

*imagine*

# MILLS RIVER

## UNIFIED DEVELOPMENT ORDINANCE

**Adoption Draft**

May 2026



# ACKNOWLEDGEMENTS

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# AMENDMENTS

1

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT RECORD		
AMENDING ORDINANCE NUMBER	ADOPTION DATE	DESCRIPTION
2028-00	12-20-28	A short description listing the main sections modified and an abbreviated summary of the changes Section 1.1: added language Section 3.5: section deleted Section 4.2: Some other change, etc.
2029-100	08-01-29	Another description and summary from a subsequent round of text amendments

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<sup>1</sup> Above is a sample table showing a possible method for the Town to record amendments to the Unified Development Ordinance ('UDO') text following adoption. The table lists amending ordinance numbers and adoption dates. It also provides a very short description of each amendment. This table is updated as part of any proposed Ordinance text amendment. In addition to this table, amended sections of the Ordinance text are appended with an editor's note indicating the date the section was amended and the applicable ordinance number. The Town should also make historical text amendment ordinances available for public review so readers can easily see how the Unified Development Ordinance language has evolved over time.



## ABOUT THIS UDO

This document is the Town of Mills River's Unified Development Ordinance (or "UDO"). It contains the rules that govern:

- How land can be used in the Town;
- What kinds of land uses may be located in particular locations (based on the zoning map); and
- How new development must be configured.

The following paragraphs explain some of the attributes of this document.

Mills River's Official Zoning Map and Overlay Zoning District Map are the graphical depiction of the location of the zoning districts and is adopted by reference into this UDO.

This UDO includes a text formatting system comprised of numbered section and sub-section headings that are designed to help code users understand how the text is organized. Section headings include different color backgrounds and sub-section headings use underlining to help them be more visible.

This UDO has 8 chapters, which are ordered alphabetically. Most sections within each chapter are also ordered alphabetically. Some chapters also include an introductory section that explains how the regulations in the chapter are structured and how to use them effectively.

The top of almost every page in the UDO includes the chapter's number and name, as well as the number and name of the section addressed on that page. This is done so users may use the tops of pages to quickly navigate the document (since articles and main sections are ordered alphabetically). Page numbers are included at the bottom of each page.

To ensure that a user is reviewing the most recent version of the document, the bottom of the page also includes the date the UDO was last updated. The most recent version of the document is maintained on the Town's webpage and is also available in the Town's Planning Department office. The table of amendments at the very end of the document summarizes the amendments made to the text since its original effective date.

**Highlighted text** in this UDO is a dynamic cross reference that, when selected with a mouse, will automatically advance to the location of the cross-referenced text in this UDO. Individual table of contents entries and index entries are also dynamic cross references that when selected, will automatically advance to the selected location.

There is an index of key terms and concepts at the end of the document. Code users may use this index to quickly locate a particular section or set of regulations.

Plan and plat submittal requirements, plat certification and declaration statements, and plat content requirements, and related material for applicants may be found in the Appendix.

The digital version of this UDO may be found under the Planning Department page on the Town's website (<https://www.millsriver.gov>). Anyone with questions about the UDO or the Town's development requirements may contact the Planning Department at 828-890-2901 or at [planning@millsriver.gov](mailto:planning@millsriver.gov).



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# CHAPTER 1.

# ADMINISTRATION

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## CHAPTER 1. ADMINISTRATION - KEY CHANGES IN THE NEW UDO

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

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

Other Key Changes in this Chapter 1 include:

- Consolidation of all the introductory material from the Town's different ordinances into a single chapter.
- Identification of the statutory authorities to adopt the UDO.
- Clarification that these standards apply to various units of government, including the Town, the County, and the State.
- Clarification that the standards in the UDO are minimum requirements, and no development may go forward without compliance (unless exempted from the UDO).
- Identification of the range of development and activity that is exempted from this some aspects of this Ordinance, including bona fide farms and forestry conducted in accordance with a forestry management plan.
- Establishment of a new, more comprehensive set of conflict provisions addressing situations where ordinances conflict with one another, or how to interpret the most restrictive standard.
- Identification of the adopted policy guidance documents that serve as the foundation for the UDO.
- Establishment of the effective date for the UDO (which will be on or before June 30, 2026). Subsequent amendments to the UDO after the effective date will be identified by the date of adoption and associated ordinance number as editor's notes to be embedded in the text.
- Provision of a new section on incentives and alternatives that identify and cross reference the flexibility mechanisms found throughout the UDO.
- Inclusion of a new more detailed set of purpose and intent statements that address Town goals found in adopted plans in addition to the aspects included in the State's planning enabling legislation.
- Clarification of new severability provisions that protect UDO language from summary removal via legal action.
- Establishment of a new section of transitional provisions describing how existing development, approved but incomplete development, pending applications, and nonconforming conditions are treated when the new Ordinance takes effect.
- Incorporation of a new comprehensive vested rights section that identifies the different forms of vesting above and beyond site-specific vesting plans and the rules around vesting.



