a brief description of the proposed development strategy. The sketch plan and development strategy shall show and describe the layout of the planned residential development, depicting proposed areas and types of residential development, open spaces and recreation areas and streets .

(b) The preapplication conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, nonbinding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the preapplication conference stage, the smoother the remaining steps of the review process will be.

(2) *Major Special Use Permit* . Upon completion of the preapplication conference with the Planning Board, the applicant shall submit to the Town Council a written application for a special use permit in accordance with § 154.180.

(3) Development plan. After the preapplication conference and upon submission of a written application for a special use permit , the applicant shall submit a development plan to the Town Council . A second copy of the development plan shall be submitted to the Planning Board for review and recommendations. The Town Council shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Town Council may proceed to act upon the application.

(4) The Planning Board shall review the development plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the preapplication conference and the requirements of the development plan which shall include the following information and supporting documentation:

(a) Written documents.

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership.

2. The zoning district or districts in which the project is located.

3. A general statement of objectives to be achieved by the planned residential development through the particular approach proposed by the applicant.

4. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.

5. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the planned residential development.

6. Quantitative data for the following : proposed total number of residential dwelling units , parcel sizes, gross residential densities and total amount of open space.

7. Plan for maintenance of common areas, recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

(b) Site plan and supporting maps. A map or maps drawn to an appropriate scale, with the date of preparation and North point, shall include the following information:

1. Existing site conditions, including contours at 5-foot vertical intervals, watercourses, identified flood hazard areas and any unique natural or man-made features.

2. Boundary lines of the proposed development, proposed lot lines and plot designs.

3. The locations, dimensions and arrangements of all open spaces and areas devoted to planting, lawns, trees or similar purposes, with a description including the height and density of all trees or planting to be used for screening .

4. Proposed location and use of all existing structures .

5. The location, use, plan and dimension of each building or structure to be constructed.

6. Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational areas, school sites and similar public and semipublic uses.

7. The existing and proposed street and/or vehicular circulation facilities, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, notations of proposed ownership of street and/or vehicular circulation facilities (public or private) and sidewalks ; documentation from Henderson County Emergency Medical Services and the Mills River Fire Chief of the adequacy of the development's facilities for emergency medical and fire services.

8. Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Water and sewer documentation must reflect the current development name and densities, be issued within the past 6 months and state that the public entity intends to accept both flow and maintenance. Documentation of an approved sedimentation and erosion control plan shall also be submitted.

9. Location and/or notation of existing and proposed easements and rights-of-way.

10. Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.

(c) Additional information. Any additional information required by the Mills River Town Council in order to evaluate the impact of the proposed PRD development. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendation of the Planning Board is one of an advisory capacity, and the Town Council has final authority on granting or denying a special use permit .

(5) The Town Council shall submit a copy of its decision on a specific planned residential development to the Planning Board.

(6) Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator , if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this chapter. All other changes in the planned residential development, including changes listed below, shall not be made without resubmission of the planned residential development according to the procedures, in this section:

- (a) A change in the use or character of the development.
- (b) An increase in overall density .
- (c) An increase in intensity of use.
- (d) Alteration of the traffic circulation system.
- (e) A reduction in approved open space.
- (f) A reduction of off-street parking and loading space.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.082 MULTI-FAMILY DEVELOPMENT.

A multi-family development may be located in the MR-30, MR-MU, and MR-NC district as a special use under a Major Special Use Permit , subject to a finding by the Mills River Town Council on the advice and recommendation of the Town of Mills River Planning Board that certain conditions be met. The purpose of this section is to provide reasonable design standards for multi-family developments for greater design flexibility and accommodate housing for current and future residents of the town. The Town Council shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

(A) Land development standards. The following land development standards shall apply for all multi-family developments. Single-family dwelling detached homes and duplexes on individual lots are exempt from this section.

(1) Ownership control. The land in a multi-family development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) Density requirements. The maximum density for multi-family developments (dwelling units per acre) shall be 4 units per acre.

(3) Streets , street right-of-way, utility station sites, lakes, ponds and other impervious structures , may not be included when determining the total number of units available within a multi-family development.

(4) Frontage requirements. Multi-family developments shall have the main entrance on a paved, public, state - maintained road or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.

(5) Minimum size. The minimum area for a multi-family development shall be 1½ contiguous acres.

(6) Minimum requirements.

(a) The normal 30,000 square feet lot size, setbacks and frontage requirements are hereby waived for multi-family developments.

(b) Height limitations. No building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof or facade whichever is greater.

(c) Required distance between buildings . The minimum distance between buildings shall be as follows:

1. All buildings located or situated end to end (shortest sides) and are less than 20 feet in height shall have a minimum separation of 20 feet between buildings . When one (1) or both buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 30 feet separation .

2. All buildings located or situated side to side or end to end (longest sides) and are less than 20 feet in height shall have a minimum separation of 30 feet between buildings . When one (1) or more adjacent buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 40 feet separation .

(d) Each building shall be no more than 150 feet in length.

(e) Landscaping. The proposed development shall be designed as a single architectural scheme with appropriate common landscaping. Landscaping shall meet the requirements of §§ 154.230 through 154.237.

(f) Publicly-owned and maintained water and sewer shall be required for a multi-family development.

(g) A minimum of 15% of the parcel must be common open space. Of the required open space, a minimum of 20% and a maximum of 50% is required to be active use open space.

(7) Multi-family developments considered in accordance with an overall plan shall include provisions for:

(a) Parking. Parking spaces shall be provided within the development at a ratio of 1½ spaces for each unit. No parking space shall be closer than 10 feet to any residential building wall.

(b) Area regulations. No building shall be erected at a distance of less than 60 feet from the center line of any minor street on which the development abuts, nor less than the required side or rear lot line setback of the adjacent district; however, in no instance shall the minimum side and rear lot line setback be less than 10 feet.

(c) Every dwelling unit shall have direct access to an interior road and there shall be provision for adequate vehicular circulation to all development properties in order to insure acceptable levels of access for emergency vehicles.

(d) The location of structures , shown on the development plan, shall be so arranged as not to be detrimental to existing or other proposed structures or to the development of the neighborhood .

(e) All utilities shall conform to the following requirements:

1. Water systems. Water system. Adequate water volume and pressure for domestic use and fire protection shall be available to the proposed project. The water system shall be designed by a registered engineer and approved by the appropriate state and local agencies.

2. Sewer system. The project shall have an approved waste disposal system designed by a registered engineer, if applicable, and approved by the appropriate state and local agencies.

3. Stormwater drainage. Stormwater runoff shall be collected, channeled or piped to discharge into natural drainageways in a manner which will not cause erosion or adverse effects to adjacent property . The system shall be designed by a registered engineer or other competent professional. The design shall be for a 25-year storm and shall incorporate requirements of the erosion and sedimentation control plan, both temporary and permanent facilities.

(f) Street design and access. All streets within the multi-family development shall conform to the North Carolina Department of Transportation standards for subdivision streets . The multi-family development shall have at least one (1) primary entrance/exit onto a public roadway and one (1) emergency entrance/exit. A turning or deceleration lane shall be provided.

(g) Exterior lighting . A multi-family development shall provide an exterior lighting system for adequate resident safety along access drives, service areas, pedestrian walks and recreation areas. The lighting system shall be designed in keeping with the scale and architectural harmony of the project. Fixtures shall be oriented, to the degree possible, to reduce glare within the project and onto adjacent properties .

(h) Building identification. All structures shall be identified in a manner that will provide immediate recognition when viewed from the street or access drive.

(8) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units . Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants , screening of objectionable views or uses, and reduction of noise. Multi-family buildings shall be located in a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings .

(a) Perimeter requirements. A 10-foot evergreen planted buffer strip shall be provided where ever the development adjoins the boundary or property line of a residential use meeting the requirements of § 154.007.

(b) If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Town Council may impose any of the following requirements:

1. Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

2. Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the Town Council .

3. The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood .

(9) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the multi-family development have been designed by a professional engineer, and have been approved by the appropriate local and state agencies, shall be submitted as a part of the application.

(10) Preliminary plans shall include parking provisions for all proposed uses within the multi-family development in accordance with § 154.105.

(11) Any pedestrian and bicycle path circulation system and its related walkways shall be insulated as reasonably as possible in order to provide separation of pedestrian and motorized vehicular traffic.

(12) Layout of parking areas, service areas, entrance, exits, yards , courts and landscaping and control of signs, lighting , noise or other potentially adverse influences shall be such as to protect the residential character within the development and the desirable character in any adjoining property .

(B) Timing. If no development has occurred pursuant to the issuance of a special use permit one (1) year after the date of the special use permit for the development or upon the expiration of one 90-day extension of time for starting development granted by the Town Council , the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property .

(C) Staged development (phasing). After general construction commences, the Zoning Administrator shall review at least once every 6 months all permits issued and compare them to the overall development phasing program. If he or she determines that the rate of construction of residential units substantially differs from the approved phasing program, he or she shall so notify the developer, and the Town Council may issue such appropriate orders to the developer as it sees fit and, upon continued violation of this division, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

(D) Conveyance of open space, recreational areas and communally owned facilities.

(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned residential development or adjoining property owners or both.

(2) The applicant must submit to the Town Council the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

(E) Maintenance. Multi-family developments shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements , rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he or she makes that membership be mandatory for each home buyer.

(1) The provisions shall include, but not be limited to, the following :

(a) The homeowners' association must be set up before the homes are sold.

(b) The open space restrictions must be permanent not just for a period of years .

(c) The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.

(d) Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property .

(e) The association must be able to adjust the assessment to meet changed needs.

(2) No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect and the Town Council as to suitability for the proposed uses.

(F) Procedures for application and review. An applicant desiring to develop a multi-family development shall adhere to the following procedures:

(1) Preapplication conference. Prior to submission of an application for a special use permit to the Town Council , the

applicant shall arrange a preapplication conference with the Planning Board and its staff.

(a) The applicant shall submit to the Planning Board a sketch development plan and a brief description of the proposed development strategy. The sketch plan and development strategy shall show and describe the layout of the development, depicting proposed areas and types of residential development, open spaces and recreation areas and streets.

(b) The preapplication conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, nonbinding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the preapplication conference stage, the smoother the remaining steps of the review process will be.

(2) Special use permit. Upon completion of the preapplication conference with the Planning Board, the applicant shall submit to the Town Council a written application for a Major Special Use Permit in accordance with § 154.180.

(3) Development plan. After the preapplication conference and upon submission of a written application for a special use permit, the applicant shall submit a development plan to the Town Council. A second copy of the development plan shall be submitted to the Planning Board for review and recommendations. The Town Council shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Town Council may proceed to act upon the application.

(4) The Planning Board shall review the development plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the preapplication conference and the requirements of the plan which shall include the following information and supporting documentation:

(a) Written documents.

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership.

2. The zoning district or districts in which the project is located.

3. A general statement of objectives to be achieved by the planned residential development through the particular approach proposed by the applicant.

4. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.

5. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the planned residential development.

6. Quantitative data for the following: proposed total number of residential dwelling units, parcel sizes, gross residential densities and total amount of open space.

7. Plan for maintenance of common areas, recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

(b) Site plan and supporting maps. A map or maps drawn to an appropriate scale, with the date of preparation and north point, shall include the following information:

1. Existing site conditions, including contours at 5-foot vertical intervals, watercourses, identified flood hazard areas and any unique natural or man-made features.

2. Boundary lines of the proposed development, proposed lot lines and plot designs.

3. The locations, dimensions and arrangements of all open spaces and areas devoted to planting, lawns, trees or similar purposes, with a description including the height and density of all trees or planting to be used for screening.

4. Proposed location and use of all existing structures.

5. The location, use, plan and dimension of each building or structure to be constructed.

6. Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational areas, school sites and similar public and semipublic uses.

7. The existing and proposed street and/or vehicular circulation facilities, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, notations of proposed ownership of street and/or vehicular circulation facilities (public or private) and sidewalks; documentation from Henderson County Emergency Medical Services and the Mills River Fire Chief of the adequacy of the development's facilities for emergency medical and fire services.

8. Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Water and sewer documentation must reflect the current development name and densities, be issued within the past 6 months and state that the public entity intends to accept both

flow and maintenance. Documentation of an approved sedimentation and erosion control plan shall also be submitted.

9. Location and/or notation of existing and proposed easements and rights-of-way.

10. Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.

(c) Additional information. Any additional information required by the Mills River Town Council in order to evaluate the impact of the proposed multi-family development. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendation of the Planning Board is one of an advisory capacity, and the Town Council has final authority on granting or denying a special use permit .

(5) The Town Council shall submit a copy of its decision on a multi-family development to the Planning Board.

(6) Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator , if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this chapter. All other changes in the planned residential development, including changes listed below, shall not be made without resubmission of the planned residential development according to the procedures, in this section:

- (a) A change in the use or character of the development.
- (b) An increase in overall density .
- (c) An increase in intensity of use.
- (d) Alteration of the traffic circulation system.
- (e) A reduction in approved open space.
- (f) A reduction of off-street parking and loading space.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.083 [RESERVED]

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

§ 154.084 MEDICAL, INSTITUTIONAL CARE DEVELOPMENT.

A Medical, Institutional Care Development (MICD) may be located in the MR-30, MR-MU, and MR-NC Districts as a special use , subject to a finding by the Mills River Town Council , on the advice and recommendation of the Town of Mills River Planning Board, that certain conditions be met. The purpose of this section is to permit the establishment of certain medical and institutional care facilities within individual residential districts and to minimize any detrimental effects of the facilities on existing or future land uses.

(A) Land development standards. The following land development standards shall apply for all medical, institutional care developments:

(1) Ownership control. The land in an MICD shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be legally completed by the applicant.

(2) Density requirements. The proposed density of the MICD shall be calculated using a combination of a persons per acre basis and a habitable structure per acre basis and shall conform to that permitted in the district in which the development is located as follows:

- (a) The number of persons served by any proposed MICD shall be calculated using the following criteria:
 - 1. One person per health care bed.
 - 2. One person per studio or efficiency unit.
 - 3. One and a quarter persons per 1 bedroom unit.
 - 4. One and a half persons per 2 bedroom unit.
 - 5. Two persons per 3 bedroom unit.
- (b) The maximum density (persons per acre) for an MICD shall be 12.
- (c) The number of habitable structures per acre shall be 1.45.

(3) Frontage requirements. MICD shall be prohibited except on parcels of land having a minimum frontage of 200 feet on a paved, public, state -maintained road or highway.

(4) Minimum size. The minimum lot area for an MICD shall be 10 contiguous acres. The required 10 acres shall not be divided by, nor include, any portion of an existing public street or road right-of-way. Furthermore, no existing bodies of water shall qualify as a portion of the required minimum lot area.

(5) Types of usage allowed. The following types of licensed medical and institutional care facilities are allowed within an MICD:

- (a) Hospitals.
- (b) Domiciliary homes for the aged and disabled.
- (c) Continuing care facilities.
- (d) Nursing homes.
- (e) Combination homes as defined by G.S. § 131E-101(1).
- (f) Customary accessory buildings , including garages, storage buildings and service utility structures .
- (g) Recreational facilities intended exclusively for use by the residents and guests of the facility and which are an integral part of the development.

(h) Administrative offices and non- dwelling support services for the facility and accessory commercial uses, subject to the following conditions:

- 1. All sales shall be for the use and convenience of the residents or guests of the facility.
- 2. All accessory uses shall not occupy more than 15% of the total floor area of the facility, except that in no case shall the accessory uses exceed 12,000 square feet. No individual accessory use permitted in this subsection shall occupy more than 5% of the total floor area of the facility, except that in no case shall any individual accessory use exceed a minimum of 4,000 square feet.
- 3. No external advertising or signs shall be allowed for any commercial activity permitted within or on any portion of the MICD.

(6) Design requirements.

(a) The normal minimum lot size, lot setbacks and lot frontage requirements of the respective district within which the MICD is located are hereby waived, provided that the spirit and intent of this section are complied with in the total development plan as determined by the Town Council . The Town Council shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

1. Setbacks. The developer shall establish minimum lot setbacks as applicable. Non- dwelling accessory buildings , structures or facilities, such as, but not limited to, covered informational areas and private security booths, may be allowed within an adequate proximity to any adjacent street or road right-of-way within the MICD but shall be located no closer than 25 feet to any exterior property line of the MICD.

2. Height limitations. No building or structure containing dwelling units or bed facilities shall exceed 35 feet in height from the highest ground elevation.

3. Required distance between buildings . The minimum distance between buildings in an MICD shall be as follows:

a. All buildings located or situated end to end (shortest sides) and are less than 20 feet in height from the highest ground elevation shall have a minimum separation of 20 feet between buildings . When one (1) or both buildings exceed 20 feet in height from the highest ground elevation, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 30 feet separation .

b. All buildings located or situated side to side, or side to end (longest sides) and are less than 20 feet in height from the highest ground elevation shall have a minimum separation of 30 feet between buildings . When one (1) or more adjacent buildings exceed 20 feet in height from the highest ground elevation, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 40 feet.

c. The Planning Board may permit the minimum building separation for single-level building units to be reduced below the minimums stated above, provided that the construction of adjacent walls conforms with the North Carolina Building Codes, but in no case shall buildings be closer than 15 feet. When the minimum separation is reduced, the area between buildings shall remain open and unobstructed.

(b) Every building shall have direct access to a paved, dedicated street and walkways to other buildings and areas dedicated for common or recreational use. Provision shall be made for access for emergency vehicles to all sides of buildings or structures containing dwelling units or bed facilities. All walkways shall be hard surface, all-weather materials. Any pedestrian and wheelchair circulation system shall be insulated as reasonably as possible to provide separation of pedestrian and motorized vehicular traffic.

(c) Handicap accessibility. All portions of the development shall conform to the minimum applicable federal, state or

local laws and regulations pertaining to handicap accessibility unless otherwise required in this section.

(d) The location of structures shown on the development plan shall be so arranged as not to be detrimental to existing or other proposed structures or to the character of the surrounding neighborhood .

(7) Privacy. Each development shall provide reasonable visual and acoustical privacy for all units. Fences, insulation, walls, barriers and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants , screening of objectionable views or uses and reduction of noise. Multilevel buildings shall be located within a medical, institutional care development (MICD) in a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of the low-rise buildings .

(8) Perimeter requirements. If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Town Council may impose any of the following requirements:

(a) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

(b) Structures other than single-level units, located on the perimeter of the development, shall require screening in a manner which is approved by the Town Council .

(c) The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood .

(d) Fencing compatible with the character of the development may be required to protect residents from dangerous conditions existing on or off site or to provide increased security for the residents of the facility.

(9) Building coverage. The total building coverage area, including non-dwelling accessory buildings , structures or facilities, but excluding roads, parking or service areas and recreational facilities, shall not exceed 25% of the net lot area.

(10) Parking. All parking must meet the requirements of §§ 154.105 through 154.114.

(11) Utilities. All utilities shall conform to the following requirements:

(a) Water system. Adequate water volume and pressure for domestic use and fire protection shall be available to the proposed project. The water system shall be designed by a registered engineer and approved by the appropriate state and local agencies.

(b) Sewer system. The project shall have an approved waste disposal system designed by a registered engineer, if applicable, and approved by the appropriate state and local agencies.

(c) Stormwater drainage. Stormwater runoff shall be collected, channeled or piped to discharge into natural drainageways in a manner which will not cause erosion or adverse effects to adjacent property . The system shall be designed by a registered engineer or other competent professional. The design shall be for a 25-year storm and shall incorporate requirements of the erosion and sedimentation control plan, both temporary and permanent facilities.

(12) Street design and access. All streets within the MICD shall conform to the North Carolina Department of Transportation standards for subdivision streets . The MICD shall have at least one (1) primary entrance/exit onto a public roadway and one (1) emergency entrance/exit. A turning or deceleration lane shall be provided.

(13) Exterior lighting . An MICD shall provide an exterior lighting system for adequate resident safety along access drives, service areas, pedestrian walks and recreation areas. The lighting system shall be designed in keeping with the scale and architectural harmony of the project. Fixtures shall be oriented, to the degree possible, to reduce glare within the project and onto adjacent properties .

(14) Building identification. All structures shall be identified in a manner that will provide immediate recognition when viewed from the street or access drive.

(15) Landscaping and buffering. Within an MICD, a landscaping plan shall be considered a required element of the project. The landscaping must minimally meet the provisions of §§ 154.230 through 154.237.

(a) The landscaping plan shall require that all exposed soils shall be covered with a permanent cover. Landscaping or natural vegetation shall cover at least 20% of the net project area.

(b) Provisions for the permanent maintenance of all landscaping and screen planting areas and materials shall be provided.

(c) Where the Town Council deems necessary, a screen planting or other architectural features shall be provided to form a visual separation between the MICD and adjacent residential uses.

(16) Design. The development shall be designed in such a manner that the layout of parking areas, service areas, entrances, exits, yards , courts, landscaping, signage, lighting , noise or other potentially adverse influences shall be such as to protect the medical residential character within the development and desirable character in any adjoining properties .

(B) Timing. If no development has occurred pursuant to the issuance of a special use permit 2 years after the date of the special use permit for the MICD, or upon the expiration of one 90 day extension of time for starting development granted by

the Town Council , the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property .

(C) Staged development (phasing). After general construction commences, the Zoning Administrator shall review at least once every 6 months all permits issued and compare them to the overall development phasing program. If he or she determines that the rate of construction of residential units or nonresidential structures substantially differs from the approved phasing program, he or she shall so notify the developer, and the Town Council may issue the appropriate orders to the developer as it sees fit and, upon continued violation of this subsection, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

(D) Open space required. A minimum of 20% of the total land area of the development shall be set aside as permanent commonly owned open space. The open space shall be exclusive of any required parking, street rights-of-way and roads or service areas required for operation and maintenance of the MICD and shall be guaranteed as permanent in the site plan or other documents as may be required to be recorded.

(E) Maintenance. MICD shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements and rights-of-way which would be legally enforceable. No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect and the Town Council as to suitability for the proposed uses.

(F) Procedures for application and review. An applicant desiring to develop an MICD shall adhere to the following procedures:

(1) Pre-application conference. Prior to submission of an application for a special use permit to the Town Council , the applicant shall arrange a pre- application conference with the Planning Board and its staff.

(a) The applicant shall submit to the Planning Board a sketch development plan and a brief description of the proposed development strategy. The sketch plan and development strategy shall show and describe the layout of the MICD, depicting proposed areas and types of development, open spaces and streets .

(b) The pre-application conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, non-binding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the pre-application conference stage, the smoother the remaining steps of the review process will be.

(2) Application for a special use permit . Upon completion of the pre-application conference, the applicant shall submit to the Town Council a written application for a Major Special Use Permit in accordance with § 154.180. The applicant shall submit 11 copies of a preliminary development plan or final site plan and required documentation to the Zoning Administrator at least 30 days prior to the Planning Board's first scheduled consideration of the project.

(3) Planning Board review. The Planning Board shall review the preliminary development plan and final site plan for conformance with the provisions of this chapter and forward its recommendations to the Town Council . If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Town Council may proceed to act upon the application.

(4) Town Council review. The Town Council shall not issue a special use permit until it has received recommendations from the Planning Board. The Town Council shall submit a copy of their decision on a specific MICD to the Planning Board and the applicant. The decision of the Town Council shall be to approve, disapprove or approve with conditions.

(5) Issuance of permits . The Zoning Administrator for the Town of Mills River or the Henderson County Building Inspector shall not issue a certificate of zoning compliance or any building permit for any portion of the proposed project until the applicant is in compliance with the decision of the Town Council .

(6) Waiver of preliminary development plan. An applicant may choose to omit the preliminary development plan, provided that the project is to be completed in a single phase and all required documentation is provided and submitted in accordance with this section.

(G) Preliminary development plan requirements. Upon application for an MICD and following the pre- application conference, an applicant shall submit a preliminary development plan for the entire MICD project, except where a waiver is permitted in accordance with division (F)(6) above. The preliminary development plan shall provide the following information on the plan and include accompanying documentation:

(1) The proposed name of the development and the names of the developer, land owner , engineer, architect and landscape architect or other professionals.