## **§ 1.1 APPLICABILITY**

### **1.1.1. ABROGATION**

This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Conflicts between these provisions and other standards in this Ordinance shall be addressed in accordance with the standards in Section <>, Conflict.

### **1.1.2. APPLICATION TO GOVERNMENTAL UNITS**

Except when stated elsewhere in applicable law, this Ordinance applies to the following units of government:

#### **A. THE TOWN OF MILLS RIVER**

Development by the Town or its agencies or departments.

#### **B. COUNTY AND STATE GOVERNMENT**

Development of buildings by State or County agencies or departments, public colleges or universities, or other political subdivisions of the State, in accordance with the standards in NCGS§160D-913.

#### **C. THE FEDERAL GOVERNMENT**

Development owned or held in tenancy by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the federal government exempted from these regulations, compliance is strongly encouraged.

### **1.1.3. COMPLIANCE REQUIRED**

No structure, land, or use thereof, shall hereafter be established, located, subdivided, extended, converted, altered, developed, or disturbed in any way without full compliance with the terms of this Ordinance, including the following:

#### **A. NO LAND DEVELOPED**

Unless exempted, no land shall be developed without compliance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **B. NO GRADING OR EXCAVATION**

Unless exempted, no land shall be subjected to clearing, grading, filling, or excavation without compliance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **C. NO USE OR OCCUPANCY**

No person shall use, occupy, or divide any land or a building or authorize or permit the use, occupancy, or division of land or a building under their control, except in accordance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **D. NO BUILDING CONSTRUCTED**

No building or structure, or portion thereof, shall be erected, used, occupied, maintained, moved, or altered except in conformity with the applicable regulations in this Ordinance and all other applicable Town, State, and federal regulations.

#### **E. NO SALE OR TRANSFER**

No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met, except as authorized by NCGS§160D-807.

#### **F. NO DOUBLE COUNTING OF REQUIRED AREAS**

No land area or other required space counted as part of a required yard, setback, lot area, parking area, or similar feature of one lot may be counted towards the requirements of another lot.

#### **G. NO EXEMPTION FROM SUBDIVISION REQUIREMENTS**



Unless exempted in accordance with NCGS§§152.105 or 160D-802, the standards and requirements in this Ordinance applicable to subdivisions of land shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

**H. NO PLATS RECORDED**

No plats for limited subdivisions, minor subdivisions, or final plats shall be recorded until they have been reviewed for compliance with the standards in this Ordinance and the mapping requirements of NCGS§47-30, as applicable.

**1.1.4. EXEMPTIONS<sup>2</sup>**

- A.** The following forms of development and activities are exempted from the zoning-related requirements of this Ordinance:
  - 01.** Agricultural activities, agritourism, horticulture, or forestry taking place on a property qualifying as a bona fide farm, in accordance with NCGS§160D-903; and
  - 02.** Forestry activities taking place on land being taxed at its present-use value as forestland or forestry activities taking place subject to a forestry management plan approved in accordance with NCGS§160D-921.
- B.** The phrase “bona fide farm” shall refer to land with documentation of at least one of the following:
  - 01.** A farm sales tax exemption certificate issued by the NC Department of Revenue;
  - 02.** A property tax listing showing the property is eligible for participation in the present use value tax deferment program in accordance with NCGS§105-277.3;
  - 03.** Listing on the farm owner’s or farm operator’s Schedule F from the owner’s or operator’s most recent federal income tax return;
  - 04.** A forest management plan;
  - 05.** The production of a non-farm product that the North Carolina Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under NCGS§106-743.2; or
  - 06.** A Farm Service Agency (FSA) farm identification number.
- C.** Land or activities seeking exemption from the provisions of this Ordinance under sub-section A. above shall maintain current documentation of one or more of the items in sub-section B. above. Failure to provide evidence of active participation in bona fide farm purposes for a period of four years or more shall extinguish exempted status of agricultural, agritourism, or forestry activities under this Ordinance.
- D.** In no instance shall the forms of development and activities listed under sub-section A. above be exempted from the following standards in this Ordinance:
  - 01.** Standards associated with the subdivision of land;
  - 02.** The flood hazard prevention standards in Section <> Special Flood Hazard Area (SFHA); or
  - 03.** The water supply watershed protection standards in Section <>, Water Supply Watershed Overlay District.
- E.** Except for structures engaged in the storage of cotton, peanuts, or sweet potatoes, development activities incidental to farming, forestry, or agritourism must be located on the bona fide farm or forestry land in question in order to be exempted from the provisions of this Ordinance. In no instance shall mere ownership of land by an entity conducting agricultural activities, forestry, or agritourism, on one property entitle land on a different property to exemption from the provisions of this Ordinance in accordance with NCGS§106-743.2.
- F.** Non-farm, non-agritourism, or non-forestry-related development and activities shall be subject to the standards of this Ordinance even when taking place on land identified for bona fide farm purposes in sub-section B. above. Goodness Grows in North Carolina nonfarm products shall be considered farm or agricultural products when produced in accordance with NCGS§106-743.2.

**1.1.5. JURISDICTION**

The standards in this Ordinance shall apply to all development within the corporate limits of the Town of Mills River as shown on the adopted Official Zoning Map, unless the development is expressly exempted by a specific section of this Ordinance, other Town requirement, or by State law.

<sup>2</sup> Note that agricultural uses and bona-fide farms are still subject to subdivision and water supply watershed regulations.



**A. ANNEXATION**

Land annexed to the Town of Mills River in accordance with NCGS§§160A-31 or 160A-58 shall become subject to the standards of this Ordinance upon the effective date of the annexation approval by the Town.

**B. SPLIT JURISDICTION**

In cases where a lot or tract is located within the Town of Mills River’s planning jurisdiction as well as within another local government’s planning jurisdiction (e.g., Henderson County), and there is no agreement between Mills River and the other local government regarding how lots subject to split jurisdictions will be addressed, the landowner may chose to follow the development regulations of the jurisdiction with the largest share of the lot or tract’s total acreage in accordance with NCGS§160D-203.

**1.1.6. MINIMUM REQUIREMENTS**

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

**§ 1.2 AUTHORITY**

**1.2.1. NORTH CAROLINA GENERAL STATUTES<sup>3</sup>**

This Ordinance is adopted in accordance with the North Carolina General Statutes, including, but not limited to:

- A.** Chapter 160A, Article 8 (Police Powers);
- B.** Chapter 160A, Article 15 (Streets, Traffic, and Parking);
- C.** Chapter 160D (Local Planning and Development Regulation); and
- D.** Chapter 143, Article 21 (Water and Air Resources)

**1.2.1. OTHER RELEVANT LAWS**

This Ordinance is adopted in accordance with other relevant laws, including but not limited to:

- A.** The Charter of the Town of Mills River;
- B.** Other relevant laws of the State; and
- C.** Any special legislation enacted to the Town of Mills River by the General Assembly.

**§ 1.3 CONFLICT**

**1.3.1. CONFLICT BETWEEN STANDARDS IN THIS ORDINANCE**

**A. GENERALLY**

Unless subject to the standards in Section <>, Alternatives, or where otherwise stated in writing in this Ordinance, in cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control.

**B. ALTERNATIVES**

**01. AUTHORIZED DEVIATIONS**

Deviations from Ordinance requirements, such as an approved Administrative Adjustment, Alternative Plan, Conditional Rezoning, Variance, Nonconforming Authorization, or other alternative form of compliance that is authorized by and established in accordance with this Ordinance shall control and shall not be considered to conflict with other more restrictive standards in this Ordinance.

<sup>3</sup> NOTE: This UDO is prepared in accordance with NCGA Session Law 2025-32, which exempts Mills River from compliance with the recent “downzoning law” until July 1, 2026.



**C. DEVELOPMENT STANDARDS AND DISTRICT STANDARDS**

In cases where a development standard from Chapter 6, Standards, conflicts with a zoning district standard in Chapter 3, Districts, the zoning district standard in Chapter 3 shall control.