(2) A site plan to a scale of not less than one (1) inch equals 50 feet, a North arrow, a vicinity map and date; topographic mapping with contour intervals of not more than 5 feet.

(3) A legal boundary description of the entire tract proposed for development, including a statement that the area shown on the preliminary site plan includes all the area and development currently under ownership, option or other consideration by the land owner or developer shown on this plan. The description shall include the location of all existing rights-of-way, easements , streams or waterways, adjacent property uses, the names of adjacent property owners and

identified flood hazard areas.

(4) Project layout including the location of all existing structures and the proposed general location and allocation of dwelling units, road locations, accessory structures and uses, setbacks, buffers and landscaping areas, natural areas, recreational facilities and areas and project phasing lines.

(5) Preliminary utility layouts with preliminary approval from the appropriate local or state agencies; the location of all other utilities within or adjacent to the development site.

(6) Proposed typical site details for lighting; signage; walkways; fencing and walls; landscaping; parking layout; cross section for roads, access roads and traffic volume; and any other pertinent site details. The site details shall be accompanied by a written description of how services and improvements are to be provided.

(7) Preliminary information on the proposed plans with regard to the ownership and maintenance of common areas and facilities, open space, landscaping and screening, roads and utilities.

(8) Documentation from the Henderson County Emergency Medical Service and the Mills River Fire Chief of the adequacy of the project's facilities for emergency medical and fire services.

(9) Documentation of submission of a preliminary or overall erosion control plan to the appropriate agency.

(10) A designation and description of the proposed phasing plan for the project, including the approximate timing schedule and the type of guaranty of performance to be requested.

(11) Summary of project data, including:

(a) Total project area.

(b) Approximate net project area.

(c) Total density permitted, density requested and method of calculating density (persons per acre).

(d) Approximate percent of building coverage.

(e) Approximate percent of open space.

(f) Approximate length of roads and designation as public or private.

(g) Type of units and conceptual plans and elevations for residential structures.

(12) Written documents. In addition to those indicated above:

(a) The zoning district or districts in which the project is located.

(b) A general statement of objectives to be achieved by the MICD through the particular approach proposed by the applicant.

(c) A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the MICD.

(13) Additional information. Any additional information required by the Town Council in order to evaluate the impact of the proposed MICD. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendations of the Planning Board is 1 of advisory capacity, and the Town Council has final authority on granting or denying a special use permit.

(H) Final site plan. Upon approval of the preliminary development plan by the Town Council, except as waived under division (F)(6), the developer shall submit a final site plan that shall contain the following information:

(1) The proposed name of the development and the names of the developer, land owner, engineer, architect, designer, landscape architect or other professional.

(2) The site plan to a scale not less than one (1) inch equals 30 feet, a North arrow, a vicinity map and date; topographic mapping with contour intervals of not more than 2 feet indicating existing and proposed contours.

(3) A legal boundary description of the entire tract proposed for development, the location of all existing rights-of-way, easements, streams or waterways, adjacent property uses and the names of adjacent property owners. If the final plans are for a phase of the MICD, the specific phase of the project shall be shown.

(4) Project layout, including the location of all existing structures and, for each proposed principal and accessory structure and use, setbacks, roads, off-street parking and loading layout. A typical cross section and public or private designation for all roads shall be submitted if not approved with a preliminary site plan.

(5) Basic floor plans, rendered elevations or perspectives.

(6) The landscaping and screening plans and the location of all walkways, recreational areas, fences and walls, lighting and signage. If the proposed typical site details for these items were not approved with a preliminary site plan, the details shall be submitted with the final site plan.

(7) The location, easement, size and gradient of all sanitary and storm sewers and water mains. The location of all

other utilities within or adjacent to the development site.

(8) Method of buffering or concealing service areas, garbage retention and collection areas and mechanical equipment from public and residential areas.

(9) Method of collecting, channeling or piping to discharge stormwater into natural drainageways that will assure no damage to neighboring properties .

(10) Approval of water and sewage systems; plans from the appropriate agency if applicable.

(11) Approval of the soil erosion and sedimentation control plan by the appropriate agency.

(12) Submission of the proposed documents for the ownership and maintenance of all common areas and facilities, open space, landscaping and screening , roads and utilities.

(13) Submission of the proposed guaranty of performance provisions, including a list of all improvements to be covered by the guaranty agreement.

(14) Summary of project data, including:

(a) Total project area: area in proposed phase.

(b) Net project area in proposed phase.

(c) Total density proposed: density in proposed phase, including number of persons per acre.

(d) Percentage of building coverage in proposed phase in relation to project total building coverage.

(e) Percentage of building coverage in proposed phase in relation to project total open space.

(f) Length of roads and public or private designation in the proposed phase.

(15) Additional information. Any additional information required by the Town Council in order to evaluate the impact of the proposed MICD. The Town Council may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision on the project. The advice and recommendations of the Planning Board is one (1) of advisory capacity, and the Town Council has final authority on granting or denying a special use permit .

(I) Initiation of construction. No construction ground-disturbing activities shall be initiated until the preliminary or final site plans have been approved by the Town Council , a guaranty of performance has been approved and until all local utility approvals and an approved soil erosion and sedimentation control plan have been received.

(J) Guaranty of performance.

(1) In order to insure that the public improvements are completed properly within a period of time specified, the developer shall enter into a guaranty for completion with the Town Council . A performance guaranty shall be negotiated between the developer and the Town Council prior to the issuance of the special use permit by the Zoning Administrator .

(2) The guaranty of performance shall require that the developer complete the public improvements, including, but not limited to, roads, parking areas and rights-of-way; water and sewer facilities; drainage, erosion and sedimentation control facilities; and lighting and landscaping. The specific improvements to be guaranteed are to be designated with submission of the final site plan. The guaranty shall be provided by a performance bond, letter of credit, certified check, cash escrow, cash payment or property bond as approved by the Town Council . No certificate of occupancy may be issued until either the improvements are completed or adequate guaranties are approved.

(3) The guaranty of performance shall be in an amount equal to 125% of the cost of the improvements included in the final site plan. If the project is to be completed in phases, the guaranty of performance may be applied to each phase. The release of a guaranty of performance by the Town Council , in total or in part, based on the percentage of improvements completed, shall be made upon a certification from the Zoning Administrator that the improvements have been completed in accordance with the approved final site plan for a phase of the overall project or the entire project.

(K) Default. Upon default (meaning failure on the part of the developer to complete the required improvements as specified and within the time period specified in the guaranty) the developer shall , if requested by the Town Council , pay all or any portion as may be required of the guaranty to the Town of Mills River for the purpose of completing the specified improvements. Upon payment, the Town Council , at its discretion, may expend the portion of the funds as it deems necessary to have completed all or any portion of the required improvements. The town shall return to the institution any funds not spent in completing the improvements.

(L) Construction codes. The developer must comply with all applicable state and local construction codes and requirements.

(M) Amendments to the development plan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator , if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this chapter. All other changes in the MICD, including changes listed below, shall not be made

without re-submission of the MICD according to the procedures in this section:

- (1) A change in the use or character of the development.
- (2) An increase in overall density .
- (3) An increase in intensity of use.
- (4) Alteration of the traffic circulation system.
- (5) A reduction in approved open space.
- (6) A reduction of off-street parking and loading space.
- (7) Any change in ownership or control of all or a portion of the development.

(N) Failure to comply. Construction and/or use of the MICD shall be set forth in the plans, application and supporting documents approved by the Town Council . Construction and/or use differing from the approved plans and application, except as herein provided, shall be deemed a violation of this chapter and subject to penalties as provided in **Administration and Enforcement** .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.085 STRUCTURED ENVIRONMENT HOMES.

The following development standards shall apply to Structured Home Environment Uses:

(A) *Land development standards.* The following land development standards shall apply for a Structured Home Environment. Structured Home Environment Uses may be located in the MR-NC, MR-MU, and MR-GB and MR-LI districts as a special use , subject to a finding by the Mills RiverTown Council on the advice and recommendation of the Planning Board that certain conditions shall be met.

- (1) *Distance from a School* . The site for a Structured Home Environment must be at least one mile in linear distance from a school .
- (2) *Maximum Density* . A Structured Home Environment has a maximum density of five residents.
- (3) *Minimum requirements.*
 - (a) The lot size and dimensional requirements of the district in which the development is proposed shall apply.
 - (b) Publicly-owned and maintained water and sewer shall be required for a Structured Home Environment.
 - (c) The Structured Home Environment shall comply with parking, buffer and landscape requirements as listed in the code for commercial uses.

(B) *Application Process.* Prior to submission of an application for a Major Special Use Permit to the Town Council , the applicant shall arrange a pre-application conference with the Planning Board and its staff.

- (1) The applicant shall submit to the Planning Board a sketch development plan for the proposed site. The sketch plan and development strategy shall show and describe the layout of the Structured Environment Home along with adequate parking and landscaping.
- (2) The pre-application conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, non-binding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the pre-application conference stage, the smoother the remaining steps of the review process will be.

(3) *Special use permit* . Upon completion of the pre-application conference with the Planning Board, the applicant shall submit to the Town Council a written application for a Major Special Use Permit in accordance with § 154.180. The special use permit shall expire two years from the date of issuance without substantial progress towards development of the site.

(4) *Development plan.* After the pre-application conference and upon submission of a written application for a special use permit , the applicant shall submit a development plan to the Town Council . A second copy of the development plan shall be submitted to the Planning Board for review and recommendations. The Town Council shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Town Council may proceed to act upon the application.

(5) The Planning Board shall review the development plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the pre-application conference and the requirements of the development plan which shall include the following information and supporting documentation.

- (6) *Written documents.*
 - (a) A legal description of the total site proposed for development, including a statement of present and proposed

ownership.

(b) The zoning district or districts in which the project is located.

(c) A general statement of the way the Structured Home Environment shall be operated.

(d) Documentation showing that the development meets the requirements as outlined for Structured Home Environments.

(e) *Site plan and supporting maps.* A map or maps drawn to an appropriate scale, with the date of preparation and North point, shall include the following information:

(f) Existing site conditions, including contours, watercourses, identified flood hazard areas and any unique natural or man-made features.

(g) Boundary lines of the proposed development, proposed lot lines and plot designs.

(h) Proposed location and use of all existing and proposed structures .

(i) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Water and sewer documentation must reflect the current development name and densities, be issued within the past 6 months and state that the public entity intends to accept both flow and maintenance. Documentation of an approved sedimentation and erosion control plan shall also be submitted.

1. Location and/or notation of existing and proposed easements and rights-of-way.

2. The proposed treatment of the perimeter of the development, including materials and/or techniques, such as screens, fences and walls.

3. Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.

(j) *Additional information.* Any additional information required by the Mills River Town Council in order to evaluate the impact of the proposed Structured Home Environment. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project. The advice and recommendation of the Planning Board is one (1) of an advisory capacity, and the Town Council has final authority on granting or denying a special use permit .

(7) The Town Council shall submit a copy of its decision on a specific Structured Home Environment to the Planning Board.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.086 SITE STANDARDS FOR CERTAIN USES IN MR-MU DISTRICT: TINY HOME PARKS, PARK MODEL PARKS, AND RECREATIONAL VEHICLE PARKS.

A tiny home park, park model park, and recreational vehicle park development may be located in the MR-MU district as a special use under a Major Special Use Permit , subject to a finding by the Town Council on the advice and recommendation of the Planning Board that certain conditions be met. The purpose of this section is to provide reasonable design standards for said developments for greater design flexibility. The Town Council shall exercise ultimate discretion as to whether the development plan does comply with the spirit and intent of this section.

(A) *Land development standards.* The following land development standards shall apply for all tiny home park, park model park, and recreational vehicle park developments .

(1) *Ownership control.* The land in a tiny home park, park model park, and recreational vehicle park development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) *Density requirements.* The maximum density for tiny home park, park model park, and recreational vehicle park developments (dwelling units per acre) shall be 4 units per acre.

(3) *Minimum size.* The minimum parcel size for a tiny home park, park model park, and recreational vehicle park development shall be 5 contiguous acres.

(4) *Setback requirements.* tiny home park, park model park, and recreational vehicle park developments shall adhere to the following setbacks:

(a) Front setback: 75 feet from major thoroughfare, 60 feet from all other streets .

(b) Side and rear setback: 30 feet from parcel line.

(c) All tiny homes , park model homes , recreational vehicles , and any slip for a tiny home , park model home , or recreational vehicle , and buildings that support the development as a whole (such as a leasing office, recreational facilities, etc.) shall adhere to the setback requirements. Development infrastructure (such as roads, etc.) is allowed within the

setback area.

(5) *Leasing office.* A leasing office is required in all tiny home , park model, and recreational vehicle park developments . The office should have regular business hours but also have 24 hour availability for emergencies.

(6) *Lease time limits.* Each tiny home , park model, or recreational vehicle shall be limited to a maximum stay of 3 months per calendar year within an approved development . The leasing office shall keep a record of each tiny home , park model, and recreational vehicle that leases space in the development and provide the Zoning Administrator with a record on a semi-annual basis. The leasing office shall only lease the space/slip for location of a tiny home , park model home , or recreational vehicle . Direct leasing of tiny homes , park model homes , and recreational vehicles is not allowed.

(7) *Parking.* A minimum of 2 parking spaces is required for each individual tiny home , park model, or recreational vehicle lot.

(8) *Landscape plan.* Landscaping shall be designed as a single architectural scheme with appropriate common landscaping. In addition, a buffer strip of no less than 20 feet is required around the entire perimeter of the property . Landscaping shall meet the requirements of §§ 154.230 through 154.237.

(9) *Commercial dumpsters.* Dumpsters are required for every 20 lots/slips within the development and must be wildlife secure. Dumpsters shall be screened according requirements in § 154.115.

(10) *Road standards.* The minimum travelway for a one-way road shall be 12 feet. The minimum travelway for a two-way street shall be 18 feet. Any cul-de-sacs or other turn arounds shall be sufficient to accommodate emergency vehicles.

(B) Prior to issuance of a special use permit , approval or receipt of review from other review agencies is required. Stormwater/erosion control, watershed, environmental health, water, sewer, NCDOT, and fire are common components of site plan review for a special use permit . Location of a proposed development will dictate which agencies require review of a tiny home park, park model park, and recreational vehicle park development.

(C) All tiny homes , park model homes , and recreational vehicles within a park development shall meet NCDOT safety and road standards.

(Ord. 2018-03, passed 3-8-2018; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.087 SITE STANDARDS FOR CERTAIN USES IN MR-MU DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY REQUIRED.

(A) *Introduction and purpose.* The purpose of this section is to specify the minimum specific site standards and the general site standards stated in § 154.138 which will provide the flexibility to impose a higher level of specific site standards if necessary to mitigate the neighborhood impact of certain uses which are permitted in the MR-MU District. These certain uses are subject to the Town Council finding that both the general site standards and the specific site standards listed in this section will be met. These site standards may apply to other use districts if specifically required therein.

(B) *General site standards.* The general site standards stated in § 154.138 must be met for all uses requiring a special use permit in the MR-MU District.

(C) *Specific site standards.* The specific site standards for each use requiring a special use permit in the MR-MU District are contained in § 154.138 and must be met.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

§ 154.088 APPLICATION REQUIREMENTS FOR CERTAIN USES IN MR-MU DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY REQUIRED.

(A) The following uses shall be required to comply with the Application requirements provided for in § 154.088(B) below:

(1) MR-MU District: those uses listed in §154.088(E), Uses permitted with standards, vehicle graveyards mobile/manufactured home graveyards .

(2) MR-MU District: those uses listed in §154.088(G), special uses , incinerators solid waste management facilities mining and extraction operations concrete plants ; asphalt plants ; junkyards ; motor sports facilities ; slaughtering plants ; amusement parks , chip mills and heavy industry.

(B) All applicants for those uses listed in §154.088(A), above, shall provide the following information by completing an application form (to be provided by the Zoning Administrator) and providing supporting documentation as required:

(1) Name and address of applicant [all uses].

(2) Permit fee as set forth by the Mills River Town Council on a fee schedule (all uses).

(3) Site plan prepared by an active North Carolina registered land surveyor, registered professional engineer or registered landscape architect and containing the following information (All uses, except vehicle graveyards in the MR-MU District, and mobile/manufactured home graveyards in the MR-MU District):

(a) Names, addresses and telephone numbers of the applicant and the property owner .

- (b) Plan scale, a North arrow and a vicinity map.
 - (c) Tax parcel identification number for any parcel of land containing the proposed use.
 - (d) Name, address, signature and seal of the person who prepared the site plan.
 - (e) Surveyed boundary lines of any parcel, or portion thereof, that will contain the proposed use, and surveyed point of highest elevation (finished grade) to the nearest foot. (The boundary lines shall be surveyed by an active North Carolina registered land surveyor).
 - (f) Proposed location, use and dimensions of all structures , and areas not within structures , devoted to principal uses . All the structures and areas shall be appropriately labeled, including a description of each sufficient to give the Town Council a reasonable understanding of each.
 - (g) Proposed location, use and dimensions of all structures , and areas not within structures , devoted to accessory uses . All the structures and areas shall be appropriately labeled, including a description of each sufficient to give the Town Council a reasonable understanding of each.
 - (h) Proposed location(s), use and dimensions of the stated minimum buffer and the stated minimum setback.
 - (i) Existing site conditions, including watercourses, flood hazard areas, existing utilities and streets and rights-of-way.
 - (j) Proposed locations, dimensions and arrangement of all off-street parking and loading areas.
 - (k) Proposed locations (including line and grade) of access road corridor(s), travelway (s) and service road(s).
 - (l) Proposed location and description of facilities to be used for sewage disposal, water supply, stormwater drainage and any other utilities.
- (4) Site plan containing the following information (vehicle graveyard and manufactured/mobile home graveyard):
- (a) Names, addresses and telephone numbers of the applicant and the property owner .
 - (b) Plan scale (if any used), a North arrow and a vicinity map.
 - (c) Tax parcel identification number for any parcel of land containing the proposed use.
 - (d) Name, address, signature of the person who prepared the site plan.
 - (e) Approximate boundary lines of the parcel or any portion thereof that will contain the proposed use, according to county tax records, and the acreage.
 - (f) Stated minimum buffer and setback.
 - (g) Approximate location of the access road corridor, including approximate line and grade.
 - (h) Approximate location of any existing buildings or structures .
 - (i) Approximate location of existing site conditions including existing watercourses.
- (5) Map from the Henderson County Assessor's Office showing that the residential density requirements and separation requirements for the proposed use, if any, will be met (all uses).
- (6) Certification of the applicant stating that the residential density requirements and the separation requirements, if any, have been met (all uses).
- (7) Names, mailing addresses and tax parcel identification numbers for all property owners adjacent to the proposed use (all uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).
- (8) Schedule of proposed hours of operation which shall be subject to approval by the Town Council (all uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).
- (9) Estimated peak noise emission measured at the property boundaries during hours of operation (all uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).
- (10) Noise mitigation plan, which shall be subject to approval by the Town Council (all uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).
- (11) Lighting plan (all uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).
- (12) A detailed plan describing or showing the proposed method(s) of screening (Junkyards in the MR-MU District).
- (13) A detailed plan describing or showing the proposed method(s) of fencing .
- (14) Written narrative which provides a description and details regarding the proposed use including, but not limited to:
- (a) A description of the operations associated with the proposed use.
 - (b) Number of employees, if any.

(c) Maximum patron capacity for which application is being made. If approved, this shall be the maximum permitted patron capacity for the use.

(d) Types of material and equipment to be used on site.

(e) Whether operations will be indoors and/or outdoors, with specificity as to which operations will be located indoors and/or outdoors.

(f) A listing of the federal and state permits which must be acquired for the proposed use.

(g) Type(s) and maximum quantity(ies) of units to be produced, extracted, disposed of, processed and/or stored as applicable for the proposed use. If approved, the type(s) and quantity(ies) requested shall be the maximum permitted type(s) and quantity(ies).

(h) Any other information necessary to fully convey the intended scope, intensity, capacity and/or size of the proposed use

(15) Identification of any and all extremely hazardous substances to be used, stored, handled, processed or manufactured and their proposed location(s) on the required site plan (All uses except vehicle graveyards and mobile/manufactured home graveyards in the MR-MU District).

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00066, passed 4-28-2011)

§ 154.089 SOLAR ENERGY GENERATION FACILITY SITE STANDARDS.

(A) Area devoted to solar energy generation facilities may not exceed 15 acres per facility on any lot.

(B) Solar energy generation facilities shall be completely enclosed within:

(1) A woven wire fence; or

(2) A masonry wall; or

(3) A wooden fence that contains spacing no greater than 6 inches.

(4) The fences shall be at least 6 feet in height. Wire woven fences shall be vinyl-coated or painted with a dark green, brown or black color. Vinyl-coating or painting of razor-wire or barbed-wire portions of the fence is not required.

(C) A buffer strip as defined in § 154.007(B) shall be planted to screen the site from all other properties . This may be along the lot line or surrounding the area designated for the solar energy generation facility .

(D) All new power transmission lines shall be underground and any electrical disconnection switches should be clearly marked and unobstructed.

(E) Wind and snow load must be certified upon application. All equipment and structures shall comply with the North Carolina State Building Code requirements for survival wind speeds and ground snow loads for buildings . Although the North Carolina State Building Code may require load designs for only buildings , all structures and equipment associated with this use shall meet those same wind and snow load requirements. Note that the requirements vary based on the elevation and location of the site. The Zoning Administrator shall require a certification from a structural engineer, licensed in North Carolina as a professional engineer, stating the designed wind and snow load standards for equipment and structures have been constructed according to the State Building Code and will meet the following :

(1) Structures and buildings will meet a minimum wind survival speed of 90 m.p.h.; and

(2) Structures and buildings will meet a minimum snow load of 15 lbs. per square foot.

(F) Should the facility stop being used or become unable to generate power, the property owner shall decommission the facility by removing the structures from the property within 180 days. After that time period, the town shall reserve the right to contract to have the equipment removed and lien against the property until payment for the contract is received in full.

(Ord. 00080, passed 5-23-2013)

COMMUNICATION TOWERS

§ 154.090 STATUTORY AUTHORITY; PURPOSE.

(A) This subchapter is enacted pursuant to the general police powers granted to the Town of Mills River by G.S. § 160A-174 and G.S. Chapter 160D, Article 9, Part 3.

(B) The purpose of this subchapter is to protect the health, safety and welfare of citizens of Town of Mills River.

(C) Any person, corporation, partnership or other entity which intends to construct a communications tower within the jurisdiction of this subchapter shall first obtain a permit in accordance with this subchapter .

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.091 JURISDICTION.

The provisions of this subchapter shall apply to all areas within the corporate boundaries of the Town of Mills River.

(Ord. 00079, passed 4-25-2013)

§ 154.092 TOWER GROUPS.

Tower *groups*. For the purposes of this subchapter, communications towers and tower activities shall be grouped as follows:

(A) *Group 1: exempt towers allowed in all districts.* Towers constructed or permitted prior to the effective date of this subchapter, towers for residential, amateur radio which are less than 80 feet in height or any tower (including replacement towers) less than 50 feet in height are exempt from the terms of this subchapter with the exception of compliance with setbacks within the district. If an antenna mounted on an alternative structure does not extend more than 30 feet higher than the alternative structure, the construction is exempt from the terms of this subchapter. If collocation of an antenna on an existing tower results in the tower height not increasing by more than 30 feet, the construction is exempt from the terms of this subchapter. Exemption herein does not constitute exemption from any other applicable federal, state or local law or regulation.

(B) *Group 2: collocation or replacement.* The Town of Mills River requires collocation of antennas on existing communications towers where collocation opportunities are available. Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to collocate on an existing communications tower within the jurisdiction of this subchapter, where the collocation results in the tower height increasing by more than 20 feet, shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter. Replacement towers shall be placed so as not to increase the degree of any existing non-conformities.

(C) *Group 3: towers for residential, amateur radio.* Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to construct a communications tower, within the jurisdiction of this subchapter, which is 80 feet or more in height and which is intended for residential or amateur radio shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter.

(D) *Group 4: new communications towers less than 50 feet.* Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to construct a new communications tower up to 50 feet in height within the jurisdiction of this subchapter shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter. Allowed in districts MR-GB, MR-NC, MR-LI and MR-MU.

(E) *Group 5: new communications towers 50 feet through 250 feet.* Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to construct a new communications tower up to 250 feet in height within the jurisdiction of this subchapter shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter. Allowed in districts MR-GB, MR-NC, MR-LI and MR-MU.

(F) *Group 6: special use new communications towers.* Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to construct a new communications tower greater than 250 feet in height within MR-GB, MR-NC, MR-LI and MR-MU districts and under the jurisdiction of this subchapter shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter. Any person, corporation, partnership or other entity which intends to construct a new communications tower less than 100 feet in height within MR-30 district and under the jurisdiction of this subchapter shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter.

(G) *Group 7: location of antennas on alternative structures.* Upon enactment of this subchapter, any person, corporation, partnership or other entity which intends to mount an antenna on an alternative structure that would add more than 20 feet to the height of the alternative structure within the jurisdiction of this subchapter shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter.

(H) *Group 8: public safety and governmental Use.* Upon enactment of this subchapter, any government agency which intends to construct a new communications tower shall first obtain a permit from the Zoning Administrator in accordance with the terms of this subchapter.

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.093 TOWER STANDARDS BY GROUP.

Standards for communications towers. Tower owners should exercise best efforts in the placement of communications towers so that they have minimal impact on adjacent residents and land owners. Conformance with the following standards shall be conclusive proof of best efforts on the part of tower owners. The following standards shall apply to communications towers:

(A) *Standards for Group 1.* The structures shall be located on sufficient land to meet the setback requirements of the zoning district, if applicable.

(B) *Standards for Group 2.*

(1) The replacement tower shall be placed as close to the existing tower as is reasonable feasible and on the same parcel as the original tower.

(2) The replacement tower shall meet the setback requirements of the zoning district, if applicable. However, if the existing tower is non-conforming for setbacks, the replacement tower shall not increase the degree of non-conformity.

(3) The existing tower being replaced shall be removed within 90 days of completion of the replacement tower .

(C) *Standards for Group 3.* The structures shall be located on sufficient land to meet the setback requirements of the zoning district, if applicable.

(D) *Standards for Groups 5, 6 and 7.*

(1) *District setback requirements.* The structures shall be located on sufficient land to meet the setback requirements of the zoning district, if applicable.

(2) *Separation from existing communications towers .* New monopole towers shall be located at least half (1/2) mile from any existing or permitted tower of any type (monopole, lattice or guyed) which is greater than 150 feet in height. New lattice or guyed towers shall be located at least one (1) mile from any existing or permitted tower of any type which is greater than 150 feet in height.

Separation from Existing or Permitted	
New Tower Type	Towers Greater than 150 feet in Height
Monopole	1/2 mile
Guyed or lattice	1 mile

(3) *Separation from occupied buildings .*

(a) *Separation distance.* New monopole towers shall be separated from occupied buildings and other structures by a distance equal to 75% of the height of the proposed tower . New lattice or guyed towers shall be separated from occupied buildings and other structures by a distance equal to the height of the proposed tower .

Separation from Occupied Buildings	
Tower Type	(Percentage of tower height)
Monopole	75%
Guyed or lattice	100%

(b) *Exception.* The required separation area for all types of new towers may include occupied buildings if the applicant obtains affidavits of understanding or similar documents from the owners of property containing the buildings . The affidavits or other documents shall state that the property owners do not object to the construction of the tower as proposed in the application and agree to hold the Town of Mills River harmless from any and all liability for the location and construction of the tower as proposed in the application. The affidavits should also cite the specific plan or drawing reviewed by the property owner .

(4) *Lighting .* No permanent or strobe lightsshall be allowed on the tower unless required by federal, state or local law or regulation. Ground level security lighting may be permitted if designed to minimize impacts on adjacent properties .

(5) *Color.* Towers shall be light gray or any other color that blends into the environment in which the tower is located, except when otherwise required by applicable federal and state law or regulations.

(6) *Signs.* A sign which includes the name of the tower operator and a telephone number for emergencies shall be displayed in a visible location near the tower . No sign may be placed on the tower for commercial advertisement purposes. "Warning" and "no trespassing" signs are permitted and encouraged.

(7) *Fencing .* The base of any tower shall be surrounded by a secured fence or an enclosed wall of at least 8 feet in height.

(8) *Compliance with federal and state regulations.* The applicant shall be required to provide documentation satisfactory to the Zoning Administrator of compliance with all applicable federal and state laws and regulations.

(9) *Siting towers on protected mountain ridges .* The height of any new monopole tower proposed for a protected mountain ridge , as defined, shall not be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to the tower site . The height of new lattice or guyed towers proposed for a protected mountain ridge shall not be greater than 20 feet above the existing vegetative canopy adjacent to the tower site . For purposes of this subchapter , the vegetative canopy shall be the average tree line height within 500 feet of the tower site or, if no such adjacent vegetation exists, then the canopy shall be set at 40 feet.

(10) *Design to accommodate additional user.* All new communications towers shall be designed to accommodate at least one (1) additional user.

(11) *Option to town on collocation opportunity.* For all new towers , the applicant shall give the Town of Mills River the option of collocating, for governmental use, an antenna space on the new tower at fair market value, if technically feasible and if requested by the Town of Mills River in writing within 30 days of the submission of a permit approval.

(12) *Landscaped buffer.* A landscaped buffer shall be provided around the outside of the fence enclosing the base of the tower , except where access to the base of the tower is provided. The purpose of the buffer is to screen the base of the tower and fencing from surrounding land uses. The buffer shall be installed and approved by the Zoning Administrator prior to issuance of a certificate of occupancy for the tower by the Henderson County Inspections Department.

(a) *Material.* The buffer shall consist of at least 1 row of evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in height. The plants shall be at least 3 gallon container plants or 24 inches tall at the time of planting. Individual plants shall be spaced not more than 8 feet apart.

(b) *Installation.* The required buffer shall be installed according to established planting procedures using good quality plant materials. Plant materials used for installation shall conform to the standards established by the American Association of Nurserymen in the American Standard for Nursery Stock.

(c) *Maintenance.* The tower owner shall be responsible for providing, protecting and maintaining all buffer plant materials in a healthy and growing condition. Unhealthy or dead plant materials shall be replaced in a timely manner. Replacement materials shall conform to the materials specified in the landscaped buffer planting plan submitted with the application for the proposed tower (see § 154.094(B)(2)(a)12.) and shall , at a minimum, be of the same size and quality of the original plantings.

(d) *Waiver of requirements.* Mills River Town Council may waive the buffer requirements, in whole or in part, if:

1. The applicant cannot feasibly meet the requirements because of physical constraints or characteristics of the site. In the cases Mills River Town Council may require that plant material be placed in another feasible location on the site which would serve to meet the intent of the buffer requirements.

2. The existing vegetation, topography or other natural means provides screening of the tower base which satisfies the intent of the buffer requirements.

3. The proposed tower is in a district where residential dwellings are not allowed.

(E) *Standards for Group 8.*

(1) *District setback requirements.* The structures shall be located on sufficient land to meet the setback requirements of the zoning district, if applicable.

(2) *Lighting .* No permanent or strobe light shall be allowed on the tower unless required by federal, state or local law or regulation. Ground level security lighting may be permitted if designed to minimize impacts on adjacent properties .

(3) *Color.* Towers shall be light gray or any other color that blends into the environment in which the tower is located, except when otherwise required by applicable federal and state law or regulations.

(4) *Fencing .* The base of any tower shall be surrounded by a secured fence or an enclosed wall of at least 8 feet in height.

(5) *Compliance with federal and state regulations.* The applicant shall be required to provide documentation satisfactory to the Zoning Administrator of compliance with all applicable federal and state laws and regulations.

(6) *Siting towers on protected mountain ridges .* The height of any new monopole tower proposed for a protected mountain ridge , as defined, shall not be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to the tower site . The height of new lattice or guyed towers proposed for a protected mountain ridge shall not be greater than 20 feet above the existing vegetative canopy adjacent to the tower site . For purposes of this subchapter , the vegetative canopy shall be the average tree line height within 500 feet of the tower site or, if no such adjacent vegetation exists, then the canopy shall be set at 40 feet.

(7) *Option to town on collocation opportunity.* For all new towers , the applicant shall give the Town of Mills River the option of collocating, for governmental use, an antenna on the new tower at fair market value, if technically feasible and if requested by the Town of Mills River in writing within 30 days of the submission of a permit application.

(8) *Landscaped buffer.* A landscaped buffer shall be provided around the outside of the fence enclosing the base of the tower , except where access to the base of the tower is provided. The purpose of the buffer is to screen the base of the tower and fencing from surrounding land uses. The buffer shall be installed and approved by the Zoning Administrator prior to issuance of a certificate of occupancy for the tower by the Henderson County Inspections Department.

(a) *Material.* The buffer shall consist of at least one (1) row of evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in height. The plants shall be at least 3 gallon container plants or 24 inches tall at the time of planting. Individual plants shall be spaced not more than 8 feet apart.

(b) *Installation.* The required buffer shall be installed according to established planting procedures using good quality plant materials. Plant materials used for installation shall conform to the standards established by the American Association of Nurserymen in the American Standard for Nursery Stock.

(c) *Maintenance.* The tower owner shall be responsible for providing, protecting and maintaining all buffer plant

materials in a healthy and growing condition. Unhealthy or dead plant materials shall be replaced in a timely manner. Replacement materials shall conform to the materials specified in the landscaped buffer planting plan submitted with the application for the proposed tower (see § 154.094(B)(2)(a)12.) and shall, at a minimum, be of the same size and quality of the original plantings.

(d) *Waiver of requirements.* Mills River Town Council may waive the buffer requirements, in whole or in part, if:

1. The applicant cannot feasibly meet the requirements because of physical constraints or characteristics of the site. In the cases Mills River Town Council may require that plant material be placed in another feasible location on the site which would serve to meet the intent of the buffer requirements.

2. The existing vegetation, topography or other natural means provides screening of the tower base which satisfies the intent of the buffer requirements.

3. The proposed tower is in a district where residential dwellings are not allowed.

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.094 APPLICATION AND PROCESS.

(A) The following process shall be followed for application and processing of all communication tower permits. Group 1 category communication towers shall submit a zoning permit application and fee with a sketch plan verifying that setbacks are met. All other groups shall follow the process outlined in this subchapter.

(B) Permit *application and review requirements* for communications towers. All sealed documents shall be accompanied by an unsealed copy. All site plans and drawings must submit at least one copy in 11 x 17. Application and review requirements for communications towers vary according to group, as follows:

(1) *Requirements for Groups 2, 3, 4 and 7.* In order to obtain a permit for towers or tower activities in Groups 2, 3, 4 and 7, the applicant shall submit the following items to the Zoning Administrator:

(a) *Application.*

1. An application form (to be provided by the Zoning Administrator).

2. A permit fee (to be set by the Town Council in a fee schedule).

3. A sketch plan in sufficient detail to show the location of the tower, the foundation, accessory structures and antennas within the tower site.

4. A structural engineering certification signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base. The Zoning Administrator may accept, in lieu of the above, other documentation evidencing the structural integrity of the tower and the tower base. Applicants for towers for residential, amateur radio or governmental use or those in Group 4 do not have to submit the structural engineering certification or similar documentation.

5. A copy of the valid Federal Communications Commission license must be provided to the Town before the communication tower shall be operational.

(b) *Review procedure.* If an application for a Group 2, 3, 4 or 7 permit meets the requirements of this subchapter, the Zoning Administrator shall issue a permit for the tower. The Zoning Administrator shall have 10 business days from the date a complete application is filed to issue or deny the permit. If the Zoning Administrator has reason to deny a permit, the Zoning Administrator shall notify the applicant of the nonconformity which could cause a denial and give the applicant 10 business days to cure the nonconformity. If the applicant fails to cure the nonconformity within 10 business days, the Zoning Administrator may deny the permit, but the denial shall be made in writing and shall be accompanied by the reasons stating why the permit was denied.

(2) *Requirements for Group 5 or 8.* In order to obtain a permit for towers or tower activities in Group 5 or 8, the applicant shall submit the following items to the Zoning Administrator:

(a) *Application.*

1. An application form (to be provided by the Zoning Administrator).

2. A permit fee (to be set by the Town Council in a fee schedule).

3. A tower profile, with dimensions, which shows the proposed tower, the foundation, accessory structures and antennas.

4. A structural engineering certification signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base.

5. A site plan, prepared by an active North Carolina registered land surveyor, registered professional engineer or registered landscape architect, which contains the following information:

a. The names, addresses and telephone numbers of the applicant and the property owner.

- b. The plan scale, a North arrow and a vicinity map.
- c. Tax parcel identification number for any parcel of land containing the tower site and the tower's latitude and longitude coordinates.
- d. The name, address, signature and seal of the person who prepared the site plan.
- e. The boundary lines of any parcel or portion thereof that will contain the proposed tower. The boundary lines shall be surveyed by an active North Carolina registered land surveyor.
- f. The general location of boundary lines of any parcel or portion thereof within a radius from the tower base equal to the proposed tower height.
- g. The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site.
- h. All identifiable buildings and other structures (including existing towers), roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height.
- i. The tower base and the foundations for all guyed line anchors and support structures, all proposed buildings, accessory structures and any other proposed improvements, including roads and utilities serving the proposed site.
- j. The ground elevation of the base of the proposed tower to the nearest foot.

6. Statement regarding accommodation of additional user. The applicant shall submit a document signed and sealed by an active, registered, North Carolina professional engineer which indicates that the proposed tower will accommodate at least one (1) additional user.

7. Statement regarding collocation. The applicant shall submit a written statement which indicates that he or she is willing to allow future collocations and will make space available at fair market value. This statement may include a caveat for rejecting a collocation based on concern regarding frequency disruption as certified by a state certified radio frequency engineer.

8. Evidence of mailing of notices of intent. The applicant must submit documentation which shows that the applicant has sent required notices of intent to file an application for a communications tower permit to all owners of property immediately adjacent to the parcel containing the tower site as well as to all owners of property within a radius measured from the tower base equal to a half (1/2) mile. The notice of intent shall include the following: a vicinity map showing the proposed tower location; a sketch of the tower with dimensions which indicates the proposed tower type and height; and a general statement from the Zoning Administrator outlining the procedure by which the proposed tower may be permitted. (See sample on file with the Zoning Administrator.) The notices of intent shall be mailed no fewer than 10 days and no more than 30 days prior to the date on which an application for a tower permit is filed. A list of all current adjacent property owners as listed with Henderson tower Land Records shall be included.

9. Evidence of lack of alternative antenna sites shall be presented when a tower falls within the required distance listed in § 154.093, separation from existing communication towers. The applicant for a Group 5 must provide written documentation which shows that a reasonable effort has been made to collocate a proposed antenna for a communications tower on an existing tower or alternative structure and that there are no feasible alternatives to constructing the proposed tower because the owner of an existing tower or alternative structure which could be used for an antenna is unwilling or unable to allow the collocation or because no tower or structure exists which: could provide coverage to the proposed service area; or is structurally capable of supporting the intended equipment; or is the proper height; or would not cause frequency interference. Group 8 is exempt from this application requirement.

10. Easement acquisition documents. Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit, with the application, a statement of intent to grant an easement to the applicant. If the application is subsequently approved, no certificate of occupancy for tower operation may be issued by the Town of Mills River until easement documents are recorded in the Henderson County Register of Deeds office and copies of such are submitted to the Town of Mills River.

11. Evidence of compliance with federal and state regulations. The applicant shall be required to provide documentation satisfactory to the Zoning Administrator of compliance with all applicable federal and state regulations.

12. Landscaped buffer planting plan. The applicant shall submit a sketch which shows the general type(s) of plant materials to be used for the buffer and where the materials will be planted on the tower site.

13. A copy of the valid Federal Communications Commission license must be provided to the Town before the communication tower shall be operational.

(b) *Review procedure.* If an application for Group 5 or 8 permit meets the requirements of this subchapter, the Zoning Administrator shall issue a permit for the tower. The Zoning Administrator shall have 15 business days from the date a complete application is filed to issue or deny the permit. If the Zoning Administrator has reason to deny a permit, the Zoning Administrator shall notify the applicant of the nonconformity that would cause a denial and give the applicant 10 business days to cure the nonconformity. If the applicant fails to cure the nonconformity within 10 business days, the Zoning Administrator may deny the permit, but the denial shall be made in writing and shall be accompanied by the reasons stating why the permit was denied.

(3) *Requirements for Groups 6.* In order to obtain a permit for towers or tower activities in Groups 6, the applicant shall submit the following items to the Zoning Administrator :

(a) *Application.* All of the items stated in division (B)(2)(a)1. through 13., requirements for Group 5 and 8, above, except that the permit fee shall be set by the Town Council in a fee schedule reflected as a special use permit fee.

(b) *Review procedure.* Review and approval for Group 6 permits shall be by the Mills River Town Council in accordance with § 154.138. special uses , and § 154.180, powers and duties of the Town Council , of this subchapter . In addition, the Town Council may consider the economic impacts of a proposed communications tower on surrounding properties in determining whether to grant a special use permit .

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.095 DISCONTINUED USE.

Written notice shall be provided to the Zoning Administrator by the tower /operator and the tower site owner when the use of a communications tower is discontinued. If the use of a communications tower has been discontinued for a continuous period of 90 days, then the tower owner /operator or the tower site owner shall remove the tower within 90 days. The tower owner /operator and the tower site owner shall be jointly and severally responsible for the removal.

(Ord. 00079, passed 4-25-2013)

§ 154.096 CONTINUED COMPLIANCE REQUIRED.

All permits for the construction of communications towers shall be issued upon a presumption that the application and documents submitted do not contain any misrepresentations or inaccuracies and that the tower will strictly conform to the plans which are submitted as the basis for the permit . Any misrepresentation or inaccuracy in the application or documents submitted or failure to strictly conform the tower to the plans submitted shall constitute a violation of this subchapter . Further, once constructed, the tower must continue to be at all times maintained in strict compliance with the provisions of this subchapter ; failure to do so shall also constitute a violation of this subchapter . Any violation shall subject the tower owner /operator and the tower site owner to revocation pursuant to § 154.098 and penalties pursuant to § 154.101.

(Ord. 00079, passed 4-25-2013)

§ 154.097 VARIANCES.

(A) Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this subchapter would cause an unnecessary hardship, the Town Council may authorize a variance, if the variance can be made without compromising the intent of this subchapter . Notwithstanding the foregoing, no variance may be issued allowing the modification of any height restriction or limitation contained in this subchapter . Anyone desiring a variance from the terms of this subchapter shall make application, in writing, justifying the request. The Zoning Administrator shall prepare an item requesting that the Town Council set a quasi-judicial public hearing on the application for variance and shall forward the item to the Town Manager or other appropriate personnel designated by Town Council by the agenda deadline for the first regularly scheduled meeting of the Town Council after the application has been submitted. The Town Council shall schedule the public hearing for a regular evening meeting on a date which allows sufficient time for notice of the hearing to be mailed to owners of adjacent property and to be published in the newspaper, as outlined in § 154.199 Notice of a quasi-judicial public hearing on an application for a proposed tower shall comply with the provisions of G.S. § 160D-601 , as amended. (see § 154.199). The Town Council shall consider the public health, safety and welfare when ruling on applications for variance. Any grant of a variance pursuant to this section must be based upon specific findings of the fact made by the Board that support the following conclusions:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this subchapter .
- (2) The variance applied for is in harmony with the general purpose and intent of this subchapter and preserves its spirit.
- (3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

(B) Any variance authorized by the Town Council is required to be entered in the minutes of the meeting of the Town Council and the reasoning on which the departure was justified set forth. In addition, the grant of the variance shall be made in writing and delivered to the applicant.

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.098 REVOCATION OF PERMIT.

(A) *Revocation by Zoning Administrator .* The Zoning Administrator shall revoke any permit issued by the Zoning Administrator pursuant to this subchapter for any violation of this subchapter upon the Zoning Administrator having knowledge of the violation; provided, however, that the Zoning Administrator shall notify the tower owner /operator and tower site owner of the violation that may cause the permit to be revoked and give the tower owner /operator and tower site owner at least 10 business days to cure the violation. If the tower owner /operator and/or the tower site owner fails to cure the violation within the time prescribed, the Zoning Administrator shall revoke the permit . The revocation of the permit must

be made in writing and must be accompanied by the reasons for which the permit was revoked.

(B) *Revocation by Town Council* . The Town Council may revoke any permit issued pursuant to this subchapter for any violation of this subchapter ; provided, however, that prior to the Town Council consideration of the revocation of the permit , the Zoning Administrator shall notify the tower owner /operator and tower site owner of the violation that may cause the permit to be revoked and give the tower owner /operator and tower site owner at least 10 business days to cure the violation. If the tower owner /operator and/or the tower site owner fails to cure the violation within the time prescribed, the Zoning Administrator may prepare an item requesting that the Town Council set a quasi-judicial public hearing on the revocation of the permit and shall forward the item to the appropriate personnel by the agenda deadline for the first regularly scheduled meeting of the Town Council after the revocation request has been submitted. The Town Council shall schedule the public hearing for a regular evening meeting on a date which allows sufficient time for notice of the hearing to be mailed to owners of adjacent property and to be published in the newspaper, as outlined in § 154.199. Notice of a quasi-judicial public hearing on an application for a proposed tower shall comply with the provisions of G.S. § 160D-601, as amended. (See § 154.199). The revocation of the permit must be made in writing and must be accompanied by the reasons for which the permit was revoked. The request for revocation of the permit submitted to the Town Council may be accompanied by an application for variance related to the violation and the same may be considered by the Town Council as outlined in § 154.097.

(Ord. 00079, passed 4-25-2013; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.099 APPEALS.

(A) *Decision of the Zoning Administrator* . The denial or the revocation of a permit by the Zoning Administrator or the imposition of any conditions to the permit by the Zoning Administrator may be appealed to the Mills River Town Council by giving written notice within 15 days of notification to the applicant of the Zoning Administrator's decision. Further appeal shall be made pursuant to division (B) as below set forth.

(B) *Decision of the Town Council* . The denial or the revocation of a permit by the Town Council or the imposition of any conditions to the permit by the Town Council may be appealed to the Superior Court of Henderson County in the nature of certiorari. A petition for writ of certiorari in the Superior Court must be filed with the Clerk of Superior Court within 30 days after the decision of the Mills River Town Council is served upon the applicant. Unless otherwise ordered by a court of competent jurisdiction, this subchapter may be enforced pursuant to § 154.101 during the pendency of any appeal under this division.

(Ord. 00079, passed 4-25-2013)

§ 154.100 PERMIT FEES AND EXPENSES.

The Town Council may set fees for any and all permits granted under the terms of this subchapter and for processing applications for variances. All reasonable and necessary expenses associated with the processing, issuance or denial of any application or variance, including, but not limited to, advertising fees, postage, travel, engineering studies and technical consultations, may be recovered from the applicant.

(Ord. 00079, passed 4-25-2013)

§ 154.101 PENALTY.

The construction of a communications tower , collocation of an antenna on an existing tower , location of an antenna on an alternative structure or the replacement of an existing tower in violation of this subchapter , or failure to comply with any of the requirements of this subchapter or with any permit issued pursuant to this subchapter subject the applicant, the tower owner /operator and/or the owner of the tower site to revocation of the permit (§ 154.098) and the penalties and enforcement provisions pursuant to G.S. § 160A-175, including, but not limited to, the following :

(A) *Equitable remedies*. This subchapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this subchapter may be enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

(1) *Injunction*. Where necessary to effectuate compliance with this subchapter , the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this subchapter . The action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions herein.

(2) *Order of abatement*. Where necessary to abate a condition existing upon land in violation of this subchapter or a use made of land in violation of this subchapter , the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this subchapter . The action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this subchapter .

(3) *Other equitable remedies*. This subchapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

(B) *Civil penalties*. Any individual who is found in violation of this subchapter may be subject to a civil penalty of \$50. Each day's violation shall be treated as a separate offense.