**D. DEVELOPMENT STANDARDS, DISTRICT STANDARDS, AND USE STANDARDS**

In cases where a development standard from Chapter 6, Standards, or a zoning district standard from Chapter 3, Districts, conflicts with a standard in Chapter 4, Land Uses, the standards in Chapter 4, Land Uses, shall control.

**E. OVERLAY DISTRICT STANDARDS**

- 01. In the event of a conflict between an overlay zoning district standard in Section <>, Overlay Zoning Districts, and another standard in this Ordinance, the overlay zoning district standard shall control even in cases where the overlay zoning district standard is less restrictive.
- 02. In cases where land is located in two or more different overlay zoning districts and the standards between the overlay districts conflict, the more restrictive requirements shall control.

**F. TEXT AND ILLUSTRATIONS**

- 01. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- 02. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

**G. TEXT AND MAPS**

- 01. In the event of a conflict or inconsistency between the text of this Ordinance and the Official Zoning Map, the text shall control.
- 02. In cases where requirements are based upon a map provided by the State or the federal government, and there is a conflict between the map and the text of this Ordinance, the State or federal map shall control.

**1.3.2. CONFLICT WITH A CONDITION OF APPROVAL**

In cases where a standard in this Ordinance conflicts with an authorized and legally established condition of approval that has not expired, the condition of approval controls.

**1.3.3. CONFLICT WITH PRIVATE AGREEMENTS AND COVENANTS**

- A. In cases where a standard in this Ordinance conflicts with a private agreement, covenant, or deed restriction established on or after *(insert the effective date of this Ordinance)*, and the standards in this Ordinance are more restrictive, the standards in this Ordinance shall control.
- B. In cases where a private agreement, covenant, or deed restriction conflicts with State or federal law, the private agreement, covenant, or deed restriction shall be void.

**1.3.4. CONFLICT WITH STATE OR FEDERAL LAW**

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

**1.3.5. CONFLICT WITH OTHER TOWN CODE OR POLICY**

If a provision of the UDO is inconsistent with another provision found in other adopted ordinances of the Town, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise. Apart from application submittal policy, Town policy is advisory only.

**1.3.6. DETERMINATION OF MOST RESTRICTIVE STANDARD**

The more restrictive provision is the one that imposes greater restrictions, burdens, or more stringent controls.



### **1.3.7. CONFLICT OF INTEREST**

Conflicts of interest for review authorities under this Ordinance shall be addressed in accordance with Section <>, General Requirements for All Authorities.

## **§ 1.4 CONSISTENCY WITH ADOPTED POLICY GUIDANCE**

### **1.4.1. ADVISORY IN NATURE**

Adopted policy guidance is advisory in nature and does not carry the effect of law. Consistency with adopted policy guidance is not a requirement for the continuing validity of any provision of this Ordinance, except as provided in NCGS§§160D-604 and 160D-605.

### **1.4.2. CONFORMANCE**

This Ordinance is intended to ensure that all development within the Town is in conformance with the goals, objectives, policies, strategies, and actions expressed in the Town’s adopted policy guidance. While conformance with adopted policy guidance is desired, it is not legally required.

### **1.4.3. CONSISTENCY**

- A.** To the extent this Ordinance or the Official Zoning Map is or becomes inconsistent with the Town’s adopted policy guidance, it should be amended to remain consistent.
- B.** Consistency with adopted policy guidance is not a prerequisite for approval of a rezoning or application, and the future land use map portion of the Comprehensive Land Use Plan shall be deemed amended when the Town Council approves a rezoning that is inconsistent with the future land use map in accordance with NCGS§160D-605.

### **1.4.4. INCONSISTENCY**

To the extent the UDO or the Official Zoning Map is or becomes inconsistent with the adopted policy guidance, it may be amended to remain consistent.

### **1.4.5. POLICY DOCUMENTS IDENTIFIED**

The Town’s adopted policy guidance shall include, but is not limited to the following:

- A.** Making Mills River, 2040 Comprehensive Land Use Plan;
- B.** Go Mills River Bicycle and Pedestrian Plan;
- C.** The Parks and Recreation Master Plan; and
- D.** Any other policy document adopted by the Town of Mills River in accordance with State law.

## **§ 1.5 DOCUMENT TITLE**

### **1.5.1. ORDINANCE TEXT**

This Ordinance shall be officially known as the “Unified Development Ordinance of the Town of Mills River, North Carolina” and may be referred to “this Ordinance” and several abbreviated references, including “the UDO” or “this UDO.”