(1) *Compliance order.*

(a) Upon making a determination that a person is in violation of this subchapter, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances shall issue a compliance order to the owner of the property and/or owner/lessor of the tower in violation of this subchapter. The compliance order shall notify the violator of the violation in writing. The order shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. The notification shall further identify the action which is necessary to comply with this subchapter. The notification shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist that the violator cannot come into compliance within 15 days, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may grant an extension of time commensurate with the magnitude of the violation. The compliance order shall further state that failure to comply with the terms of the compliance order will subject the violator to a civil penalty and shall further state the amount of the civil penalty.

(b) Failure to comply with the terms of a compliance order issued by the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances within the time stated in the order shall subject the violator to a civil penalty of \$50. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to an additional civil penalty for each separate offense.

(2) *Civil action.* When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties by the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances.

(C) *Criminal penalties.* Unless otherwise provided by this subchapter or other applicable law, violation of this subchapter shall constitute a Class 3 misdemeanor punishable by a fine not to exceed \$500. Each day's violation shall be treated as a separate offense.

(1) *Warning ticket.* Upon the initial violation of a particular provision of this subchapter, an individual may be issued a warning ticket. The warning ticket shall identify the particular practice which is in violation of this subchapter and shall state the time, date and place of the violation. The warning ticket shall further state that if the individual commits further similar violations within the 6 months following the date of the warning ticket, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may cause a warrant to be issued for the individual's arrest.

(2) *Warrant.* If an individual violates this subchapter within the 6 months following the issuance of a warning ticket in a manner that is similar to the violation specified in the warning ticket, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may cause a warrant to be issued for the arrest of the individual.

(3) *Enforcement.* Notwithstanding any other provisions of this subchapter, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Ordinances may cause a warrant to be issued without having first issued a warning ticket where he or she deems it necessary to effectively enforce the terms of this subchapter.

(Ord. 00079, passed 4-25-2013)

GENERAL REGULATIONS

§ 154.105 NONCONFORMING USES.

Any parcel of land, use of land, building or structure lawfully existing at the time of the adoption of this chapter, or any amendment thereto, that does not conform to the use, lot size or dimensional requirements of the district in which it is located may be continued and maintained subject to the following provisions:

(A) *Nonconforming vacant lots.* This category of nonconformance consists of vacant lots for which plats or descriptions have been recorded in the Register of Deeds office of Henderson County, which at the time of the adoption of this chapter or any amendment thereto fail to comply with the minimum area requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located, provided that the lot conforms with § 154.131 of this chapter.

(B) *Nonconforming occupied lots.* This category of nonconformance consists of lots, occupied by buildings or structures at the time of adoption of this chapter or any amendment thereto, that fail to comply with the minimum requirements for lot area, yard and setbacks for the districts in which they are located, but were in compliance with the Henderson County Zoning Ordinance immediately prior to the adoption of this chapter.

(C) *Nonconforming open uses of land.* This category of nonconformance consists of lots used for storage yards, used car lots, auto wrecking, junkyards and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where the use of the land is not permitted to be established hereafter under this chapter, or any amendment thereto, in the district in which it is located. A legally established nonconforming open use of the land may be continued except as follows:

(1) When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.

(2) Nonconforming open use of land shall not be changed to any but conforming use.

(3) A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.

(4) When any nonconforming open use of land is discontinued for a period in excess of 180 days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

(5) When any nonconforming use was not in compliance with the Henderson County Zoning Ordinance immediately prior to the adoption of this chapter.

(D) *Nonconforming uses or structures*. This category of nonconformance consists of buildings or structures used at the time of enactment of this chapter or any amendment thereto for purposes of use not permitted in the district in which they are located. The uses may be continued as follows:

(1) An existing nonconforming use may be changed to another nonconforming use of the same or higher classification, provided that the other conditions in this section are complied with. For the purpose of this chapter, the rank order of uses from higher to lower shall be:

- (a) Residential;
- (b) Public;
- (c) Commercial; and
- (d) Industrial.

(2) When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

(3) A nonconforming use may not be extended or enlarged nor shall a nonconforming structure be altered except as follows:

(a) Structural alterations as required by law or ordinance or as ordered by the Zoning Administrator to secure the safety of the structure are permissible.

(b) Maintenance and repair necessary to keep a nonconforming structure in sound condition is permissible.

(c) Existing single-family residential structures in business or industrial districts may be enlarged, extended or structurally altered, provided that no additional dwelling units result therefrom. However, any such enlargement, extension or alteration shall comply with the dimensional requirements of the MR-30 Residential District.

(d) Expansion of a nonconforming use of a building or structure into portions of the structure which, at the time the use became nonconforming, were already erected and arranged and designed for the nonconforming use.

(4) When any nonconforming use of a building or structure is discontinued for a period in excess of 180 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(5) When any nonconforming use was not in compliance with the Henderson County Zoning Ordinance immediately prior to the adoption of this chapter.

(E) *Reconstruction of damaged buildings or structures*. Any nonconforming use which has been damaged by fire, wind, flood or other causes may be repaired and used as before, provided that:

(1) Repairs are initiated in 12 months and completed within 2 years of the damage.

(2) The total amount of space devoted to a nonconforming use may not be increased.

(3) The dimensions of a reconstructed building may not be larger than the original building if the non-conformance was related to dimensional restrictions.

(F) *Use of existing lot of record*. Where the owner of a lot of official record in any district at the time of the adoption of this chapter or any amendment thereto, or his or her successor in title thereto, does not own sufficient contiguous land to enable him or her to conform to the minimum lot size requirements of this chapter, the lot may be used as a building site, provided that the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(G) *Non-conforming Residential*. Non-conforming residential lots may be permitted for family child care home, adult day care homes, adult day health homes and incidental home occupations.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.106 OFF-STREET PARKING.

Off-street automobile storage or parking spaces shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for

various uses. When application of the provision results in a fractional space requirement, the next larger requirement shall prevail. Each lot abutting a major thoroughfare, as determined by the Zoning Administrator, shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street.

(A) *Minimum parking requirements.*

(1) Motor vehicle parking spaces shall measure nine feet by 18 feet. Aisle width shall be based on parking angle and direction of flow according to the following table:

Parking Angle (Degrees)	One Way Aisle Width (Feet)	Two Way Aisle Width (Feet)
30	14	18
45	15	19
60	17	21
90	24	24

(2) The required number of off-street parking spaces specified below for each use shall be provided, (etc.)

Residential Uses	Required Parking
Residential dwellings, single-family and duplexes	2 spaces for each dwelling unit
Residential dwelling, multifamily	1-1/2 spaces for each dwelling unit
Public and Semipublic Uses	Required Parking
Adult Day Center and Adult Day Health Centers	1 space for each activity room and administrative office with an additional 3 spaces for drop off and pick up
Child Care Centers	1 space for each classroom and administrative office with an additional 3 spaces for drop off and pick up
Hospitals and clinics	1 space for each 2 beds, plus 1 space for each staff or visiting doctor, plus 1 space for each 4 employees, including nurses
Funeral parlors	1 space for each 4 seats in the chapel or parlor
Churches, spiritual institutions and places of public assembly	1 space for each 4 seats in the principal assembly room
Places of assembly or recreation without fixed seats	1 space for each 200 feet of gross floor space directed to patron use
Schools, elementary and junior high	1 space for each classroom and administrative office
Schools, senior high	1 space for each classroom and administrative office, plus 1 space for each 20 seats or 1 space for each 400 square feet of area used for public assembly
Public buildings	1 space for each 200 square feet of gross floor space
Sanitariums, rest and convalescent homes for the aged and similar institutions	1 space for each 6 patient beds, plus 1 space for each staff or visiting doctor, plus 1 space for each 4 employees
Business Uses	Required Parking
Doctors and dentists offices	5 spaces per doctor or dentist
Professional and business offices	1 space for each 300 square feet of gross floor space
Banks	1 space for each 150 square feet of gross floor space
Retail stores and shops of all kinds, including barber, shoe and similar service outlets	1 space for each 200 square feet of gross floor space
Car sales, house and truck trailer sales, outdoor equipment and machinery sales and commercial nurseries	4 spaces for each sales person, plus 1 space for each 2 employees

Hotels	1 space for each 2 rooms, plus 1 additional space for each 5 employees
Motels, tourist homes, tourist courts and bed-and-breakfast inns	1 space for each accommodation , plus 2 additional spaces for employees

<i>Business Uses</i>	<i>Required Parking</i>
Service stations	2 spaces for each gas pump, plus 3 spaces for each grease rack or similar facility
Shopping centers	1 parking space for each 300 square feet of gross floor area
Restaurants, drive-in	Parking space equivalent to 5 times the floor space in the main building
Restaurants, indoor	1 space for each 3 seats or stools, plus 1 space for each 2 employees on the shift of the largest employment
Motor sports facilities	1 space for each 3 seats based on maximum capacity of the motor sports facility or per each 200 square feet of space directed to patron use, whichever is greater
Amusement parks	1 space for each 3 seats based on maximum capacity of the amusement park or per each 200 square feet of space directed to patron use, whichever is greater, plus 1 space for each 2 employees at maximum employment on a single shift
Junkyards	1 space for each 2 employees at maximum employment on a single shift, plus 1 space for each company vehicle operating from the premises
Adult establishments	1 space for each 200 square feet of gross floor space
<i>Wholesale and Industrial Uses</i>	<i>Required Parking</i>
Wholesale and industrial uses	1 space for each 2 employees at maximum employment on a single shift, plus 1 space for each company vehicle operating from the premises
Solid waste management facilities , mining and extraction operations , concrete plants , asphalt plants , slaughtering plants , chip mills , heavy industry, incinerators	1 space for each 2 employees at maximum employment on a single shift, plus 1 space for each company vehicle operating from the premises

(B) Location on other property . If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, the spaces may be provided on other off-street property , provided that the property lies within 400 feet of the main entrance to the principal use . The automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner.

(C) Extension of parking space into a residential district. Required parking space may extend up to 120 feet into a residential zoning district, provided that the parking space:

- (1) Adjoins a commercial or industrial district;
- (2) Has its only access to or fronts upon the same street as the property in the commercial or industrial district for which it provides the required parking space; and
- (3) Is separated from abutting properties in the residential district by a buffer strip .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 2018-10, passed 11-8-2017; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.107 OFF-STREET LOADING AND UNLOADING SPACE.

Every lot on which a business, trade or industry use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street . The space shall have access to an alley or, if there is no alley , to a street . For the purpose of this section, an off-street loading space shall have minimum dimensions of 12 feet by 40 feet and an

overhead clearance of 14 feet in height above the alley or street grade.

(A) Retail businesses and adult establishments : 1 space for each 10,000 square feet of gross floor area .

(B) Wholesale and industry: 1 space for each 25,000 square feet of gross floor area or area devoted to principal use .

(C) Truck terminals and other nonresidential uses: sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at any one time.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.108 REQUIRED YARDS AND OTHER SPACES.

No part of a yard or open space or off-street parking or loading space required about or in connection with any building for the purpose of complying with this chapter shall be included as part of a yard , open space or off-street parking or loading space similarly required for any other building .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

§ 154.109 ONE PRINCIPAL BUILDING ON A LOT.

Only one (1) principal building and its customary accessory buildings may hereafter be erected on any one (1) lot, except as otherwise provided in this chapter. This restriction shall not apply in the MR-MU District or the MR-LI District.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.110 CONFORMITY WITH REGULATIONS REQUIRED.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered, except in conformity with the regulation specified for the zoning district in which it is located and as otherwise provided in the Mills River Town Code . Any existing building or land that is proposed for a change of use shall conform to the regulation in the Mills River Town Code and as specified for the district in which it is located.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2017-07, passed 11-10-2017)

§ 154.111 RELATIONSHIP OF BUILDING TO LOT.

Every building hereafter erected, moved or structurally altered shall be located on a lot, and in no case shall there be more than one (1) principal building and its customary accessory buildings on the lot, except in the case of a specially designed group development of institutional, residential, commercial or industrial buildings in an appropriate zoning district, e.g., school campus, cluster housing, shopping centers , industrial parks, manufactured home parks and planned unit developments . This restriction shall not apply in the MR-MU District or the MR-LI District.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.112 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Rear yards . Accessory structures and buildings shall be permitted in rear yards , provided that they are located not less than 10 feet from any property line.

(B) Side yards . Accessory structures and buildings may be permitted in side yards , provided that their placement shall not exceed the minimum side yard setback requirement for that district or use.

(C) Front yards .

(1) Accessory structures and buildings shall not be permitted in front yards , except in the following cases:

(a) Where, by definition, more than one (1) front yard exists, such as in corner lots or double fronted lots.

(b) Where the measurement of a lot's perimeter boundary is equal to or exceeds 50% of the abutting road right-of-way width.

(2) In division (C)(1)(a) and (b) above, an accessory building or structure shall not be located closer to the center line of the abutting road than is otherwise permitted by this chapter.

(3) In these cases only, the determination shall be made by the Zoning Administrator on a case-by-case basis. Determinations shall take into account orientation of the structure and dwelling, road and driveway location, topographical features, traffic volume and visual buffers.

(D) Height. In no case shall an accessory structure or building be permitted in any front, side or rear yard if it exceeds 15 feet in height or if it occupies more than 30% of the required yard area; however, height restrictions do not apply on lots of 1 acre or more.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.113 VEHICLE GRAVEYARD OR MOBILE/MANUFACTURED HOME GRAVEYARD AS ACCESSORY USES.

Where a vehicle graveyard or a mobile/manufactured home graveyard is allowed as an accessory use , the following site standards shall apply:

- (A) Secured fencing shall be required.
- (B) Full screening shall be required.
- (C) There shall be a minimum front yard , side yard and rear yard setback of 25 feet.
- (D) At least one (1) direct access road corridor , as defined in §154.066(B), having a minimum width of 20 feet, and a minimum travelways width of 20 feet, shall be required.
- (E) Fire protection shall be required.
- (F) The vehicle graveyard and/or mobile/manufactured home graveyard shall be separated from any existing school by a minimum of ½ mile.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.114 RECREATIONAL VEHICLES.

Recreational vehicles may be used as a temporary single-family dwelling only in those districts that permit recreational vehicle parks and then only within the parks. In no case shall a recreational vehicle be used as a single-family dwelling on an individual lot or in conjunction with a primary residence on an individual lot, except as provided in § 154.179(D).

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

§ 154.115 COMMERCIAL WASTE CONTAINER SCREENING REQUIREMENTS.

(A) Commercial waste container screening *requirements*. New commercial sites in all districts shall locate commercial waste containers so that they are screened from view from the public right of way by either:

- (1) A solid fence; or
- (2) Screened with evergreen landscaping. Shrubbery used for screening must be a minimum of 24" high at planting and maintained so as to grow vertically to screen the commercial waste container . Any landscaping used for screening may also count towards interior plantings on the landscape plan; or
- (3) By a building or natural barrier.
- (4) Construction related waste containers , as defined in §154.007(B) are to be excluded from this provision.

(Ord. 00066, passed 4-28-2011)

§ 154.116 TRAFFIC IMPACT ANALYSIS (TIA).

(A) *Purpose*. The purpose of this section is to ensure that applicants for new construction, special use permits , major subdivisions, additions and/or expansions to existing structures , and/or changes of use consider and mitigate the impact of the development on the existing and/or proposed roadway system. A traffic impact analysis (TIA) will ensure that the transportation network has adequate capacity to handle projected transportation demand associated with the development project, identify problems with the transportation system, delineate solutions to identified problems, and identify improvements to be incorporated into the proposed development .

(B) *Traffic impact analysis required*. All proposals and applications for new construction, redevelopment, special use permit , additions and/or expansions to existing structures or sites, major subdivisions, changes of use, and/or any other proposed development which will result in peak hour vehicle trips equal to or greater than 75 peak hour trips or which will result in daily vehicle trips equal to or greater than 750 daily trips using trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers shall include an analysis of the traffic to be generated with a TIA. The traffic impact analysis (TIA) shall be submitted to town staff with the development application or subdivision application. In addition to the foregoing, the Town Zoning Administrator shall have the discretion to require a TIA when a development's expected traffic will substantially affect an intersection or roadway segment already identified as operating at a failing level of service, when a development may create a hazard to public safety, or when a development will substantially change the off-site transportation system or connections to it. Notwithstanding the above a TIA shall not be required if the property to be developed has been the subject of a TIA within the previous 3 years and the projected trip generation of the newly proposed development is equal to or less than the previous TIA performed and the trip distribution has not significantly changed.

(C) *Traffic impact analysis submission guidelines*.

(1) Any TIA, whether required or voluntary, must be prepared by a licensed North Carolina engineer and submitted as part of a development and/or subdivision application. Prior to conducting the TIA, the developer and/or engineer that will be conducting the TIA must meet with town staff and the North Carolina Department of Transportation (NCDOT) to identify certain assumptions and scope that shall be addressed in the TIA, including but not limited to establishing the study area, the trip distribution, the traffic counts to be utilized, approved developments in the area, additional hours of analysis (other

than A.M. or P.M. peak). and resolve any other questions specific to the site.

(2) An executive summary shall be provided in the TIA outlining the following: a) detailed description of the proposed development ; b) number of access points proposed and studied; c) existing and future Level of Service (LOS) for studied intersections and road segments including the LOS at the time of build-out; d) existing traffic counts for road (s) and intersection(s) studied and dates/times counts were conducted; e) A.M. and P.M. peak hour vehicle trips for pre-development and post-development conditions; f) average daily vehicle trips for pre-development and post-development conditions; g) existing traffic accident counts; h) any recommended improvements.

(3) The TIA shall address the following: a) proposed land use; b) site access and site distances at all proposed access points; c) impacts on the transportation system from the proposed development ; d) physical improvements or enforceable management strategies to mitigate negative impacts.

(4) The TIA shall take into consideration proposed and planned NCDOT roadway improvement projects and town roadway and pedestrian/bicycle transportation projects.

(5) The TIA shall identify the improvements necessary to maintain level of service (LOS) D for roads and intersections as defined in the Highway Capacity Manual.

(6) The TIA shall conduct a pedestrian and bicycle analysis. Continuity and adequacy of pedestrian and bicycle facilities shall be provided to the nearest attraction (existing or planned) within ¼ mile of the boundary of the development site. Destinations of significance include public transportation stops, schools, parks, activity centers, major bicycle facilities and corridors, and high-density population centers.

(7) When calculating vehicle counts for commercial and industrial developments where the projected traffic primarily consists of trucks, tractor trailers, and other large commercial vehicles, the following formula shall be used to equate truck trips to regular passenger vehicle trips. A passenger car equivalent (PCE) shall be provided in addition to truck traffic counts. Truck trips shall be converted to passenger vehicle trips using a 2.0 PCE factor for two-axle trucks, 2.5 PCE factor for 3-axle trucks, and 3.0 PCE factor for 4-axle trucks and larger trucks. The PCE shall be used to determine if a TIA is required for developments primarily expected to generate truck traffic.

(8) The town may require special/specific analysis in the TIA relative to the proposed development .

(D) *Improvements required.* In those cases where the town or the North Carolina Department of Transportation (NCDOT) requires improvements to be constructed in order to accommodate additional traffic generated by the proposed development , the improvements shall be funded and/or constructed by the developer in accordance with the standards and direction provided by the town or the NCDOT. The improvements shall be complete and in place prior to issuance of any certificate of occupancy or certificate of completion/compliance required for any phase or portion of the project. The town may require additional mitigation, onsite improvements, and/or offsite improvements provided the improvements are acceptable by NCDOT. However, a TIA shall not be utilized as a means for the town to require the developer to make needed transportation improvements remote from and not affected by the property for which the TIA is submitted.

(1) *Left turn lane, right turn lane, acceleration/deceleration lanes, and/or right turn taper.* Improvements may be required based on requirements of the NCDOT Policy on Street and Driveway Access to North Carolina Highways or other NCDOT standards.

(2) *Additional right-of-way.* If a proposed development falls along a road projected to be widened or improved by NCDOT or an adopted town plan, additional right-of-way along the development's road frontage shall be dedicated as deemed acceptable by NCDOT.

(3) *Offsite improvements.* If a road segment or intersection is currently performing at LOS D or better and is projected to perform at LOS E or F at the time of build-out of the proposed development , improvements must be made to maintain the road segment or intersection at LOS D. If a road segment or intersection is currently performing at LOS E or F and is projected to continue to perform at the same LOS (E or F) at the time of build-out of the proposed development , the TIA shall demonstrate how an LOS D could be achieved and also specify what improvements must be made to ensure that the road segment or intersection LOS is not degraded any further than the current levels. The town may require improvements be made to preserve the existing LOS.

(4) *Other necessary improvements.* Additional improvements may be required based on the TIA recommendations related to topographic/environmental conditions, sight distance, street offsets, conflicting movements, existing traffic accident counts, circulation, and other potential traffic issues resulting from the proposed development . Additionally, the town may require additional improvements deemed necessary to ensure the safety and welfare of the town's citizens and transportation network users.

(Ord. 2018-02, passed 2-8-2018; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-16, passed 9-8-2022)

EXCEPTIONS AND MODIFICATIONS

§ 154.130 WAIVER OF REQUIREMENTS.

Compliance with the requirements of this chapter is mandatory, except that under the specific conditions enumerated in the following sections of this subchapter, the requirements may be waived or modified as so stated.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.131 EXISTING LOTS.

(A) *Lots of insufficient land area.* Where the owner of a lot at the time of the adoption of this chapter or any amendment thereto or his or her successor in title thereto does not own sufficient land to enable him or her to conform to the minimum lot area requirements of this chapter, the lot may nonetheless be used as a building site, provided that any principal structure on an existing lot with an area below the minimum set forth in this chapter shall meet the setbacks required in the district. Applicants that cannot meet the setback requirements may appeal to the Board of Adjustment as provided in § 154.105(F). If, however, the owner of two (2) or more adjoining lots either of which contains insufficient land area to comply with the applicable provisions of this chapter decides to build on or sell these lots as a building lot, he or she must first combine the lots to comply with the area and dimensional requirements of this chapter and meet the lot design standards of Chapter 153 Subdivisions . As used in the section, "the time of the adoption of this chapter or any amendment thereto" means the date on which this chapter or any amendment thereto is made applicable to the use district in which the lot is located.

(B) *Nonconforming occupied lots established prior to the date this chapter is adopted or any amendment thereto* Any lot on which a building is located or improvements thereon shall be considered a nonconforming occupied lot if the building or improvement located on the lot was lawfully constructed in compliance with the Henderson County Zoning Ordinance prior to the date this chapter or any amendment thereto is adopted. All conditions and provisions of Subsection A of this section and § 154.105 , "Nonconforming Uses " shall apply to the aforementioned lots and the development thereon.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.132 FRONT YARD SETBACK.

(A) *Front yard setback requirements.* The front yard setback requirements of this chapter for buildings shall not apply on any lot where the average setback of existing buildings located wholly or in part within 100 feet on each side of the lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required setback. In such cases, the setback may be less than the required setback but not less than the average of the setbacks of the aforementioned existing buildings .

(B) *Reduction of front yard setback for single-family dwellings on steep slopes.*

(1) On undeveloped lots for single-family dwellings located in the MR-30 District, the minimum front yard setback requirements may be reduced as follows:

(a) Where the average slope at the proposed building site is greater than 18% but is less than 25%, the minimum front yard setback may be reduced by 10 feet.

(b) Where the average slope at the proposed building site is equal to or greater than 25% but is less than 35%, the minimum front yard setback may be reduced by 15 feet.

(2) The Zoning Administrator shall verify that lots qualify for the reduction in front yard setbacks and may therefore require that documentation indicating the average slope at proposed building sites be submitted at the time of application for zoning compliance permits . The average slope (percent) of a proposed building site shall equal the difference in elevation divided by the horizontal distance measured from a point 100 feet from the front property line (edge of right-of-way).

(3) The provisions of this section shall not apply to undeveloped lots for single-family dwellings which front on a major street as defined by this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.133 SIDE YARD SETBACK.

Where a side yard abuts a street , the setback requirements for the side yard shall be the same as the front yard setback requirements for the district.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.134 GROUP DEVELOPMENTS.

(A) A shopping center , industrial park, cluster housing or school campus of 2 or more buildings to be located on a plot of land at least 1-1/2 acres not to be subdivided into customary streets and lots, and which will not be so subdivided, may be constructed, provided that:

(1) Uses are limited to those permitted within the district in which the project is located.

(2) The overall intensity of land use within the project is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.

(3) The distance of every building from the nearest property line shall meet the front yard setback and the side and rear yard requirements of the district in which the project is located.

(4) There shall be a buffer strip along the rear or side lot lines abutting residential zoned properties .

(5) Other information, maps or plans that the Planning Board may request in order to properly review the project are

provided.

(B) Before any group development shall be constructed, plans, maps, graphs and other information shall be submitted to the Planning Board for its approval. No group development shall be allowed to be constructed until the developer shows that the project will be landscaped with shrubs, grass, trees, flower beds, as required by the **Landscaping** subchapter of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.135 COMPLETION OF BUILDINGS UNDER CONSTRUCTION.

Nothing in this chapter shall require any change in the plans, construction or designated use of a building under construction at the date of the passage of this chapter or any amendment thereto, provided that construction of the building is diligently pursued and the entire building is completed within 18 months from the date of passage of this chapter or any amendment thereto and construction is consistent with the Henderson County Zoning Ordinance. A building shall be deemed to be under construction if, at the date of passage of this chapter or any amendment thereto, architect's plans have been prepared and preparation of the site has commenced. As used in this section, the "date of passage of this chapter or any amendment thereto" means the date on which this chapter or any amendment thereto is first made applicable to the use district in which the property is located.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.136 RESIDENCE ADDITIONS AND ACCESSORY BUILDINGS.

A zoning compliance permit shall be required for the construction of an addition to a single-family dwelling, or for the construction of an accessory building on the same lot as a single-family dwelling, to ensure that the addition or outbuilding is constructed in such a manner as to comply with the other requirements of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.137 MINOR SPECIAL USE PERMITS.

(A) When a Minor Special Use Permit is required by the terms of this chapter, application for such a permit shall accompany the application for a zoning compliance permit. The application shall be transmitted immediately to the Zoning Board of Adjustment, which may refer it to the Planning Board for review and recommendations prior to a public hearing.

(B) A notice of the evidentiary hearing shall be given once a week for 2 successive calendar weeks in a newspaper published in the county, as provided in § 154.179(C)(1)(b).

(C) The applicant shall identify all adjacent property owners, whom the Zoning Administrator will notify by registered mail of the special use application. The Zoning Administrator shall post the property with a hearing notice detailing the special use sought and the hearing time. The Mills River Town Council may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying the adjacent property owners. These fees shall be paid by the applicant before a special use permit is issued.

(D) If the Zoning Board of Adjustment shall find after the evidentiary hearing the use for which the special use permit is sought will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, it shall issue a special use permit. All uses requiring a special use permit must meet the general site standards listed in § 154.138(D). In granting such a permit, the Zoning Board of Adjustment shall designate the conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this chapter.

(E) If at any time after a special use permit has been issued for any use the Zoning Board of Adjustment finds that the conditions imposed and agreements have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated immediately and the operation of the use discontinued.

(F) If a special use permit is terminated for any reason, it may be reinstated upon application as in the case of a new matter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.138 MAJOR SPECIAL USE PERMITS.

(A) When a Major Special Use Permit is required by the terms of this chapter, application for such a permit shall accompany the application for a zoning compliance permit. The application shall be transmitted immediately to the Mills River Town Council, which shall refer it to the Planning Board for review and recommendations prior to an evidentiary hearing.

(B) A notice of the evidentiary hearing shall be given once a week for 2 successive calendar weeks in a newspaper published in the county as provided in § 154.180(A)(1)(b).

(C) The applicant shall identify all adjacent property owners, whom the Zoning Administrator will notify by registered mail of the special use application. The Zoning Administrator shall post the property with a hearing notice detailing the special use sought and the hearing time. The Mills River Town Council may establish and maintain a fee schedule to recover costs

of legal notices, posting the property and notifying the adjacent property owners . These fees shall be paid by the applicant before a special use permit is issued.

(D) General site standards. All uses requiring a special use permit must meet the general site standards listed below. In evaluating whether the general site standards have been met, the Mills River Town Council may consider the type and size of the principal use , size of the property and other relevant factors. The applicant will not bear the burden of proving that all of the general site standards as listed below have been met. The applicant will, however, be required to produce evidence sufficient to rebut any evidence presented that the general site standards would not be met or that a condition is necessary.

(1) The following general site standards shall apply to all uses requiring a special use permit :

(a) Establishments requiring a special use permit shall not be located or developed in such a manner as to adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood .

(b) Establishments requiring a special use permit shall be located or developed in such a manner as to minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use and the property and public improvements in the neighborhood .

(c) Establishments requiring a special use permit shall not be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety.

(d) Establishments requiring a special use permit shall be located or developed in such a manner as to comply with all applicable federal, state and local laws, rules and regulations.

(e) Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with any approved Official Thoroughfare Plans.

(f) Establishments requiring a special use permit shall be located and developed in such a manner as to minimize the environmental impacts on the neighborhood including the following : groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites and unique natural areas .

(2) In the event that the Mills River Town Council determines that a proposed use is contrary to one (1) or more of the general site standards, then the Town Council may impose a condition on the issuance of the special use permit when the condition will avoid a violation of the general site standards. The condition imposed may be an increase in any minimum specific site standards stated for the regulated use. The imposition of a condition may only be based on evidence presented at the hearing that the general site standards would not be met without the imposition of the condition. The Town Council must make specific findings of fact based upon the evidence presented prior to the imposition of the condition.

(E) If at any time after a special use permit has been issued for any special use , the Mills River Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit , the permit shall be terminated immediately and the operation of the use discontinued.

(F) If a special use permit is terminated for any reason, it may be reinstated upon application as in the case of a new matter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00052, passed 6-26-2008; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.139 TEMPORARY USES.

(A) An application for a temporary use permit shall accompany the application for a zoning compliance permit . The application shall be transmitted immediately to the Zoning Board of Adjustment, which shall hold a public hearing at its next regularly scheduled meeting.

(B) A notice of the public hearing shall be given in a newspaper of general circulation published in the county .

(C) No temporary use permit may be granted in any district for the following uses:

(1) Adult establishments .

(2) Hazardous waste disposal facility .

(3) Radioactive waste disposal facility .

(D) Except as provided in § 154.139(E), no temporary use permit may be granted in the MR-MU District for any regulated use except for the following uses: asphalt plants ; concrete plants ; and chip mills . In such instances, the Zoning Board of Adjustment may impose as a condition of the temporary use permit any specific site standards listed for the regulated use necessary to make the temporary use comply with the general site standards listed for special use permits .

(E) Isolated racing events , not otherwise allowed under a valid zoning permit , may be conducted only upon the issuance of a temporary use permit in accordance with this subsection and subject to the restrictions and limitations contained within this subsection:

(1) Temporary use permits may not be issued for more than two (2) racing events per calendar year for any one (1) location or individual or entity.

(2) Temporary use permits for racing events shall be limited in duration to a 24 hour period.

(3) Temporary use permits for racing events shall not be issued for locations that would violate the separation requirements for motor sports facilities contained within the applicable zoning district, if any.

(4) The Zoning Board of Adjustment should consider the following factors in evaluating the application:

(a) Type and size of the proposed event.

(b) Size of the parcel on which the event will be conducted.

(c) Time and duration of the event.

(d) Other activities in the specified geographic area at the same time as the proposed event that might be disturbed by the proposed event.

(e) Residential density in the proposed location.

(f) Effect of the racing event on the residential areas.

(g) Economic benefit to the community; any economic hardship on the applicant if the permit is denied or on others if it is allowed.

(h) Previous violations of this chapter by the applicant.

(i) Any other relevant factor.

(5) The Zoning Board of Adjustment may impose as a condition of the temporary use permit any specific site standards listed for motor sports facilities necessary to make the temporary use comply with the general site standards listed for special use permits .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.140 ACQUISITION OF LAND FOR PUBLIC PURPOSES.

(A) Nothing in this chapter shall prohibit duly authorized agencies of the Town of Mills River from acquiring and using land whenever necessary to protect the public health and provide necessary public services and public works; however, the Mills River Town Council shall hold a public hearing before the action is taken.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

ADMINISTRATION AND ENFORCEMENT

§ 154.155 ZONING ENFORCEMENT OFFICER.

It shall be the duty of the duly appointed Zoning Administrator that he or she is hereby given the authority to administer and enforce the provisions of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.156 ZONING COMPLIANCE PERMIT.

(A) Unless otherwise stated in this chapter, all uses regulated by this chapter must secure a zoning compliance permit . The Zoning Administrator shall in no case grant any permit for the construction or alteration of any building if the building as proposed to be constructed or altered would be in violation of any of the provisions of this chapter.

(B) All applications for zoning compliance permits shall be accompanied by plans in duplicate, if possible, showing the actual dimensions of the plat to be built upon, drawn to scale, and the location on the lot of the building or structure proposed to be erected and altered, and the other information as may be necessary to provide for the enforcement of the provisions of this chapter. The Zoning Administrator or his/her designee shall review all applications for zoning compliance and shall approve an application if it meets all requirements. If it does not meet all requirements, then the Administrator or his/her designee shall notify the applicant of deficiencies in the application. Once an applicant has been notified that all requirements have not been met, the applicant shall have 6 months to re-submit the application for additional review. If an applicant does not re-submit within 6 months , the application will be considered void. In addition, an application will only be considered active to 18 months . If an applicant cannot meet the requirements of this chapter within 18 months , it will be considered void.

(C) A zoning compliance permit shall be required for those uses permitted with standards in the MR-MU District, (See § 154.066(E)).

(D) Events occurring off-site subsequent to the date of an application for any zoning compliance permit shall not operate to invalidate any permit validly issued.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00052, passed 6-26-2008; Am. Ord. 2018-02, passed 2-8-2018)

§ 154.157 DURATION OF PERMIT.

If no substantial construction progress has been made within 6 months of the date of the issuance of the zoning compliance permit , the permit becomes invalid.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.158 APPEALS.

It is the intention of this chapter that all questions arising in connection with the enforcement of this chapter shall be presented first to the Zoning Administrator and that the questions shall be presented to the Zoning Board of Adjustment only on appeal from the Zoning Administrator .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.159 REMEDIES.

If any building or structure is erected, constructed, repaired, converted or maintained or any building , structure or land is used in violation of this chapter, the Zoning Administrator or any other appropriate authority or adjacent or other property owner who would be damaged by the violation, in addition to other remedies, may institute injunction, mandamus or other appropriate action in proceeding to stop the violation.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL

§ 154.175 ESTABLISHMENT OF ZONING BOARD OF ADJUSTMENT.

A Zoning Board of Adjustment is hereby established. The Board shall consist of 5 regular members, who shall be citizens of the Town of Mills River and shall be appointed by the Mills River Town Council for overlapping terms of 3 years . The Board shall also consist of as many alternate members as the Town Council deems appropriate, who shall be citizens of the Town of Mills River and who shall also serve overlapping 3 year terms. Alternate members shall serve in the absence of any regular member and, while serving, shall have and exercise all the powers and duties of a regular member of the Zoning Board of Adjustment. The Mills River Town Council may, by resolution duly adopted, establish guidelines for appointment of regular and/or alternate members, including, but not limited to, the establishment of representative districts for Zoning Board of Adjustment membership. Initial appointment of regular members shall be as follows: 1 member for a term of 3 years , 2 members for terms of 2 years and 2 members for terms of 1 year . Initial appointment for alternate members shall be staggered in a like manner. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Zoning Board of Adjustment.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.176 PROCEEDINGS OF ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall elect a Chairperson and a Vice Chairperson from its members, who shall serve for 1 year or until reelected or until their successors are elected. The Board shall appoint a Secretary, who may be a town officer , an employee of the town, a member of the Planning Board or a member of the Zoning Board of Adjustment. The Board shall adopt rules and bylaws in accordance with the provisions of this chapter and of Chapter 160D of the North Carolina General Statutes (G.S. § 160D-302). Meetings of the Board shall be held at the call of the Chairperson and at the other times as the Board may determine. The Chairperson or, in his or her absence, the Vice Chairperson may administer oaths and compel the attendance of witnesses by subpoena. All hearings held by the Board shall be open to the public.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.177 DECISIONS OF ZONING BOARD OF ADJUSTMENT.

The concurring vote of 4/5 of the members of the Zoning Board of Adjustment shall be necessary to approve a variance. The concurring vote of a majority of the members shall be required to decide any other quasi-judicial matter, to determine an appeal to the Zoning Board of Adjustment in the nature of certiorari or any other matter upon which the Zoning Board of Adjustment is required to act. For purposes of this chapter, vacant positions on the Zoning Board of Adjustment and members who are disqualified from voting on quasi-judicial matters shall not be considered members of the Zoning Board of Adjustment for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. On all appeals, applications and other matters brought before the Board of Adjustment, the Board shall inform in writing all parties involved of its decisions and the reasons thereof. The Zoning Board of Adjustment is authorized to interpret the Zoning Map and pass upon disputed questions of lot lines or district boundary lines and other similar questions as they arise in the administration of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014)

§ 154.178 APPEALS OF ZONING BOARD OF ADJUSTMENT.

Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved or by any official or board of the Town of Mills River affected by any action of the Zoning Administrator . The appeal shall be taken within 30 days, as provided by

the rules of the Board, by filing with the Zoning Administrator and with the Secretary of the Zoning Board of Adjustment a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed unless the Zoning Administrator certifies to the Zoning Board of Adjustment, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the Zoning Administrator and on due cause shown.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall have the following powers and duties:

(A) *Administrative review.* To hear and decide appeals where it is alleged there is error in an order, requirement, decision, determination or interpretation made by the Zoning Administrator in the enforcement of this chapter pursuant to any of the following :

(1) Any person who has standing under G.S. § 160D-1402(c) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least 6 inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. Chapter 160D, Article 4 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160D-1402(c).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(B) *Variances.* To authorize, upon appeal, variations or modifications of any regulation or provision of this chapter relating to the dimensional requirements, construction or alteration of buildings or other provisions, so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done; however, the Zoning Board of Adjustment shall not permit a use of land, building or structure which is not permitted by right or by a special use permit in

the district involved.

(1) The Zoning Board of Adjustment may issue a variance only on the basis of affirmative findings of fact for all of the following criteria:

(a) There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter, as demonstrated by:

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that is secured, and substantial justice is achieved. No change in permitted uses may be authorized by variance.

(2) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(C) *Minor Special Uses; conditions governing application.* To grant, in particular cases and subject to appropriate conditions and safeguards, permits for Minor Special Uses as authorized by this chapter and set forth as conditional uses under the various use districts.

(1) The Zoning Board of Adjustment shall not grant a special use permit unless and until:

(a) A written application for a special use permit shall be submitted indicating the section of this chapter under which the special use permit is sought.

(b) A public hearing is held pursuant to §154.182.

(2) If the Board of Adjustment finds that in the particular case in question, the use for which the conditional use permit is sought will not adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, a permit may be granted. In granting such a permit, the Zoning Board of Adjustment may designate the conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter.

(3) If at any time after a conditional use permit has been issued the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of the use discontinued. If the conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.

(4) The Planning Board and/or Zoning Board of Adjustment may ask for the submission of a preliminary site plan where a site plan is not required by this chapter.

(5) Before any conditional use permit is issued, the Board may ask for advice and recommendation of the Planning Board.

(6) Before any conditional use permit is issued, the Zoning Board of Adjustment shall make written findings certifying compliance with the specific rules governing the individual conditional use and that satisfactory provision and arrangement has been made concerning the following where applicable:

(a) Satisfactory ingress and egress to property and proposed structures thereon with particular reference to automotive/pedestrian safety and convenience and traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(6)(a) above and the economic, noise, glare and odor effects of the conditional use on adjoining properties in the area.

(c) Utilities with reference to locations, availability and compatibility.

(d) Buffering with reference to type, location and dimensions.

(e) Playgrounds, open spaces, yards, landscaping, access ways and pedestrian ways with reference to location, size and suitability.

(f) Building and structures with reference to location, size and use.

(D) *Temporary uses.* Except as otherwise provided in this chapter, the Zoning Board of Adjustment may grant a temporary use permit to allow a use not ordinarily permitted in the district, provided that the permit has a fixed expiration date, and the applicant satisfies any conditions imposed by the Zoning Board of Adjustment.

(E) *Watershed Review Board.* Unless Watershed Review Board functions are otherwise designated by the Mills River Town Council, the Mills River Zoning Board of Adjustment shall hear and decide cases which arise from appeals or may perform other proper administrative functions pursuant to the provisions set forth in the Mills River Town Code.

(F) *Major Special Uses.* The Zoning Board of Adjustment shall have the authority to hear and grant, grant with conditions or deny an application for a Major Special Use Permit where the Mills River Town Council has determined that the Mills River Town Council cannot hear the application due to conflict of interest, bias, lack of a quorum or other similar reasons and has specifically delegated its authority to hear and decide the application to the Zoning Board of Adjustment by resolution. In such event, the Board of Adjustment shall have all of the powers and duties of the Town Council as defined in § 154.180(A). Notice requirements of § 154.182 shall apply.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-18, passed 12-8-2022)

§ 154.180 POWERS AND DUTIES OF MILLS RIVER TOWN COUNCIL.

(A) *Major Special Uses; conditions governing application.* The Mills River Town Council shall have the power to grant, in particular cases and subject to appropriate conditions and safeguards, permits for Major Special Uses as authorized by this chapter and set forth as special uses under the various use districts.

(1) The Mills River Town Council shall not grant a special use permit unless and until:

(a) A written application for a special use permit is submitted, indicating the section of this chapter under which the special use permit is sought.

(b) An evidentiary hearing is held. Notice of the hearing shall be given per § 154.182.

(2) If the Mills River Town Council finds that in the particular case in question the use will meet all of the required general standards (see § 154.138) and the applicable specific site standards or site conditions, a permit may be granted. In granting such a permit, the Mills River Town Council may designate the conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter.

(3) If at any time after a special use permit has been issued the Mills River Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of the use discontinued. If a special use permit is terminated for any reason, it may be reinstated only after an evidentiary hearing is held.

(4) The Planning Board and/or Town Council may ask for the submission of any additional information or evidence relevant to the determination of whether the proposed special use meets the applicable requirements of this chapter.

(5) Before any special use permit is issued, the Mills River Town Council shall ask for advice and recommendation of the Planning Board.

(6) Before any special use permit is issued, the Mills River Town Council shall make written findings certifying compliance with the specific rules governing the individual special use and that satisfactory provision and arrangement has been made concerning the following where applicable:

(a) Satisfactory ingress and egress to property and proposed structures thereon with particular reference to automotive/pedestrian safety and convenience and traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to the items in division A(6)(a) above and the economic, noise, glare and odor effects of the special use on adjoining properties in the area.

(c) Utilities with reference to locations, availability and capability.

(d) Buffering with reference to type, location and dimensions.

(e) Playgrounds, open spaces, yards, access ways and pedestrian ways with reference to location, size and suitability.

(f) Building and structures with reference to location, size and use.

(7) *Variances.* The Town Council shall be authorized, upon application, to approve variations or modifications of any regulation or provisions of this chapter for any special use so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done; however, the Town Council shall not permit a use of land, building or structure which is not allowed in the district involved.

(a) The Town Council may issue a variance only on the basis of affirmative findings of fact for all of the following criteria:

1. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter, as demonstrated by the following:

a. If the applicant complies with the literal terms of this chapter, he or she cannot secure a reasonable return from, or make a reasonable use of, his or her property.

b. The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

c. The hardship is not the result of the applicant's own action.

2. The variance is in harmony with the general purpose and intent of this chapter and will preserve its spirit.
3. The variance will secure the public safety and welfare and will do substantial justice.

(b) The existence of a nonconforming use of neighboring land, buildings or structures in the same district or permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance.

(c) A notice that describes the variance requested, property location and time and place of the hearing shall be published as a legal notice in a local newspaper of general circulation not less than 5 days before the hearing date. A second notice shall be published in the same newspaper as a commercial advertisement between the legal notice date and the hearing date.

(B) The Mills River Town Council may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying adjacent property owners. These fees shall be paid by the applicant before a special use permit is issued. Additionally, the applicant shall be required to pay the cost of any special experts or studies which the Town Council and the applicant agree are necessary to evaluate the application.

(C) The Mills River Town Council shall have the authority to delegate the power to hear and grant, grant with conditions or deny an application for a Major Special Use Permit to the Zoning Board of Adjustment by resolution, where it determines that the Mills River Town Council cannot hear the application due to conflict of interest, bias, lack of a quorum or other similar reasons. In the event the Board of Adjustment shall have all of the powers and duties of the Mills River Town Council as defined in § 154.180(A) above. In adopting such a resolution, the Mills River Town Council shall state with specificity the reasons that it could not hear the application.

(D) *Voting for special uses.* The consideration of a special use permit is a quasi-judicial matter. The granting of a special use permit shall require the concurring vote of a majority of the Town Council. For purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on quasi-judicial matters shall not be considered members of the Town Council for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.181 APPEALS TO COURT.

Appeals from decisions of the Zoning Board of Adjustment and the Mills River Town Council shall be taken to the appropriate court of record as provided by law. Appeals must be filed within 30 days from the date the Zoning Board of Adjustment or the Mills River Town Council issues its order.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

§ 154.182 NOTICE REQUIREMENTS FOR QUASI-JUDICIAL PUBLIC HEARINGS.

The following shall be required notice requirements when conducting quasi-judicial hearings:

(A) Notice of hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels abutting the parcel of land that is the subject of the hearing. Notice shall be deposited in the mail at least 10 days, but not more than 25 days prior to the date of the hearing.

(B) Notice shall be placed via prominently posted notice of hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way not less than 10 days, but not more than 25 days prior to the date of the hearing.

(Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021)

AMENDMENTS

§ 154.195 AUTHORITY OF MILLS RIVER TOWN COUNCIL.

This chapter, the Official Zoning Map of the Town of Mills River, and the Town's adopted comprehensive plan, including the future land use vision map, may be amended by the Mills River Town Council upon a majority vote on first reading and in accordance with the provisions of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2023-04, passed 9-14-2023)

§ 154.196 INITIATION.

(A) The text of this chapter, the Official Zoning Map of the Town of Mills River, the adopted comprehensive plan, and the future land use vision map may be amended in order to:

- (1) Correct an error or clarify statements or boundaries;
- (2) Change the regulations in the text;
- (3) Apply zoning to previously unzoned areas of the town; or

(4) Change the zoning or future land use designation of an area.

(B) *Zoning map amendment.* Except as provided in § 154.067, proposed changes or amendments to the Official Zoning Map of the Town of Mills River may be initiated by the Mills River Town Council, the Planning Board, the Zoning Board of Adjustment, the Town Manager, or 1 or more owners of property within the area proposed to be changed or affected, as applicable.

(C) *Zoning text amendment, comprehensive plan amendment, or future land use vision map amendment.* Proposed changes or amendments to this chapter, to the comprehensive plan, or to the future land use vision map may be initiated by the Mills River Town Council, the Planning Board, or the Town Manager. One or more owners of property within town limits, including designated owner's agents and legal counsel representing property owners, may petition Town Council for an amendment to this chapter, to the comprehensive plan, or to the future land use vision map, only after holding a pre-application conference with Town Council to determine the acceptability of the proposed amendment.

(1) *Pre-application conference required.* Prior to submission of an application for an amendment to the zoning ordinance, the comprehensive plan, or the future land use vision map by a Mills River property owner (s), the applicant shall arrange a pre-application conference with Town Council, coordinated by the Zoning Administrator.

(2) The applicant shall submit to the Zoning Administrator a description of the proposed amendment. The description shall identify sections proposed for amendment and include draft language or proposed changes.

(3) The pre-application conference with Town Council is designed to inform the applicant of the town regulations and policies concerning amendments and potential compatibility or incompatibility with the town's adopted comprehensive plan. The pre-application conference is also meant to inform the town of the applicant's intentions. Town Council has the authority to allow or deny the property owner initiated amendment to continue through the amendment process. An amendment initiated by 1 or more property owners in Mills River may proceed with submitting a formal amendment application only upon a majority vote from Town Council authorizing such during the pre-application conference.