### **1.5.2. ZONING MAP**

The zoning map referenced in this Ordinance is officially titled as the “Zoning Map, Town of Mills River, North Carolina” and may be referred to as “the Official Zoning Map” or the “Zoning Map.” The Official Overlay Zoning District Map is incorporated by reference into the Official Zoning Map though the Overlay Zoning District Map may be on separate sheets.



## **§ 1.6 EFFECTIVE DATE**

- A.** This Ordinance shall be adopted on *(insert the effective date of this Ordinance)*.
- B.** This Ordinance shall be in full force and effect on *(insert the effective date of this Ordinance)*, and repeals and replaces the current Subdivision and Zoning Ordinances, Chapters 151, 153, 154, 155, 156, and 170 respectively, of the Town of Mills River, North Carolina, Code of Ordinances, as originally adopted on March 2, 2004.
- C.** Nothing shall limit an applicant from voluntary compliance with this Ordinance prior to its effective date.

## **§ 1.7 INCENTIVES AND ALTERNATIVES**

### **1.7.1. PURPOSE AND INTENT**

The terms “incentive” and “alternative” are defined in Section <>, Terms Defined, and intended to create necessary flexibility in the application and interpretation of the standards in this Ordinance for the following purposes:

- A.** Protection of the public’s health, safety, or welfare;
- B.** Promotion of preferred uses or forms of development as identified by the Town;
- C.** Creating necessary flexibility to permit the beneficial development of land in accordance with reasonable investment-backed expectations;
- D.** Protecting the environment or sensitive environmental resources on a lot or site;
- E.** Allowing for development or redevelopment that is consistent with the Town’s adopted policy guidance; or
- F.** Permitting development that is consistent with applicable State or federal law.

### **1.7.2. APPLICABILITY**

Incentives and alternatives included herein are permitted for all development applications as noted in the applicability subsections of each standard or procedure, unless otherwise expressly prohibited.

### **1.7.3. ALTERNATIVE MEANS OF COMPLIANCE**

#### **A. ACCESS**

Alternative site access to single-family detached and two-family dwellings may be established in accordance with Section <>, Shared Driveways.

#### **B. ALTERNATIVE PLANS**

Section <>, Alternative Plans, allows applicants to provide alternatives for certain site design standards such as landscaping, parking, signs, and lighting when particular site considerations do not allow for the placement or use as required in this Ordinance.

#### **C. PUBLIC ART AS SIGNAGE**

Section <>, Public Art As Signage, allows for the use of murals as allowable forms of wall signs by permitting a mural to convey a commercial message provided it is included within the context of public art, as determined in accordance with this Ordinance.

#### **D. NONCONFORMING AUTHORIZATION**

Section <>, Nonconforming Authorization, is a means for existing development established prior to *(insert the effective date of this Ordinance)* to be altered (whether by change of principal use, change in site features, or expansion of an existing building) without reaching full compliance with the standards in this Ordinance.

#### **E. PROVISION OF GATHERING SPACE**

Section <>, Gathering Spaces, allows certain forms of gathering space, like roof gardens, rooftop seating, sidewalk dining or seating areas, atriums open to the public, public art, and similar features to be credited towards certain open space set-aside requirements.



### **1.7.4. DIMENSIONAL STANDARDS AND FLEXIBILITY**

#### **A. ADMINISTRATIVE ADJUSTMENT**

Section <>, Administrative Adjustment, allows a request by an applicant to deviate from a specified numerical standard of this UDO by a specified percentage, subject to consistency with applicable review criteria.

#### **B. ALLOWABLE ENCROACHMENTS INTO REQUIRED SETBACKS**

Table <>, Table of Allowable Encroachments, outlines the kinds of features that are permitted within a required setback, provided they do not obstruct visibility in required sight distance triangles.

#### **C. CONSERVATION SUBDIVISIONS**

Single-family detached developments configured in accordance with Section <>, Conservation Subdivision, are permitted to utilize lot sizes, setbacks, and maximum residential densities in accordance with the allowable standards for conservation subdivisions in the zoning district where located.

#### **D. HEIGHT LIMIT EXEMPTIONS**

Deviations or exceptions to maximum building height provisions are permitted in accordance within Section <>, Rules of Measurement.

### **1.7.5. PROCEDURAL FLEXIBILITY**

#### **A. CONDITIONAL REZONING**

Section <>, Conditional Rezoning, provides the process for a legislative zoning map amendment subject to conditions of approval incorporated into the zoning map amendment.

#### **B. DEVELOPMENT AGREEMENT**

Section <>, Development Agreement, outlines the process for a written agreement between the Town and a developer or applicant that sets down the rights and responsibilities of each party as pertaining to a single development.

#### **C. FEE-IN-LIEU**

Section <>, Fee-in-Lieu, provides the methodology for the provision of a fee-in-lieu or the monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.

#### **D. PERFORMANCE GUARANTEES**

Section <>, Performance Guarantee, outlines the procedure for the submittal and approval of the cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or required private site feature prior to issuance of a building permit, final plat, or other development approval.

#### **E. VARIANCE**

Section <>, Variance, provides the details of the quasi-judicial process required to be granted relief from the requirements of this Ordinance.

## **§ 1.8 PURPOSE AND INTENT OF ORDINANCE**

The purpose of this Ordinance is to guide and manage growth in a way that preserves the rural character and agricultural history of Mills River while protecting the natural resources that contribute to its charm and beauty. Additionally, this Ordinance intends to protect the public health, safety, prosperity and general welfare of the Town's residents, landowners, and businesses and to provide for the continued orderly development of the Town of Mills River. This Ordinance has been made with reasonable consideration for the unique setting of the community and its mission of offering an exceptional quality of life and opportunities for prosperity. In support of these purposes, this Ordinance contains regulations designed to:

- A.** Maintain Mills River's quality of life, small-town appeal, and attractive natural beauty while continuing to encourage managed growth;
- B.** Promote preservation of agricultural lands, natural resources, open spaces, steep slopes, and hilltops;



- C. Foster economic development and create conditions for continued employment growth in the Town;
- D. Ensure responsible development and redevelopment that is sustainable in terms environmental protection, resident and visitor health, and economic quality;
- E. Ensure Town residents have a wide range of housing options that allow for varying income levels, varying life stages, and diverse housing preferences;
- F. Facilitate well-planned infrastructure with sufficient provision for transportation, public utilities, and other public requirements in an environmentally responsible and timely manner;
- G. Protect valuable water sources and implement methods to prevent flooding;
- H. Protect existing tree canopy and forested areas;
- I. Provide a safe, efficient, connected, and complete transportation network for cars, transit, pedestrians, and cyclists.
- J. Expand recreational opportunities and stimulate the expansion of the community's parks and greenways;
- K. Establish procedures and standards for the orderly subdivision of land;
- L. Help secure safety from fire, crime, and other dangers;
- M. Help prevent the overcrowding of land and undue concentration of population;
- N. Regulate the size of yards, courts, and other spaces;
- O. Regulate the density and distribution of boundaries thereof;
- P. Provide procedures, guidance, and remedies for violations; and
- Q. For other purposes as identified by the Town Council.

## **§ 1.9 SEVERABILITY**

### **1.9.1. INVALIDATION**

Should any section, sentence, clause, phrase, or word of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect, impair, or invalidate the validity of the remaining parts of this Ordinance which can be given effect without the invalid provision.

### **1.9.2. PREJUDICIAL APPLICATION**

Should any section, sentence, clause, phrase, or word of this Ordinance be held invalid or unconstitutional in its application to a particular case, such decision shall not affect or prejudice its application to other cases.

### **1.9.3. LAWFUL PRESUMPTION**

There shall be a conclusive presumption when a review authority authorizes regulatory action, that the review authority would not have authorized the action except in the belief that such action was lawful.

## **§ 1.10 TRANSITIONAL PROVISIONS**

The standards in this sub-section address existing violations, nonconformities, and applications in process at the time this Ordinance is made effective.

### **1.10.1. APPLICATIONS**

#### **A. PRIOR APPROVAL**

- 01. Any development approvals granted before (*insert the effective date of this Ordinance*), shall remain valid until their expiration date.
- 02. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the development standards in effect at the time of approval.



03. Any new development of the site shall only take place in accordance with the procedures and standards of this Ordinance.
04. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required Town, State, or federal permits or approvals.
05. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.
06. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development shall be considered conforming with respect to these provisions. Any change of existing principal use, revisions to an existing site feature that increases the amount of impervious area, or increases in floor area of an existing principal building shall be considered new development and shall require the site to fully comply with all applicable standards in this Ordinance.