(4) Upon positive direction from Town Council to proceed with the amendment process, the applicant may submit to the Zoning Administrator a written application for an amendment, with the applicable fee as identified in the most recent Town of Mills River fee schedule.

(D) When considering any zoning text or map amendment, or comprehensive plan, or future land use vision map amendment, all proposed changes shall be reviewed by the Planning Board, but only after a pre-application conference with Town Council for amendments initiated by 1 or more owners of property in Mills River. All changes approved or denied by Town Council shall include a statement describing whether its action is consistent or inconsistent with the town's adopted comprehensive plan, per G.S. 160D-605(a). If a zoning map amendment is adopted and the action was deemed inconsistent with the future land use vision map and comprehensive plan, the zoning amendment shall have the effect of also amending the future land use map in the approved comprehensive plan, and no additional request or application for a comprehensive plan amendment shall be required.

(E) When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Council, per G.S. 160D-605(b). This statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. § 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(F) *Down-zoning.* No zoning text or map amendment that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town of Mills River. For the purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in 1 of the following ways: (i) by decreasing the development density of the land to be less dense than was allowed under its previous usage; or (ii) by reducing the permitted uses of the land that are specified in the town zoning code to fewer uses than were allowed under its previous usage, per G.S. 160D-601(d).

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2021-18, passed 11-18-2021; Am. Ord. 2022-18, passed 12-8-2022; Am. Ord. 2023-04, passed 9-14-2023)

§ 154.197 APPLICATION.

(A) *Text amendment, comprehensive plan amendment, or future land use vision map amendment.* In order for a person authorized by § 154.196 to initiate an amendment, a pre-application conference must be held with Town Council, as described in § 154.196(C), coordinated by the Zoning Administrator. If the petitioner receives approval from Town Council during the pre-application conference to proceed with the amendment process, an application accompanied by the application fee shall be submitted to the Mills River Town Hall at least 30 days prior to the date of the Planning Board meeting at which the application is to be considered for a recommendation. The application shall contain the name(s) and address(es) of the applicant(s), a copy of the proposed change and a statement from the applicant(s) which explains the purpose for the amendment.

(B) *Zoning map amendments.*

(1) *Conventional rezoning.* In order for a person authorized by §154.196 to initiate a change to the Official Zoning Map, from 1 base district to another, an application accompanied by the application fee shall be submitted to the Mills River Town Hall at least 30 days prior to the date of the Planning Board meeting at which the application is to be considered for a recommendation. The application shall contain the name(s) and address(es) of the owner (s) of the property in question, the location of the property proposed to be rezoned, a list of the name(s) and address(es) of the owner (s) of property abutting the property in question as shown on the Henderson County tax listing, a description of the present and proposed zoning district, and a statement describing the consistency of the request with the adopted town comprehensive plan and land use vision map. All applications requesting a change in the Official Zoning Map shall include a description of the property in question sufficient to unequivocally describe and identify the property . The description may take the form of a property survey, a legal description or a legible copy of a Henderson County cadastral or composite Tax Map clearly annotated with district lines which follow political boundaries, geographical features or property lines.

(2) *Conditional rezoning.* In order for a property owner to initiate a change to the Official Zoning Map to create a conditional zoning district, an application accompanied by the application fee, and a preliminary master plan or final master plan shall be submitted to the Mills River Town Hall at least 60 days prior to the date of the Planning Board meeting at which the application is to be considered for a recommendation.

(a) *Required supplemental materials for preliminary or final master plans*

1. Site Masterplan (Preliminary or Final).
2. Name of Development .
3. Timetable including all phases.
4. List of proposed development conditions.
5. Location of flood hazard areas, buffer zones, watershed districts, jurisdictional wetlands or similar.

(b) *Requirements for preliminary masterplans.*

1. The location of proposed buildings , parking and loading areas, streets , alleys, easements , lots , parks or other open spaces, property lines and building setback lines with street dimensions, and tentative lot dimensions.
2. The traffic and circulation system demonstrating a safe and adequate on-site transportation system that addresses vehicular, bicycle, and pedestrian circulation.
3. The proposed limits of construction for all proposed development activity, including all required protected areas and open space.
4. A statement from the appropriate utility providers regarding the availability of adequate water and sewer capacity for the proposed development .
5. Landscape plan.
6. Architectural plans.
7. Traffic impact analysis (if required).
8. Stormwater management plan.
9. Watershed compliance plan.
10. Conceptual utilities plan including water, wastewater, and other utilities.

(c) *Requirements for final masterplan.*

1. Items 1-10 in § 154.197(B)(2)(b).
2. The boundary, as determined by survey, of the area to be subdivided with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets , railroad lines, water courses, easements , bridges, floodplains, or other significant features of the tract.
3. Scale in feet denoted both graphically and numerically with north arrow and declination.
4. A sketch vicinity map at a scale no smaller than 1 inch equals 1,200 feet showing the relationship between the proposed subdivision and surrounding area.
5. Existing topography and finish grading with contours drawn at 2-foot intervals. This requirement may be waived for developments where insufficient topographic changes warrant such information.
6. The proposed names of the development and streets , the owner's name and address, signature of the owner or owner's duly authorized agent, the surveyor's name, the names of existing and proposed adjoining subdivisions or property owners , the names of the city, county , and state in which the development is located, the date of preparation, and the zoning classification of the tract to be developed and of adjoining properties.
7. Proposed lot lines, lot and block numbers, and exact dimensions.

8. The future ownership (dedication or reservation for public use to a governmental body; for owners to duly constituted home owners' association, for tenant's remaining in subdivider's ownership of recreation and open space lands).

9. The plans for utility layouts, including sanitary sewers, storm sewers, and water lines, illustrating connections to existing systems, and approval from the utility provider for the system including new connections.

10. The location and size of all utility lines, easements, and rights-of-way.

11. The location of proposed buildings, parking and loading areas, streets, alleys, lots, parks or other open spaces, reservations (e.g., school sites), property lines and building setback lines with street dimensions, tentative lot dimensions, and the location of any building restriction areas (e.g., flood hazard areas, watershed protection districts, and/or jurisdictional wetlands). Building setbacks are measured from the property line to the closest point of the structure, including gutters and roof overhangs. Buildings shown for the purpose of measuring setbacks must reflect these elements when applicable.

12. Site calculations shall include total acreage of tract, acreage in parks and other nonresidential uses, total number and acreage of parcels, the total number of housing units, area of all mixed-use and nonresidential buildings, gross project density per acre, linear feet of streets, and the accurate locations and descriptions of all monuments, markers, and control points.

13. The location and dimensions of all off-street parking and loading spaces, and walkways indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific parking plan showing parking provided for the proposed uses and structures with parking ratios.

14. Typical cross sections of proposed streets showing rights-of-way, pavement widths, grades, and design engineering data for all corners and curves.

15. The location of any existing or proposed demolition landfills in the site. Such sites shall not be used for building.

16. A copy of the full soil erosion and sedimentation permit application and any US Army Corps of Engineers permit applications, including forms, plans, and calculations to be submitted to the North Carolina Department of Environmental Quality-Erosion and Sediment Control Office. A copy of the approval letter shall be provided prior to zoning permit approval and construction.

17. Final proposed elevations of all non-single-family and duplex buildings proposed for construction as part of the site plan approval. Subsequent buildings within the development may be handled as separate site plans. Such elevations shall include all facades.

(d) *Conditions.* Per G.S. 160D-703(b), specific development conditions may be proposed by the applicant and/or the Town of Mills River, but only those conditions approved by the Town of Mills River and consented to by the applicant in writing may be incorporated into the conditional zoning district ordinance. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address conformance of the development and use of the site to Town of Mills River ordinances, existing development standards, the Making Mills River 2040 Comprehensive Plan or any amendments thereto, or the impacts reasonably expected to be generated by the proposed development or use of the subject property.

(e) *Modification of final approval.* Minor modifications of conditional district sitedevelopment plans approved by the Mills River Town Council, may be considered and approved by the Town Manager or Zoning Administrator, as long as the requested modification does not involve a change in permitted uses, change in density of the development, change in roadway layout or transportation access points, or significant changes in building locations, or other major site characteristics, and does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval.

1. Minor modifications may be granted for the reduction or adjustment of up to 10% of the required parking, landscaping, building set-backs, or change in building dimensions or gross floor area. Any minor modification must meet all other Town ordinance requirements. Minor modifications may only be granted for just cause and are only intended to provide relief based upon a unique physical attribute of the property or some other factor unique to the property which was not known at the time of approval and which has subsequently rendered the property difficult or impossible to develop or use due to the conditions imposed.

2. The permit holder shall bear the burden of proof to secure the modification. Any other modification of the conditions and standards in the conditional district shall be considered a major modification and shall follow the same process for the original approval of the conditional district. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels must consent in writing to the requested modification.

(C) *Application modification.* Application forms may be modified by the Town Council, Planning Board, Town Manager, or Zoning Administrator, as necessary.

(D) (1) *Conditional district review process and approvals.* Preliminary masterplans may be considered and approved prior to the final masterplan approval. This allows the applicant an opportunity to present a request for conditional rezoning without fully engineered construction details and plans. Preliminary and final masterplan approvals are valid for 2 years, and the approval shall be annotated on the plan itself and certified by the Zoning Administrator, or designee. The Mills River Town Council may, for just cause, grant a single extension of the masterplan approval for a maximum of 1 additional year.

(2) If the applicant includes a preliminary master plan in the initial conditional zoning application which receives Council approval, this preliminary master plan is valid for 2 years . The applicant is then required to submit a fully engineered final master plan to the Zoning Administrator within 2 years of initial approval, which will be reviewed by the Town Planning Board for conformance with the preliminary plan approval. An applicant shall only receive a zoning permit to begin project construction after securing Planning Board approval for the final master plan. If the final master plan deviates from the preliminary master plan approval, the applicant shall secure a minor modification approval, or the change shall be considered a major modification, which requires a conditional zoning re-submittal, recommendation from the Planning Board, and review of Town Council in a public hearing, following the same process applicable for the original approval. Final master plans may also be submitted as part of the initial conditional zoning application, and if approved by Town Council , no additional Planning Board or Council review for zoning permit issuance is needed.

(E) *Consideration.* The Planning Board and the Mills River Town Council will not consider an application for an amendment denied within the preceding 12 months by the Town Council . This 12 month waiting period shall be calculated beginning from the date of Town Council's decision to deny.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-18, passed 11-18-2021; Am. Ord. 2023-04, passed 9-14-2023)

§ 154.198 PLANNING BOARD ACTION.

Before taking any action on a proposed amendment to this chapter, to the Official Zoning Map, to the comprehensive plan, or to the future land use vision map, the Mills River Town Council shall consider the Planning Board's recommendation on each proposed amendment. The Planning Board shall have 30 days after the first consideration of an application for an amendment at a regular meeting to submit its recommendations to the Mills River Town Council , per G.S. 160D-604(b). Failure of the Planning Board to submit recommendations within the 30 day period shall constitute a favorable recommendation, except that, if by agreement of the Planning Board, Town Council , and the applicant 30 days is insufficient due to the size of the area, the complexity of the request or similar circumstances, the Planning Board shall have 60 days to submit the recommendation. If no written recommendation or report is received from the Planning Board within the initial 30 day period, Town Council may act on the amendment without the Planning Board report. Town Council is not bound by the recommendations, if any, of the Planning Board, per G.S. 160D-604(b). Time limitations shall not apply to applications for areas not previously zoned, or to text amendments, zoning map amendments, comprehensive plan amendments, or future land use vision map amendments initiated by the Planning Board, the Town Manager, or the Town Council .

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-18, passed 11-18-2021; Am. Ord. 2022-18, passed 12-18-2022; Am. Ord. 2023-04, passed 9-14-2023)

§ 154.199 LEGISLATIVE HEARING.

Before enacting any amendment to this chapter, to the Official Zoning Map, to the comprehensive plan, or to the future land use vision map, the Mills River Town Council shall hold a legislative hearing . Public notification of the hearing shall comply with the provisions of G.S. 160D-601, as amended.

(A) *Newspaper notice.* In accordance with G.S. 160D-601, a notice of the legislative hearing shall be published in a newspaper of general circulation in the Town of Mills River once a week for 2 successive calendar weeks, the first publication of which shall not appear less than 10 days nor more than 25 days prior to the date fixed for the hearing. In computing the public notice period, the day of publication is not to be included but the day of the hearing shall be included. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to the ordinance and/or Official Zoning Map.

(B) *Mailed notice.* In accordance with G.S. 160D-602, whenever there is a proposed amendment to the Official Zoning Map or the future land use vision map, the owner of that parcel of land as shown on the Henderson County tax listing and the owners of all parcels of land abutting that parcel of land as well as all properties separated from the subject property by street , reserved right-of-way, railroad, or other transportation corridor as shown on the Henderson County tax listings shall be mailed by first class mail a notice of a legislative hearing on the proposed amendment by first class mail at the last addresses listed for the owners on the Henderson County tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the legislative hearing . The person(s) mailing the notices shall certify to the Town Council that fact, and the certificate shall be deemed conclusive in the absence of fraud. However, with specific approval of the Mills River Town Council at the time the Town Council sets a legislative hearing on a particular application, the Town Council may elect to use the expanded notice procedure, per G.S. 160D-602(b), which follows in lieu of or in addition to the first class mailed notice required by this division if:

(1) The proposed amendment would initially zone property added to the territorial coverage of the Official Zoning Map; or

(2) The proposed amendment directly affects more than 50 properties owned by a total of at least 50 different property owners .

(C) *Expanded published notice procedure.* If the Town Council elects to utilize the expanded notice procedure, the town shall publish once a week for 4 successive calendar weeks in a newspaper having general circulation in the area an advertisement of the legislative hearing that shows the boundaries of the area affected by the proposed Zoning Map amendment and explains the nature of the proposed change. The final 2 advertisements shall comply with and be deemed

to satisfy the provisions of G.S. 160D-602. The advertisement shall not be less than ½ of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person(s) mailing the notices shall certify to the Town Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town of Mills River shall post 1 or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed re-zoning.

(D) *Posted notice.* For any proposed amendment to the Official Zoning Map or to the future land use vision map, the Town of Mills River shall post a sign in a prominent location on or near the subject property which indicates that a zoning map change or future land use map change has been proposed for the subject property. In the event that more than 1 parcel is involved in a particular amendment, at least 1 sign shall be posted in a central location; however, the Town of Mills River may post multiple signs. The sign (s) shall be posted during the period between 25 days prior and 10 days prior to the legislative hearing date.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2021-18, passed 11-18-2021; Am. Ord. 2023-04, passed 9-14-2023)

CONFLICT OF INTEREST

§ 154.201 CONFLICT OF INTEREST REQUIREMENTS.

Elected and appointed boards and Town of Mills River staff shall maintain conflict of interest procedures pursuant to G.S. § 160D-109 in administering Title XV of the Mills River Town Code. The Mills River Town Council serves as the Governing Board for the Town. The Planning Board and Zoning Board of Adjustment are Appointed Boards. Town of Mills River staff includes and anyone employed by the Town or acting in an official capacity on behalf of the Town. These boards and individuals shall follow conflict of interest rules as described in this section.

(A) *Governing board.* A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to Title XV of the Mills River Town Code where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) *Appointed boards.* Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to Title XV of the Mills River Town Code where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(C) *Administrative staff.* No staff member shall make a final decision on an administrative decision required by Title XV of the Mills River Town Code if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the governing board. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under Title XV of the Mills River Town Code unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town of Mills River to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the governing board.

(D) *Quasi-judicial decisions.* A member of any board or Town staff member facilitating or exercising quasi-judicial functions pursuant to Title XV of the Mills River Town Code shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' rights to an impartial decision maker and process. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed communications with affected persons outside of defined decision making processes, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(E) *Resolution of objection.* If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(F) *Familial relationship.* For purposes of this section, a **CLOSE FAMILIAL RELATIONSHIP** means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(G) *Additional rules and procedures.* Nothing in this section precludes the Town, its boards or its staff from enacting additional rules and procedures to ensure conflict of interest issues do not adversely affect parties seeking rulings and approvals on legislative or quasi-judicial matters that come before the Town provided that additional rules and procedures

are not inconsistent with G.S. § 160D-109 and any amendments thereto.

(Ord. 2021-06, passed 4-22-2021)

LEGAL STATUS

§ 154.215 CONFLICT WITH OTHER LAWS.

Wherever the regulations of this chapter require a greater size of yards or require a greater percentage of lot to be left unoccupied or impose other more restrictive standards than are required in or under any other statutes, the requirements of this chapter shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this chapter, the provisions of the statute shall govern.

<i>Table A. Dimensional Requirements</i>							
	<i>Minimum Lot Area</i>	<i>Minimum Lot Area Per Dwelling (Family) Unit</i>	<i>Maximum Building Height</i>	<i>Yard Setback From Center Line of Street</i>		<i>Minimum Setbacks</i>	
				<i>Major¹</i>	<i>All Others</i>	<i>Side</i>	<i>Rear</i>
<i>District</i>	<i>(sq. ft.)</i>	<i>(sq. ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>
<i>Table A. Dimensional Requirements</i>							
	<i>Minimum Lot Area</i>	<i>Minimum Lot Area Per Dwelling (Family) Unit</i>	<i>Maximum Building Height</i>	<i>Yard Setback From Center Line of Street</i>		<i>Minimum Setbacks</i>	
				<i>Major¹</i>	<i>All Others</i>	<i>Side</i>	<i>Rear</i>
<i>District</i>	<i>(sq. ft.)</i>	<i>(sq. ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>
MR-30	30,000	30,000	50	75	60	30	30
MR-LI ^{2,4}	1 acre ³	-	50	75	60	15	20
MR-GB ^{2,3}	see note 3	-	50	50	40	15	30
MR-NC Residential	30,000	30,000	50	75	60	30	30
MR-NC ⁵ Non-Residential	30,000	-	30	75	60	30	30
MR-MU Residential	30,000	30,000	-	-	-	-	-
MR-MU ⁶ Non-Residential	-	-	40	75	60	30	30
NOTES:							
¹ Where the major street is more than 2 lanes, including parking lanes, setback requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved street abutting the property in subject.							
² Building foot print shall cover no more than 50% of total area.							
³ Minimum mean lot width: 75 feet.							
⁴ Minimum mean lot width: 200 feet.							
⁵ Maximum building size: 10,000 square feet.							
⁶ Maximum building size: 15,000 square feet.							

Table B Part 1: Minimum Specific Site Standards

	<i>Heavy Industry</i>	<i>Solid Waste Management Facility</i>	<i>Mining and Extraction Operation</i>	<i>Concrete Plant</i>	<i>Asphalt Plant</i>
Table B Part 1: Minimum Specific Site Standards					
	<i>Heavy Industry</i>	<i>Solid Waste Management Facility</i>	<i>Mining and Extraction Operation</i>	<i>Concrete Plant</i>	<i>Asphalt Plant</i>
Hours of Operation	No stated minimum	7:00 a.m. - 11:00 p.m.	7:00 a.m. - 11:00 p.m.	7:00 a.m. - 11:00 p.m.	7:00 a.m. - 11:00 p.m.
Screening	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum
Fencing	Secured	Secured	Secured	Secured	Secured
Buffer (feet)	100	500	500	100	100
Setback (feet)	300	1,500 (landfill) 500 (other)	No stated minimum	200	500
Parking	See § 154.106	See § 154.106	See § 154.106	See § 154.106	See § 154.106
Loading	See § 154.107	See § 154.107	See § 154.107	See § 154.107	See § 154.107
Access Road Corridor	Number: 1 Width: 60 feet	Number: 2 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 60 feet
Width of Travel-way (feet)	30	30	30	30	30
Fire Protection	Required	Required	Required	Required	Required
Noise Mitigation	Plan required	Plan required	Plan required	Plan required	Plan required
Lighting	Required	Required	Required	Required	Required
Separation 1	½ mile–schools ½ mile–health-care	½ mile–schools	½ mile–schools ½ mile–health-care	½ mile–schools	½ mile–schools ½ mile–health-care
Maximum Residential Density	1 unit per 8 acres radius: 1 mile	1 unit per 2 acres radius: 1 mile	1 unit per 2 acres radius: 1 mile	N/A	1 unit per 8 acres radius: 1 mile
Protected Mountain Ridge	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

Table B Part 2: Minimum Specific Standards

	<i>Incinerator</i>	<i>Junkyard</i>	<i>Motor Sports Facility</i>	<i>Slaughtering Plant</i>	<i>Amusement Park</i>	<i>Chip Mill</i>
Table B Part 2: Minimum Specific Standards						
	<i>Incinerator</i>	<i>Junkyard</i>	<i>Motor Sports Facility</i>	<i>Slaughtering Plant</i>	<i>Amusement Park</i>	<i>Chip Mill</i>
Hours of Operation	No stated minimum	7:00 a.m.-11:00 p.m.	7:00 a.m.-11:00 p.m. no more than 3 consecutive days	7:00 a.m.-11:00 p.m. on weekdays	7:00 a.m.-11:00 p.m. on weekdays; 7:00 a.m. to 2:00 a.m. on Fri, Sat.	7:00 a.m.-11:00 p.m., a.m., Fri & Sat.

Screening	No Stated Minimum	Full	No Stated Minimum	No Stated Minimum	No Stated Minimum	No Stated Minimum
Fencing	Secured	Secured	Secured	Secured	Secured	Secured
Buffer (feet)	100	50	100	100	100	100
Setback (feet)	300	300 (from public road)	500 (minor) 1,500 (major)	1,000	500	200
Parking	see § 154.106	see § 154.106	see § 154.106	see § 154.106	see § 154.106	see § 154.106
Loading	see § 154.107	see § 154.107	see § 154.107	see § 154.107	see § 154.107	see § 154.107
Access Road Corridor	Number :1 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 (minor); 2 (major) Width: 45 feet	Number:1 Width: 60 feet	Number:2 Width: 45 feet	Number:1 Width: 60 feet
Width of Travelways (feet)	30	20	20	30	20	30
Fire Protection	Required	Required	Required	Required	Required	Required
Noise Mitigation	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required
Lighting	Required	Required	Required	Required	Required	Required
Separation ¹	½ mile– schools ½ mile– health- care	½ mile– schools	½ mile– schools ½ mile– health- care	½ mile– schools ½ mile– health- care	½ mile– schools ½ mile– health-care	½ mile– schools
Maximum Residential Density	1 unit per 8 acres radius: 1 mile	N/A	1 unit per 2 acres radius: 1 mile	1 unit per 2 acres radius: 1 mile	1 unit per 2 acres radius: 1 mile	1 unit per 1 acre radius: ½ mile
Protected Mountain Ridge	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

NOTES:

¹. The term HEALTH-CARE refers to health-care facilities as that term is defined in this chapter. (See § 154.007(B))

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-2011)

LANDSCAPING

§ 154.230 LANDSCAPE PLAN REQUIRED.

(A) This applies to multi-family other than duplexes on individual lots, commercial, industrial and public land uses. Additionally, this section applies to any off-street paved parking areas in any residential zoning district which exceeds 6 parking spaces. Parking decks are excluded from this section.

(B) For the purposes of this subchapter, a parking space shall be defined as a location (delineated by painted lines, signage, wheel stops, curbing, landscaping, sidewalks or buildings) within a paved area for the expressed purpose of parking a motor vehicle . Parking area shall be defined as a lot used exclusively for parking motor vehicles and the required aisles needed to facilitate ingress and egress parking area. Parking area shall also include loading zones, merchandise display areas and driveways.

(C) A landscape or site plan must be submitted for all new parking areas at the time of application for a zoning compliance permit . At minimum, the landscape or site plan shall contain the following information.

- (1) Existing and proposed landscaping, including but not limited to,
 - (a) The location, species, and height of new trees and shrubbery;
 - (b) The location and dimensions of planting areas;
 - (c) The dimensions of the entire parking or paved area;

(d) The location and height of fences, walls or earth berms;

(e) The location and height of earth berms;

(2) The number, location, species and size of existing trees between the principal building and the public street right-of-way which are to be maintained and preserved for credit.