## **B. PENDING APPROVAL**

### **01. COMPLETE APPLICATIONS**

Applications accepted as complete prior to *(insert the effective date of this Ordinance)*, may be decided in accordance with either the regulations in affect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant in accordance with Section <>, Permit Choice.

### **02. FILED, BUT NOT COMPLETE**

Applications that have been filed prior to *(insert the effective date of this Ordinance)*, but not determined to be complete as of that date in accordance with Section <>, Applications to be Complete, shall be reviewed and decided in accordance with this Ordinance.

## **1.10.2. EXISTING NONCONFORMITIES<sup>4</sup>**

### **A. GENERALLY**

01. Any principal use, principal structure, or site feature that legally existed on *(insert the effective date of this Ordinance)*, but that does not fully comply with the standards of this Ordinance after its effective date, shall be considered to conform with the requirements of this Ordinance unless and until any of the following take place:
  - a. A change to the principal use in accordance with Section <>, Change of Principal Use;
  - b. Addition of a new or a change to an existing site feature that increases the amount of impervious surface on the site; or
  - c. Increase in the total square footage or footprint of an existing principal building.
02. In cases where any of the changes listed in sub-sections (a-c) above are proposed after the effective date of this Ordinance, the entire site shall be brought into full compliance with all applicable requirements in this Ordinance.
03. An applicant may seek approval of a Variance (see Section <>, Variance), a Conditional Rezoning (see Section <>, Conditional Rezoning), or a Nonconforming Authorization (see Section <>, Nonconforming Authorization) as a means of securing approval of a concurrent change to existing development that does not comply with all applicable provisions.

### **B. NONCONFORMING LOTS**

01. Lawfully-established nonconforming lots of record existing in a conventional zoning district prior to *(insert the effective date of this Ordinance)* may be continued and developed, subject to compliance with the applicable dimensional standards in the zoning district where located, to the extent practicable.
02. In no instance shall an existing nonconforming lot of record located in a conventional zoning district be further subdivided or be subject to a change in a lot line location unless such subdivision or change renders the lot conforming with all applicable requirements of this Ordinance.

### **C. NONCONFORMING SIGNS**

<sup>4</sup> NOTE: This section is included to avoid the need to track prior nonconformities not requiring consent versus those nonconformities created after the effective date that do require consent based on SL 2024-57.



01. Lawfully-established nonconforming signage may be continued in accordance with the applicable standards in Section <> Nonconforming Signs, and NCGS§160D-912.1. In the event of conflict between the standards in this Ordinance and the standards in NCGS§160D-912.1, the standards in the General Statutes shall control.
02. In no instance shall a nonconforming sign that constitutes a danger to public safety be permitted to continue unless the danger to public safety is corrected and public safety is preserved.

### **1.10.3. EXISTING USES NOW REQUIRING A SPECIAL USE PERMIT**

01. Existing conditional use permits approved prior to *(insert the effective date of this Ordinance)*, are hereby converted to special use permits and shall continue to apply as approved. In the event an applicant seeks to revise development subject to a conditional use permit, all changes shall be considered in accordance with Section <>, Special Use Permit.
02. If a use was a lawfully established permitted use before *(insert the effective date of this Ordinance)*, and is subsequently made a special use in **Table <>**, Listing of Common Principal Uses, the use shall be considered by the Town as a lawfully established use. Any modifications to the use or the site after *(insert the effective date of this Ordinance)*, shall require approval of a Special Use Permit in accordance with Section <>, Special Use Permit.

### **1.10.4. VIOLATIONS**

01. Sites subject to a current, unresolved notice of violation as of *(insert the effective date of this Ordinance)* shall continue to be violations under this Ordinance unless the development complies with this Ordinance and is no longer considered to be in violation or the ability for the Town to compel a landowner to address the violation has lapsed in accordance with Section <>, Statute of Limitations.
02. Violations of this Ordinance shall be subject to the penalties and enforcement provisions in Chapter 7, Violations.

## **§ 1.11 VESTED RIGHTS**

### **1.11.1. INTENT**

This section is intended to implement NCGS§160D-108 with respect to the establishment of zoning vested rights for landowners or applicants who have received a development approval from the Town.

### **1.11.2. DEFINITION OF VESTED RIGHTS**

As used in this Ordinance, a vested right is defined as the right to undertake and complete the development and use of land under the terms and conditions of a development approval issued by the Town.