(3) The location and description of any barriers to be erected to protect any vegetation from damage both during and after construction.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018- 01, passed 1-12-2018; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.231 [RESERVED]

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.232 STREETS OR PERIMETER PLANTING BEDS.

(A) Street and perimeter planting beds shall be at least 10 feet in width and shall be provided for all commercial or industrial uses that are visible from the public right-of-way.

(1) Plantings within this area shall include trees and vegetative ground cover.

(2) Earth berms may be used in addition to, but not instead of plantings. Earth berms should have a minimum of 4 feet at its highest point. Walls constructed of similar material as the principal building and not exceeding 3 feet in height may also be used; however, they may not be used instead of plantings.

(3) Planting areas shall be protected from vehicular encroachment by curbing or wheel stops at least 4 inches in height.

(B) One large shade tree (expected height of 15 feet at maturity) is required for every 40 feet of linear street frontage of the lot minus the width of driveways and access points.

(1) Required street trees shall be placed 30 feet apart at minimum or 50 feet at maximum.

Example: If a lot has street frontage of 150 feet on Hwy 280 and a proposed driveway is a total 30 feet in width, the developer will be required to plant 3 trees in the perimeter planting bed.

(2) Inclusion of existing trees in the landscape design is encouraged.

(C) Shrubbery, ground cover, and other planting materials shall be used to complement the tree planting.

(1) No area in the perimeter planting area may be exposed soil, but instead shall be covered with vegetation, whether grass, mulch or shrubbery. The only area which shall remain uncovered is the 6 foot radius surrounding the trunk of any tree; however, it is recommended that this area be mulched.

(2) Within the perimeter planting bed, shrubs shall be planted at a minimum rate of three (3) per every 100 square feet.

Example: If a perimeter planting bed has a total square footage of 950 square feet, then the developer is required to plant 28 shrubs within the planting bed.

(3) Shrubs shall be a minimum of 18 inches in height at planting and reach a minimum height of 36 inches in three (3) years . No more than 50% may be deciduous.

(4) At the discretion of the Zoning Administrator , the requirement for street trees may be waived if the applicant submits detailed plans which show a suitable vegetation screen will surround the perimeter of the property adjacent to public rights-of-way. An example of a suitable vegetative screen would be an appropriate combination of earth berms and evergreen hedges.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.233 INTERIOR PLANTINGS.

All parking areas (not including parking decks) shall provide and maintain landscaped planting areas within the interior of or adjacent to the parking area or both, which planting areas shall exclude and be in addition to the street or perimeter planting beds.

(A) Landscaped planting areas are to be located within or adjacent to the parking area as tree islands, at the end of parking bays, inside medians, or between rows of cars. Planting areas shall be protected from vehicular encroachment by curbing or wheel stops at least four (4) inches in height.

(B) There shall be one (1) large shade tree for every 10 parking spaces. There shall be one (1) large shade tree for any additional 1,500 square feet of driveway or loading area.

(C) There shall be 6 shrubs for every 10 parking spaces. There shall be two (2) shrubs for every 500 square feet of

additional area of driveway or loading area. Shrubs must be 18 inches tall at planting and reach a minimum height of 36 inches in 3 years . No more than 50% may be deciduous.

(D) All trees and shrubs are to be planted within a landscaped planting area not less than 175 square feet in area.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.234 PARKING AREA LANDSCAPING FOR STRUCTURES.

Employee and customer parking areas and the driveway(s) which serve these areas, unless located on or within a structure , shall be separated from the exterior wall of a structure by a paved pedestrian walkway or a landscaped strip at least 5 feet in width. The landscaping may consist of small trees, a variety of shrubs or ground cover appropriate to the area. The Zoning Administrator must approve the planting plans.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.235 EXCEPTIONS.

Modifications to these standards may be granted in writing by the Zoning Administrator if the Administrator finds any of the following circumstances exist on the proposed building site, or surrounding properties :

(A) Natural land characteristics such as topography or existing vegetation on the proposed building site would achieve the same intent of this section.

(B) Innovative landscaping or architectural design is employed on the building site to achieve an equivalent screening or buffering effect.

(C) The required screening and landscaping would be ineffective at maturity due to the proposed topography of the site, and or the location of the improvements on the site.

(D) The topography of adjacent and surrounding sites is such as to render required screening ineffective at maturity.

(E) If, in the opinion of the Zoning Administrator , the landscaping or screening required will interfere with traffic safety.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.236 NONCONFORMING PARKING AREAS.

Nonconforming parking lots existing at the time of the adoption of this amendment shall be required to comply with this amendment at the time the parking area is increased to a total area greater than 30,000 square feet.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

§ 154.237 MAINTENANCE.

(A) Landscaping shall not be installed or retained in any location which constitutes a hazard or infringement to the public health, safety and welfare. Landscaping shall not obstruct the view of motorists using any street , private driveway, parking aisles or the approach to any street intersection.

(B) Whenever any planting areas required by this section are adjacent to parking or vehicular circulation areas, the planting areas shall be protected from vehicular intrusion or damage from excessive vehicle fuels.

(C) All landscaped planting areas shall be stabilized from soil erosion immediately upon planting and shall be maintained for the duration of the premises.

(D) The property owner is responsible for maintaining all required plant material in good health. Any dead, unhealthy or missing plants must be removed which conforms with the initial planting standards of this section within 1 planting season.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006)

SIGNS

§ 154.250 PURPOSE AND INTENT.

It is the intent of this subchapter to authorize the use of signs:

(A) To encourage the effective use of signs as a means of communication in the town.

(B) To preserve Mills River as a community that is attractive to business and industry while also preserving the natural beauty of the area.

(C) To protect existing property values in both residential and non-residential areas.

(D) To improve pedestrian and traffic safety.

(E) To minimize the possible adverse effects of signs on nearby public and private property .

(F) To improve the overall aesthetics of the community by preventing over-concentration, improper placement, and excessive height, bulk, and area of signs.

(Ord. 2017-07, passed 11-10-2017)

§ 154.251 GENERAL PROVISIONS/ APPLICABILITY.

The regulations in the following sections pertaining to signs specify the number, types, sizes, heights, and locations of signs, which are permitted within the jurisdiction of the town. Except as otherwise provided, no sign shall be erected, placed, altered, constructed, moved, converted, or enlarged except with the provisions of this chapter.

(Ord. 2017-07, passed 11-10-2017)

§ 154.252 DEFINITIONS.

The following words or terms shall have the meanings as herein defined:

ABANDONED SIGN. A sign erected on property in conjunction with a particular use, which use has been discontinued for a period of 180 days or more, or a temporary sign for an event which has occurred.

AGRICULTURAL SIGN. A sign in use advertising the sale of seasonal produce, crops, livestock and animal products and horticulture products.

AWNINGS. Cloth, vinyl, plastic or other similar type material permanently attached to a rigid frame on the face of a structure , typically over a door or entryway. This is not intended to include banners as defined and regulated in this chapter.

BANNER. A sign or outside advertising display having the characters, letter, illustrations, ornamentation, symbol, color or visual representation applied to cloth, paper, vinyl, fabric, plastic or like kind of malleable material, with or without frame. The term **BANNER** shall include flags, pennants, ribbons, spinners, streamers, kites, balloons and/or, or any other material or outside advertising display fastened in such a manner as to move upon being subjected to movement of the atmosphere or any mechanical device. Flags on residential use properties are exempt from regulation.

BILLBOARD. A panel for the display of advertisements in public areas, such as along highways or on the sides of buildings .

CHANGEABLE COPY SIGN. A sign on which message copy is changed manually in the field or through electronic means. Time and temperature signs are not included in this definition.

CONSTRUCTION SIGN. A temporary sign whose message is limited to identification of architects, engineers, contractors, and other individuals or firms involved with construction on a specific site, the name of the building , the intended purpose of the building and the expected completion date.

EXEMPT SIGN. Any sign that is specifically listed as exempt from this subchapter . The listed exempt signs are not regulated by the terms of this subchapter .

FLASHING SIGN. A sign that incorporates flashing, strobe, pulsating or blinking lights, or a sign with moving or rotating parts or parts which simulate movement, including signs or lights or signs reflecting or emitting a glaring light that could impair driver vision.

FREESTANDING SIGN. A sign which stands alone or on its own foundation free of support or attachment to a building or other structure .

GOVERNMENTAL SIGN. Any sign erected by or on the order of a governmental or public official or entity in the performance of an essential public service, including, but not limited to, traffic control signs , street name signs , warning and directions signs , public notice signs , or signs of a similar nature.

INCIDENTAL SIGN. A single face, non- illuminated professional or announcementsign attached wholly to a building , window or door or posted on property containing information relative to emergencies, store hours, credit cards honored and other similar accessory information. Including signs directing drivers such a "Drive Thru", "ATM", "Loading Dock", "Truck Entrance Only", and the like.

MARQUEE (AWNING). A permanent rooflike structure other than a roof attached to, supported by, and projecting from a building , providing protection from the natural elements over the ground, sidewalk , or walkway.

MONUMENT SIGN. Similar to a freestanding sign , typically with a substantial base made of natural material and with a lower height requirement.

NONCONFORMING SIGN. A sign legally erected and in existence prior to the date of adoption of this subchapter or an amendment, that does not meet the standards imposed by this chapter.

NO TRESPASSING/WARNING SIGNS. A sign which carries a message forbidding the unlawful entry upon the land or building of another or a sign which carries a message warning of danger which could cause injury to a person entering upon the land or building of another.

POLITICAL SIGN. A sign erected for the purpose of advertising a candidate or stating a position regarding an issue upon which the voters of the town may vote.

PORTABLE SIGN. A sign generally constructed to be easily movable without a permanent attachment to the ground and which may or may not be equipped with wheels. Such signs may be designed for changeable messages. Signs painted on or attached to operational vehicles and trailers with permanent signage are not included in this definition.

PROJECTING SIGN. A sign which projects from and is supported by a building or other structure .

REAL ESTATE SIGN. A sign erected by the owner , or his or her agent, advertising real property upon which the sign is located for rent, for lease or for sale.

SEASONAL/HOLIDAY SIGN. A sign setting forth information concerning the observance of activities which occur once per year .

SETBACK. The shortest horizontal distance between the edge of the pavement or traveled surface and the closest point of a sign or its supporting member.

SIGN. Any form of publicity or advertising which is designed to be visible from any public way, directing attention to an individual business, commodity, service, activity or product by means of words, lettering, numerals, trade names or trademarks, or other pictorial matter designed to convey such information. **SIGNS** shall include the SIGN STRUCTURE .

SIGN STRUCTURE. A supporting structure erected or intended for the purpose of identification, with or without a sign thereon, situated upon or attached to the premises upon which any sign may be fastened, affixed, displayed or applied, provided however, said definition shall not include a building or fence.

SUBDIVISION AND DEVELOPMENT SIGNS. Signs that are intended to identify larger scale developments such as major subdivisions, multi- family developments, office parks, and industrial parks.

TEMPORARY SIGN. Any sign , whether attached to a principle structure or freestanding, which is intended to be displayed for a limited time. This definition does not include portable signs . If a sign display area is permanent but the copy displayed is subject to periodic changes, that sign shall not be regarded as temporary.

WALL SIGN. A sign which is placed on and/or attached to and supported throughout its entire length by the facade or exterior side of a building wall by means of adhesive, paint, manufacturing process, structural and/or mechanical attachment, which said sign is not more than 12 inches from the facade or exterior wall line and when its exposed face is parallel or approximately parallel to the plane of the building or structure on which the sign is affixed. Such sign may not extend above the roofline.

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2022-17, passed 1-12-2023)

§ 154.253 SIGN PERMIT REQUIRED.

(A) Unless otherwise provided, all signs must obtain a sign permit This includes the erection, placement, alteration, construction, moving, conversion, or enlargement of any sign within the town's jurisdiction.

(B) All permit requests are reviewed by the Zoning Administer of his/her designee. Applications for a sign permit shall be accompanied by plans or drawings that depict the location and dimensions of said sign (s). Sign permits expire after 6 months after issuance unless the applicant has completed construction of the permitted sign (s).

(C) Notwithstanding the above, changing or replacing the permanent copy of an existing and conformingsign shall not require a permit , provided the copy change does not change the nature of thesign such as to render the sign in violation of the Town Code .

(Ord. 2017-07, passed 11-10-2017)

§ 154.254 DETERMINATION OF SIGN COPY AREA AND SIGN HEIGHT.

(A) In measuring the copy area of a sign , the entire face of the sign shall be included. Where both sides of a double-faced sign contain lettering or other allowable display, one side only shall be used to compute the allowable copy area of the sign . Where the sign consists of individual letters, numbers, characters, figures, or displays attached in some manner to a building or a sign face of irregular shape, the sign copy area shall include the area of the smallest circle, square, or rectangle that can encompass the total sign area composed of letters, numbers, characters, figures, or displays or the irregular shaped sign face. Where signs have appendages or additions, such as "pop-ups" or "cutouts" that extend beyond the main sign copy area, the area of such appendages or additions shall be measured separately, but included in the total sign copy area. Also to be included in the total sign copy area shall be any area designed for changeable copy as defined in § 154.261. Spherical, cylindrical or other three-dimensional signs not having conventional sign faces shall be computed from the smallest three- dimensional geometrical shape or shapes which best approximate the actual surface area of the sign .

(B) The maximum height of a sign shall be measured from the highest point of natural grade under the sign to the highest point of the sign . The grade shall not be altered in such a way as to increase the sign height.

(Ord. 2017-07, passed 11-10-2017)

§ 154.255 SIGN ILLUMINATION.

All sign illumination shall be provided by a continuous light source that is installed only with the intent to illuminate said sign .

(A) Signs illuminated by an external source shall be directed to the sign only with minimal spillover onto a street or adjacent properties .

(B) Whether illuminated internally or externally, the sign shall not produce glare or reflection that interferes with traffic safety.

(C) No internal or external illuminated sign shall flash, pulse, blink, strobe, or alternate light at any time.

(Ord. 2017-07, passed 11-10-2017)

§ 154.256 CONSTRUCTION STANDARDS.

All signs shall be constructed according to requirements of Chapter 31 of the North Carolina State Building Code, as amended.

(Ord. 2017-07, passed 11-10-2017)

§ 154.257 COMMON SIGNAGE PLAN FOR MULTI-UNIT DEVELOPMENTS OR DEVELOPMENTS WITH MORE THAN ONE PRINCIPAL BUILDING.

(A) A Common Signage Plan shall be prepared for developments with multiple buildings and/or multiple units. The signs must be uniform in design and features. All types and colors of signs, as long as they produce a unifying theme and meet all dimensional requirements in § 154.258, will be considered except for those expressly prohibited by the Town Code .

(B) A site layout plan shall be part of the sign permit application for each existing and proposed signs. The plan shall contain all sign types, location, lighting scheme, and provisions for shared usage of freestanding signs .

(Ord. 2017-07, passed 11-10-2017)

§ 154.258 SIGNS PERMITTED IN THE MR-GB, MR-NC, MR-LI, AND MR-MU ZONING DISTRICTS.

(A) Freestanding signs .

(1) The maximum height of a freestanding sign shall be 20 feet.

(2) The maximum area of a freestanding sign shall be 80 square feet.

(3) The maximum area of a freestanding sign requiring a common signage shall be 125 square feet.

(4) The maximum number of freestanding signs shall be 1 per street frontage.

(5) All freestanding signs shall be located behind the street right-of-way or 10 feet from the curb or edge of a street where right-of-way does not exist or cannot be determined.

(6) No sign shall be placed so as to interfere with automobiles entering or exiting the roadway.

(7) Freestanding signs that adjoin a residential use shall adhere to a 15-foot side yard setback .

(B) Projecting signs .

(1) The minimum width of a building front for a projecting sign shall be 20 feet.

(2) The maximum height of a projecting sign shall be 8 feet.

(3) The maximum area of a projecting sign shall be 16 square feet.

(4) The maximum projection from a wall shall be four (4) feet.

(5) The maximum number of projecting signs shall be one (1) per tenant frontage.

(6) No projecting sign shall extend above the highest point of a roofline or parapet.

(7) No projecting sign shall be permitted on the same facade along which there is a wall sign .

(C) Marquee or awning signs.

(1) The maximum height shall be 16 inches.

(2) The maximum width shall be 40 inches.

(3) Signs hung below a marquee or awning shall conform in size and appearance to existing signs under the same marquee or awning .

(4) Sign clearance shall be 8 feet from sidewalk or other walkway.

(D) Wall signs .

(1) Wall signage shall not exceed 10% of the total surface area of the wall to which the sign (s) is located up to a maximum of 150 square feet. The 150 square foot maximum can be waived as part of a Common Signage Plan if no sign (s) on a building wall or building unit exceeds the 10% surface area wall requirement.

(2) No wall sign shall project more than 18 inches from the building wall.

(3) No wall sign intended for the facade of a building shall cover any window or part of a window.

(4) Signs that are displayed on or through windows are exempt .

(5) No wall sign shall extend above the highest point of a roofline or parapet.

(E) Monument signs .

(1) Only buildings set back more than 30 feet from the right-of-way and having 100 feet or more of street frontage may use a monument sign .

(2) All monument signs shall be located behind the street right of way or 10 feet to any adjacent lot line. A 15-foot side yard setback shall be required of the side lot line abuts a residential use.

(3) Changeable copy is not permitted for a monument sign that is subject to this subchapter.

(4) The maximum number of monument signs shall be 1 per street frontage.

(5) Computation of sign height and area shall be 50% of allowable height and area of a freestanding sign .

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-17, passed 1-12-2023)

§ 154.259 SIGNS FOR NON-RESIDENTIAL USES PERMITTED IN THE MR-30 ZONING DISTRICT.

Signs for permitted uses in the MR-30 zoning district shall not exceed 50% of the requirements found in § 154.258.

(Ord. 2017-07, passed 11-10-2017)

§ 154.260 CHANGEABLE COPY SIGNS.

(A) *Manual* changeable copy signs . Manual changeable signs must comply with the following standards:

(1) In no case shall a manual changeable copy sign comprise more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

(2) The copy area (background) must be one uniform color.

(3) The letters and numbers may be colored red or black.

(B) *Electronic* changeable copy signs . Electronic changeable copy signs which are subject to this subchapter shall not be permitted in Mills River. Electronic changeable copy signs permitted before March 13, 2020 must comply with the following standards:

(1) Shall be located on freestanding signs only.

(2) In no case shall an electronic changeable copy sign comprise more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

(3) Messages shall remain in a fixed position for at least 8 seconds.

(4) Messages shall not contain flashing, scrolling, blinking or similar type movements. In addition, messages shall not contain any animation.

(5) Message transition must be instantaneous.

(6) Electronic changeable copy shall shall have a black background screen. All lighted characters, letters, and numbers shall only be green or red in color.

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2020-06, passed 3-13-2020; Am. Ord. 2022-17, passed 1-12-2023)

§ 154.261 SIGNS EXEMPT FROM OBTAINING A SIGN PERMIT.

The following signs are exempt from the provisions of this subchapter and shall not require a permit.

(A) Signs required by law, statute, or ordinance.

(B) Governmental signs in furtherance of an essential governmental service. Governmental signs are subject to the ordinance dimensional standards of §§ 154.258 and 154.260.

(1) Signs erected by or pursuant to the authorization of governmental agencies including but not limited to DOT (Department of Transportation), Americans with Disabilities Act signage and warning or hazard signage. Governmental signs unique to the Town of Mills River are required to abide by the sign ordinance which would include for example school signage or water treatment facility signage.

(C) Flags (non-advertising/non-informational).

(D) Political signs . Political signs (less than 4 square feet) may be placed up to 60 days prior to an election and must be removed within 72 hours of the close of voting. This includes polling place identification signage. Candidates should obtain property owners permission before placing signs on their property .

(E) Address numbers.

(F) Window signs. Signs placed or attached to the interior side of a window or door glass of a building .

(G) Building memorial sign .

(H) No trespassing or warning signs (soliciting, hunting, fishing, parking, etc.).

(I) Signs associated with a seasonal or religious holiday .

(J) Agricultural signs . Signs that are designed to advertise seasonal agricultural products and are limited to 32 square feet of copy area.

(K) Sidewalk . Signs that are used by businesses to advertise daily specials, sales, etc. These signs must be placed on sidewalks within the development (not on sidewalks in public right-of- way).

(L) Temporary signs .

On Premise				
	Maximum Number	Maximum Square Feet	Maximum Height	Maximum Time
On Premise				
	Maximum Number	Maximum Square Feet	Maximum Height	Maximum Time
Real Estate /For Lease (Residential)	2	12	6	Until sold/leased
Real Estate /For Lease (Commercial)	2	32	10	Until sold/leased
Grand Opening	1	20	10	30 days
Going Out of Business	1	20	10	30 days
Construction	1	32	10	Project duration
Remodeling/Repair	1	12	10	Project duration
Special Event	1	32	10	30 days prior to event
Info/Advertisement (Banners /Flags, etc.)	2	12	10	30 days
Off Premise				
Real Estate /For Lease	2	6	6	Until sold/leased
Directional (for events)	2	6	6	Event duration
Special Event	2	20	6	30 days prior to event

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-17, passed 1-12-2023)

§ 154.262 EXTENDED USE TEMPORARY SIGNS.

Signs that are listed in §154.261(L) that are larger than the maximum dimensions/time may be permitted with an extended use temporary sign permit . The sign shall not exceed 32 square feet of copy area with a height not to exceed 10 feet. Extended use temporary signs can be issued for up to 1 year and can be applied for annually.

(Ord. 2017-07, passed 11-10-2017)

§ 154.263 SIGNS PROHIBITED.

(A) Billboards (outdoor advertising).

(B) Flashing, strobing, pulsating, blinking.

(C) Motion. Moving parts by mechanical means.

(D) Snipe. Signs attached to utility poles, fences, street lights, hydrants, trees, etc. on public property or right-of-way.

- (E) Signs obstructing motorist visibility.
- (F) Signs in aright-of-way.
- (G) Signs above roofline.
- (H) Obscene signs.
- (I) Permanent off-premise.
- (I) Balloons and other inflatables.
- (K) Signs erected or placed without a permit or not in compliance with regulations.

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.264 SUBDIVISION AND DEVELOPMENT SIGNS.

(A) *Residential subdivisions and developments.*

- (1) One monument sign (per § 154.258) is allowed for each road or driveway into the development.
- (2) The sign may identify a single-family residential subdivision or multi-family residential complex.
- (3) The sign must be located on a parcel that is associated with the approved subdivision or development .

(B) *Industrial and office parks.*

- (1) One monument sign (per § 154.258) is allowed for each road or driveway into the development.
- (2) The sign may identify the name of the subdivision and/or the tenants of the subdivision.
- (3) The sign must be located on a parcel that is associated with the approved subdivision or development .
- (4) Said signs are allowed in addition to the signage allowed for each individual development in the subdivision .

(Ord. 2017-07, passed 11-10-2017)

§ 154.265 NON-CONFORMING SIGNS.

(A) Signs that were erected and were in place prior to the adoption of this subchapter but which do not conform to the provisions of this chapter are declared non-conforming signs. Signs that were erected and that are in place and which conformed to the provisions of this subchapter at the time erected, but which do not conform to an amendment of this subchapter enacted subsequent to the erection of said signs are also declared non-conforming signs. Any sign erected after the passage of this chapter must meet all criteria within this chapter.

(B) A non-conforming sign may be continued but shall not be:

- (1) Changed or replaced with another non-conforming sign , except that copy may be changed.
- (2) Expanded or modified in any way which increases the sign's non-conformity or adds illumination.
- (3) Moved except to bring the sign into conformity.
- (4) Re-established once the sign structure has been removed.
- (5) Re-established after the sign has been damaged as defined in § 154.268.
- (6) Re-established after it has been discontinued regardless of reason or intent for 180 days or more.

(Ord. 2017-07, passed 11-10-2017)

§ 154.266 SIGN MAINTENANCE.

All parts of a sign , including the copy area, supports, braces, poles, wires, and other appurtenances of signs or sign structures shall be kept in good repair and maintained in safe condition. Any sign deemed to be in a state of disrepair by this section shall be considered in violation of this chapter.

(A) A sign shall be in a state of disrepair when more than 20% of its total surface area is covered with disfigured, cracked, ripped, or peeling paint or poster paper or any combination of these conditions.

(B) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than 15 degrees from the perpendicular.

(C) No sign or sign structure shall be allowed to have weeds, vines, or other vegetation growing on it and obscuring it from the street or highway from which it is intended to be viewed.

(D) No illuminated sign shall be allowed to stand with only partial illumination operational. All illuminated signs must comply with § 154.255.

(E) Unlawful cutting of trees or shrubs. No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy or remove any trees, shrubs or other vegetation located within a public right-of-way of any road or highway except as required by the North Carolina Department of Transportation. The Administrator may use discretion in determining alternative forms of compliance for landscaping in situations where sign visibility is affected.

(Ord. 2017-07, passed 11-10-2017)

§ 154.267 DANGEROUS OR UNSAFE SIGNS.

Pursuant to G. S. 160A-193, the Town Council shall have the authority to summarily remove, abate, or remedy a sign which is dangerous or prejudicial to the public health or safety. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be determined, the land owner, and if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes.

(Ord. 2017-07, passed 11-10-2017)

§ 154.268 ENFORCEMENT.

(A) If the Zoning Administrator or his/her designee shall find any of the provisions of the Sign Ordinance are in violation, he/she shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it or shall take any other action authorized by § 154.999 of the Town Code.

(B) In addition to actions authorized by § 154.999 of the Town Code, civil penalties for sign ordinance violations shall be set by the Mills River Town Council and double after 15 days from the date the individual is notified. Each day's violation after the initial 15-day period shall be treated as a separate offense.

(Ord. 2017-07, passed 11-10-2017; Am. Ord. 2021-06, passed 4-22-2021)

ARCHITECTURAL DESIGN GUIDE REQUIREMENTS

§ 154.270 RESERVED.

(Ord. 00065, passed 7-22-2010; Am. Ord. 2020-07, passed 3-13-2020)

§ 154.999 PENALTY.

(A) Equitable remedies. This chapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this chapter may be restrained or abated by injunction and order of abatement in accordance with G.S. § 160A-175.

(1) Injunction. Where necessary to effectuate compliance with this chapter the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this chapter. The action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions herein.

(2) Order of abatement. Where necessary to abate a condition existing upon land in violation of this chapter or a use made of land in violation of this chapter, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this chapter. The action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this chapter.

(3) Other equitable remedies. This chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

(B) Civil penalties. Any individual who is found in violation of this chapter may be subject to a civil penalty of \$50 or other amount as established by Town Council. Each day's violation shall be treated as a separate offense. The civil penalty may be recovered in a civil action in the nature of debt if the penalty is not paid within 15 days after the individual is notified by the Zoning Administrator of a violation.

(1) Notice of violation.

(a) Upon making a determination that a person is in violation of this chapter, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance shall issue a notice of violation to the person in violation of this chapter in accordance with § 154.999. The notice shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. The notification shall further identify the action which is necessary to comply with this chapter. The notice shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 15 days, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may grant an extension of time after which the individual will be subjected to a criminal penalty commensurate with the magnitude of the violation. The notice of violation shall further state that failure to comply with the terms of the notice of violation will subject the violator to a civil penalty and shall further state the amount of the civil penalty.

(b) Failure to comply with the terms of a notice of violation issued by the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance within the time stated in the order shall subject the violator to a civil penalty of \$50 or other amount as established by Town Council. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to an additional civil penalty for each such separate offense.

(2) Civil action. When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties by the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance.

(C) Criminal penalties. Unless otherwise provided by this chapter or other applicable law, violation of §§ 154.001 - 154.237 shall constitute a Class 3 misdemeanor punishable by a fine which may be up to but may not exceed \$500. Each day's violation shall be treated as a separate offense.

(1) Warning ticket. Upon the initial violation of a particular provision of §§ 154.001 - 154.237, an individual may be issued a warning ticket or notice of violation. The warning ticket shall identify the particular practice which is in violation of §§ 154.001 - 154.237 and shall state the time, date and place of the violation. The warning ticket shall further state that if the individual commits further similar violations within the 6 months following the date of the warning ticket, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may issue a notice of violation or cause a warrant to be issued for the individual's arrest.

(2) Warrant. If an individual violates §§ 154.001 - 154.237 within the 6 months following the issuance of a warning ticket or notice of violation in a manner that is similar to the violation specified in the warning ticket or notice of violation, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may cause a warrant to be issued for the arrest of the individual.

(3) Notwithstanding any other provisions of §§ 154.001 - 154.237, the Zoning Administrator or the other official charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance may issue a notice of violation or cause a warrant to be issued without having first issued a warning ticket where he or she deems it necessary to effectively enforce the terms of §§ 154.001 - 154.237.

(D) *Revocation of development approvals.* In addition to initiation of enforcement actions, development approvals may be revoked by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable element of this chapter; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable state law or local ordinance may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. § 160D-405.

(E) Other remedies. The town may utilize any other authority set forth in the General Statutes of the State of North Carolina to abate any violations of §§ 154.250 - 154.269.

(Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00037, passed 8-24-2006; Am. Ord. 2021-06, passed 4-22-2021)

CHAPTER 155: VESTED RIGHTS

Section

- 155.01 Purpose
- 155.02 Definitions
- 155.03 Establishment of development vested right
- 155.04 Approval procedures
- 155.05 Duration
- 155.06 Termination
- 155.07 Limitations
- 155.08 Repeal of statute
- 155.09 When effective; applicability
- 155.10 Title
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§ 155.01 PURPOSE.

The purpose of this chapter is to implement the provisions of G.S. § 160D-108 pursuant to which a statutory vested right is established upon the approval of a site specific development plan .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.02 DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning is apparent from the context used:

APPROVAL AUTHORITY . The Town Council of Mills River.

COUNCIL . The Mills River Town Council .

SITE SPECIFIC DEVELOPMENT PLAN . A plan which has been submitted to the Council or its designee by a landowner , describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property . The plan may be in the form of, but not limited to, any of the following plans: a planned unit development plan; a subdivision plat; a conditional or special use district zoning plan. The plan shall include the legal boundaries of the site, significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures and other improvements; the approximate dimensions, including height, of proposed buildings and other structures; the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, bicycle paths and pedestrian walkways. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with a reasonable certainty the type and intensity of use for a specified parcel of property shall constitute a site specific development plan.

DEVELOPMENT VESTED RIGHT . A right pursuant to G.S. § 160D-108 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan .

LANDOWNER . Any owner of a legal or equitable interest in real property , including heirs, devisees, successors, assigns, and personal representatives of such owner . The landowner may allow an attorney, licensed to practice in the State of North Carolina, an engineer, licensed to practice in the State of North Carolina or a person holding a valid option to purchase to act as his or her agent or representative for purposes of submitting a proposed site specific development plan .

PROPERTY . All real property located within the corporate limits of the Town of Mills River, North Carolina, whether or not the area is zoned, is within the planning and zoning jurisdiction of the Mills River Town Council .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.03 ESTABLISHMENT OF DEVELOPMENT VESTED RIGHT.

(A) A development vested right shall be deemed established upon the valid approval or conditional approval by the Council of a site specific development plan , following a properly noticed public hearing. The vested right confers upon the landowner only the right to undertake and complete the development and use the property under the terms and conditions of the site development plan.

(B) Failure to abide by any terms or conditions imposed shall result in a forfeiture of development vested rights .

(C) The Council may approve or disapprove a site specific development plan based upon the need to protect the public health, safety and welfare. The Council may require such terms and conditions as it may deem necessary to protect the

public health, safety and welfare.

(D) The establishment of a development vested right shall not preclude the application of overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town of Mills River, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this chapter.

(E) A development vested right is not a personal right, but shall attach to and run with the real property . After approval of a site specific development plan , all successors to the original landowner shall be entitled to exercise such right while applicable.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.04 APPROVAL PROCEDURES.

(A) A site specific development plan shall be processed in accordance with the following procedures:

- (1) The landowner must apply, on a form to be provided by the town , for a development vested right .
- (2) All applications shall be made at the Mills River Town Hall.
- (3) An application fee, to be established by the Council , shall be required upon submission of the application.
- (4) Each application shall be accompanied by 1 copy of the site specific development plan . Each site specific development plan shall contain the following notation in the uppermost right-hand corner:

“This site specific development plan establishes a development vested right pursuant to G.S. § 160D. Unless terminated at an earlier date, the development vested right shall be valid until _____.

Mayor, Town of Mills River”

(B) Following approval or conditional approval of a site specific development plan , nothing in this chapter shall exempt such plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(C) Nothing in this chapter shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of approval.

(D) Within 45 days of the application for a development vested right , the Council shall hold a public hearing. A notice of the public hearing shall be published in a newspaper of general circulation within the county twice per week for the 2 successive weeks prior to the hearing. The public hearing shall be conducted and may be continued pursuant to the provisions of G.S. § 160A-81.

(E) Within 30 days after the date of completion of the public hearing, the Council shall either approve the development vested right , deny the development vested right or conditionally approve the development vested right .

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.05 DURATION.

(A) A development vested right that has been vested as provided in this chapter shall remain vested for a period of 2 years unless otherwise terminated or unless specifically and unambiguously provided otherwise pursuant to the following subsection. This vesting shall not be extended by any amendment or modification to a site specific development plan unless expressly provided by the Council at the time the amendment or modification is approved.

(B) Notwithstanding the provisions of the preceding division, the Council may provide that rights shall be vested for a period exceeding 2 years but not exceeding 5 years , where warranted in light of all relevant circumstances, including, but not necessarily limited to, the size of the development, the level of investment, economic cycles and market conditions. Long-term, multi-phased projects of at least 25 acres may be vested for up to seven years. These determinations shall be in the sole sound discretion of the Council at the time the site specific development plan is approved.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.06 TERMINATION.

A development vested right that has been vested as provided in this chapter shall terminate with any one of the following being satisfied:

(A) Upon the issuance of a building permit, the expiration provisions of G.S. § 160D-1111 and the revocation provisions of G.S. § 160D-403 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a development vested right under this section is outstanding.

(B) At the end of the applicable vesting period with respect to building and uses for which no valid building permit application has been filed.

(C) With the written consent of the affected landowner .

(D) Upon a finding by the Council , by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property , if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific development plan ; provided, however, that no landowner in the immediate vicinity shall intentionally create or allow to be created any hazards, subsequent to the vesting hereunder, for the purpose of causing the termination of a development vested right .

(E) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner , including, but not necessarily limited to, all fees paid in consideration of financing and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the county , together with interest thereon at the legal rate until paid. Compensation shall include any diminution in value of the property which is caused by such action.

(F) Upon findings by the Council , by ordinance after notice and public hearing, that the landowner or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Council of the site specific development plan .

(G) Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan , in which case the Council may modify the affected provisions, upon finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and public hearing.

(H) Upon the repeal and absence of replacement of G.S. § 160D-108.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.07 LIMITATIONS.

Nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. § 160D-108. Nothing in this chapter shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided herein, nothing in this chapter shall be construed to alter the existing common law.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.08 REPEAL OF STATUTE.

In the event that G.S. § 160D-108 is repealed and not replaced, this chapter shall be deemed repealed and the provisions hereof no longer effective.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

§ 155.09 WHEN EFFECTIVE; APPLICABILITY.

This chapter shall be effective upon adoption and shall only apply to site specific development plans approved on or after the effective date of this chapter.

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

§ 155.10 TITLE.

This chapter may be cited as the "Town of Mills River Vested Rights Ordinance."

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

APPENDIX: APPLICATION FOR VESTED RIGHT

Town of Mills River
Application for Vested Right
Pursuant to N.C.G.S. 160D-108

NAME _____

ADDRESS _____

PROPERTY ADDRESS _____

PROPERTY PIN NUMBER _____

CERTIFICATION

I, _____, hereby certify that I am seeking to acquire a vested right pursuant to N.C.G.S. 160D-108 and the Town of Mills River Vested Rights Ordinance. I understand and agree that my application will be considered by the Mills River Town

Council following notice and a public hearing and that I am under a duty to provide complete and accurate information to the Town Council .

This ___ day of _____, 20 __.

Applicant

TOWN USE ONLY

Received by: _____ Date: __

Fee Paid: _____ Received by: _____ Date: __

(Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-03, passed 3-25-2021)

CHAPTER 156: NATURAL RESOURCES

Section

General Provisions

- 156.001 Title
- 156.002 Purpose
- 156.003 Definitions

Water Supply Watershed Protection Areas

- 156.015 Watershed Administrator and duties
- 156.016 Rules governing the interpretation of watershed area boundaries
- 156.017 Watershed protection permit
- 156.018 Building permit requirements
- 156.019 Watershed protection occupancy permit
- 156.020 Subdivision application and review procedures
- 156.021 Subdivision standards and required improvements
- 156.022 Construction procedures for subdivisions
- 156.023 Penalties for transferring lots in unapproved subdivisions
- 156.024 Public health
- 156.025 Appeal from the Watershed Administrator
- 156.026 Changes and amendments to the Watershed Protection Ordinance
- 156.027 Powers and duties of the Watershed Review Board
- 156.028 Criminal penalties
- 156.029 Remedies

GENERAL PROVISIONS

§ 156.001 TITLE.

This chapter shall be known and may be cited as the "Natural Resources Ordinance of the Town of Mills River, North Carolina."

(Ord. 2022-18, passed 12-8-2022)

§ 156.002 PURPOSE.

(A) The purpose of the Natural Resources Ordinance is to mitigate negative impacts of land development on natural resources to include provisions for water supply watershed protection, surface water quality management and erosion control.

(B) This chapter outlines processes and defines standards for Watershed Protection Areas within the Town of Mills River as defined in the Zoning Ordinance.

(Ord. 2022-18, passed 12-8-2022)

§ 156.003 DEFINITIONS.

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

BALANCE OF WATERSHED (BW). The area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The **BALANCE OF WATERSHED** is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.

BEST MANAGEMENT PRACTICES (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BUFFER. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The **BUFFER** is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

BUILDING. Any structures having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property . The connection of 2 buildings by means of an open porch, breezeway, passageway, carport or other such open structure , with or without a roof, shall not be deemed to make them 1 building .

BUILT-UPON AREA. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings , pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), and the like. Wooden slatted decks and the water area of a swimming pool are considered pervious.

CLUSTER DEVELOPMENT. Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments .

COMMON PLAN OF DEVELOPMENT. A site where multiple separate and distinct development activities may be taking place at different times or different schedules but governed by a single development plan regardless of ownership of parcels.

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either ½ mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or ½ mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of ½ mile.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off-site, such as a service repair truck, delivery truck, and the like.

DEVELOPMENT. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

DWELLING UNIT. A building , or portion thereof, providing complete and permanent living facilities for 1 or more persons.

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established vested right under North Carolina zoning law as of the effective date of this chapter based on at least 1 of the following criteria:

- (1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or
- (2) Having an outstanding valid building permit as authorized by G.S. 160D-102; or
- (3) Having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 160D-102).

EXISTING LOT (LOT OF RECORD). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

INDUSTRIAL DEVELOPMENT. Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

MAJOR WATERSHED VARIANCE. A variance from the minimum statewide watershed protection rules that results in any 1 or more of the following :

- (1) The relaxation, by a factor greater than 10%, of any management requirement under the low density option;
- (2) The relaxation, by a factor greater than 5%, of any buffer , density or built-upon area requirement under the high density option;
- (3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

MINOR WATERSHED VARIANCE. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to 5% of any buffer , density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to 10%, of any management requirement under the low density option. For variances to a vegetated setback requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach with the vegetated setback divided by the total area of vegetated setback within the project.

NONCONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

NON-RESIDENTIAL DEVELOPMENT. All development other than residential development , agriculture and silviculture.

PROTECTED AREA. The area adjoining and upstream of the critical area of WS-IV watersheds . The boundaries of the protected area are defined as within 5 miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed (whichever is closest to normal pool elevation of reservoir); or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed (whichever is closest to the intake).

QUALIFIED INDIVIDUAL. A person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and the like and their associated outbuildings such as garages, storage buildings , gazebos, and the like and customary home occupations .

RESIDUALS. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility.

SINGLE FAMILY RESIDENTIAL. Any development where: 1) no building contains more than 1 dwelling unit ; 2) every dwelling unit is on a separate lot; and 3) where no lot contains more than 1 dwelling unit .

STORMWATER CONTROL MEASURE (SCM). A permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater or a combination thereof.

STRUCTURE. Anything constructed or erected, including but not limited to buildings , which requires location on the land or attachment to something having permanent location on the land.

VARIANCE. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

VESTED RIGHT. The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan. Refer to G.S. 160D-108 for more information.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through ground water supply or food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures .

WATERSHED. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

WATERSHED ADMINISTRATOR. An official or designated person of the Town of Mills River responsible for administration and enforcement of this chapter.

(Ord. 2022-18, passed 12-8-2022)

WATER SUPPLY WATERSHED PROTECTION AREAS

§ 156.015 WATERSHED ADMINISTRATOR AND DUTIES.

The Mills River Town Council shall appoint a Watershed Administrator , who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter and the applicable sections of the Zoning Ordinance as follows:

(A) The Watershed Administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Watershed Administrator .

(B) The Watershed Administrator shall keep records of all amendments to applicable sections of the Natural Resources Ordinance and the Zoning Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Water Quality.

(C) The Watershed Administrator shall keep records of the jurisdiction's use of the provisions related to maximum densities applied on an areawide basis, including the provision that a maximum of 10% of the non-critical area of WS-II, WS-III, and, WS-IV watersheds may be developed with new development at a maximum of 70% built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).

(D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter,

exercising in the fulfillment of his/her responsibility the full police power of the Town of Mills River. The Watershed Administrator , or duly authorized representative, may enter any building , structure , or premises, as provided by law, to perform any duty authorized or required by this chapter.

(E) The Watershed Administrator shall keep a record of variances to this chapter and associated sections of the Zoning Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1 of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance .

(F) The Watershed Administrator is responsible for ensuring that stormwater control measures are inspected at least once a year and shall keep a record of SCM inspections.

(Ord. 2022-18, passed 12-8-2022)

§ 156.016 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Protection Map of the Town of Mills River, North Carolina, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street , alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Town of Mills River as evidence that 1 or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the Watershed Protection Map of the Town of Mills River, North Carolina (the "Watershed Map").

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

(Ord. 2022-18, passed 12-8-2022)

§ 156.017 WATERSHED PROTECTION PERMIT.

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator . No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator . The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator .

(C) A watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. 2022-18, passed 12-8-2022)

§ 156.018 BUILDING PERMIT REQUIREMENTS.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.

(Ord. 2022-18, passed 12-8-2022)

§ 156.019 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a watershed protection occupancy permit.

(B) When a change in use of land or existing building (s) occurs and no building permit is required, the Watershed Administrator may issue a watershed protection occupancy permit coincident with the watershed protection permit.

(C) If a watershed protection occupancy permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

(Ord. 2022-18, passed 12-8-2022)

§ 156.020 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) All proposed subdivisions shall be reviewed by the Watershed Administrator prior to recording. Applicants are required to seek a determination of whether or not the property is located within a Water Supply Watershed Protection Area prior to the commencement of the subdivision review under the provisions of the Subdivision Ordinance. Subdivisions that are not within a Water Supply Watershed Protection Area shall not be subject to the provisions of this subchapter. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this subchapter only when an erosion and sedimentation plan is required under the provisions of state law or approved local program. Subdivisions within a Water Supply Watershed Protection Area shall comply with the provisions of this subchapter and all other state and local requirements that may apply.

(B) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally, or disapprove each application. The Watershed Administrator may provide public agencies an opportunity to review and make recommendations.

(C) If the Watershed Administrator approves the application, such approval shall be indicated on the plat by the following certificate and signed by the Watershed Administrator :

Watershed Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed and Natural Resources Ordinances for the Town of Mills River for recording in the Register of Deeds office.

_____ Date Watershed Administrator

NOTICE: This property is located within a Water Supply Watershed Protection Area and associated development restrictions may apply.

(D) If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.

(E) Subdivisions that do not comply with the applicable standards set forth in the Water Supply Watershed Protection Overlay District section of the Zoning Ordinance shall be referred to the Watershed Review Board for review.

(Ord. 2022-18, passed 12-8-2022)

§ 156.021 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.

(A) All developments shall provide adequate building space in accordance with the development standards contained in the Water Supply Watershed Protection Overlay District section of the Zoning Ordinance. Lots that are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with the Water Supply Watershed Protection Overlay District section of the Zoning Ordinance.

(B) For the purpose of calculating built-upon area , total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Stormwater drainage facilities.* Subdivision applications shall be accompanied by a description of the proposed method of providing stormwater drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and sedimentation control.* The application shall , where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the N.C. Division of Land Quality.

(E) Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.

(Ord. 2022-18, passed 12-8-2022)

§ 156.022 CONSTRUCTION PROCEDURES FOR SUBDIVISIONS.

No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

(Ord. 2022-18, passed 12-8-2022)

§ 156.023 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the Town of Mills River, thereafter subdivides land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town of Mills River may bring an action for injunction of any illegal subdivision, transfer,

conveyance, or sale of land, and the court shall , upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter.

(Ord. 2022-18, passed 12-8-2022)

§ 156.024 PUBLIC HEALTH.

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. 2022-18, passed 12-8-2022)

§ 156.025 APPEAL FROM THE WATERSHED ADMINISTRATOR.

(A) Any order, requirement, decision, or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board. An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision, or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Watershed Review Board all papers constituting the record upon which the action appealed from was taken.

(B) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Watershed Review Board after the notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property . In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Watershed Review Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(C) The Watershed Review Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. 2022-18, passed 12-8-2022)

§ 156.026 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE.

(A) The Mills River Town Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify this chapter as described herein.

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board and the Planning Board for review and recommendations.

(C) Under no circumstances shall the Mills River Town Council adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(D) Before adopting or amending this chapter, the Mills River Town Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for 2 successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than 10 nor more than 25 days before the date for the hearing.

(Ord. 2022-18, passed 12-8-2022)

§ 156.027 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD.

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Variances .* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter and the applicable sections of the Zoning Ordinance as would not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter would result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the Town of Mills River shall notify and allow a reasonable comment period for all other local governments

having jurisdiction in the designated watershed where the variance is being considered.

(C) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(1) A site plan, drawn to a scale of at least 1 inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) A complete and detailed description of the proposed variance , together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

(D) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

(E) Before the Watershed Review Board may grant a variance , it shall make the following 3 findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Watershed Review Board must find that the 5 following conditions exist:

(a) If the application complies with the provisions of this chapter and the applicant can secure no reasonable return from, nor make reasonable use of, the property . Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Watershed Review Board in granting a variance. Moreover, the Watershed Review Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of the property .

(b) The hardship results from the application of this chapter to the property rather than from other factors such as deed restrictions or other hardship.

(c) The hardship is due to the physical nature of the applicant's property , such as its size, shape, or topography, which is different from that of neighboring property .

(d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter, or who purchases the property after the effective date of this chapter, and then comes to the Watershed Review Board for relief.

(e) The hardship is peculiar to the applicant's property , rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.

(3) In the granting of the variance , the public safety and welfare have been assured and substantial justice has been done. The Watershed Review Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(F) In granting the variance , the Watershed Review Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure , or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(G) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(H) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of the decision.

(I) If the application calls for the granting of a major variance , and if the Watershed Review Board decides in favor of granting the variance , the Watershed Review Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

(1) The variance application;

(2) The hearing notices;

(3) The evidence presented;

(4) Motions, offers of proof, objections to evidence, and rulings on them;

(5) Proposed findings and exceptions; and

(6) The proposed decision, including all conditions proposed to be added to the permit.

(J) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

(1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(Ord. 2022-18, passed 12-8-2022)

§ 156.028 CRIMINAL PENALTIES.

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(Ord. 2022-18, passed 12-8-2022)

§ 156.029 REMEDIES.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the Mills River Town Council may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(B) If any of the provisions of this chapter are being violated, the Watershed Administrator shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Watershed Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures; or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

(Ord. 2022-18, passed 12-8-2022)