### **1.11.3. EFFECT OF A VESTED RIGHT**

- A. Development approvals that have an established vested right in accordance with NCGS§160D-108 and this section shall preclude any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.
- B. Except when subject to sub-section (C) below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:
  01. Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
  02. Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
  03. A site-specific vesting plan approved in accordance with this Ordinance and NCGS§160D-108.1;
  04. A multi-phase development approved in accordance with this Ordinance and NCGS§160D-108; and
  05. A vested right established by the terms of an approved development agreement in accordance with this Ordinance and Article 10 of Chapter 160D of the North Carolina General Statutes.



**C.** Amendments to this Ordinance shall apply to vested development approvals if:

- 01.** A change to State or federal law occurs and has a retroactive effect on the development or use;
- 02.** There is written consent to be subject to the amendment by the landowner;
- 03.** The development approval expires; or
- 04.** The development is not undertaken or completed in accordance with the approval.

### **1.11.4. ESTABLISHMENT OF A VESTED RIGHT**

A vested right may only be established following an approval of a development application in accordance with this section and the applicable requirements in the North Carolina General Statutes. The following sub-sections detail the ways in which a vested right may be established.

#### **A. COMMON LAW VESTED RIGHTS**

##### **01. DEFINED**

A common law vested right establishes the right to undertake and complete the development and use of property on substantial expenditures in good faith reliance on a valid governmental approval. Such approvals include, but are not limited to:

- a.** Zoning Compliance Permits;
- b.** Sign Permits;
- c.** Building Permits;
- d.** Special Use Permits; and
- e.** Preliminary Plats.

##### **02. ESTABLISHMENT**

A request for a determination of a common law vested right will be reviewed and acted upon by the Planning Director in accordance with [Section <>, Determination](#).

##### **03. APPLICATION**

The applicant shall provide satisfactory proof that each of the following standards are met in order to establish a common law vested right:

- a.** The applicant has, prior to the adoption or amendment of an ordinance, made expenditures or incurred contractual obligations amounting to 25 percent or more of the total project cost not including any land costs; and
- b.** The obligations and/or expenditures were incurred in good faith; and
- c.** The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required, provided however, that a mistakenly-issued governmental permit shall not give rise to a common law vested right; and
- d.** The amended or newly adopted ordinance is a substantial detriment to the applicant.

#### **B. ISSUANCE OF A BUILDING PERMIT**

Issuance of a Building Permit by Henderson County in accordance with the applicable standards in this Ordinance and applicable State law shall entitle the Building Permit holder to vested rights to develop the proposal as identified in the approved Building Permit, subject to the following standards:

- 01.** The applicant shall not be required to file for a determination to establish common law vested rights or maintain vested status during the time period for which the Building Permit remains valid.
- 02.** The owner has a vested right only as long as the Building Permit remains valid and only for the work approved by the Building Permit.
- 03.** The Building Permit shall expire six months after issuance if work has not substantially commenced.
- 04.** The Building Permit shall expire after work commences if there is a 12-month discontinuance of work.
- 05.** The Building Permit may be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or State law (not just the Building Code or UDO), and any misrepresentations made in securing the permit.
- 06.** Building Permits mistakenly issued may be revoked.



- 07.** If the Building Permit expires or is revoked, the vested right based on it is also lost.

**C. STATUTORY VESTED RIGHTS**

**01. DEFINED**

Approval of a development permit, other than a Building Permit, for a building, use of a building, use of land, or subdivision of land shall establish a statutory vested right that entitles the permit holder to develop the proposal as identified in the approved permit. Such approvals shall include, but not be limited to:

- a. A Site Plan that does not qualify as a site-specific vesting or multi-phase development plan;
- b. A Subdivision that does not qualify as a site-specific vesting or multi-phase development plan;
- c. A Zoning Compliance Permit; or
- d. A Sign Permit.

**02. STANDARDS**

Statutory vested rights are established subject to the following standards:

- a. Issuance of a Building Permit is not considered a development permit, and the vesting term shall only continue in accordance with Section <>, Issuance of a Building Permit.
- b. A development permit is valid for one year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity.
- c. If the applicant fails to substantially commence authorized work within one year, then the development permit and vesting expire.
- d. Vesting shall continue provided there is a substantial commencement of authorized work under a valid development permit.
- e. The development permit and vesting shall expire after substantial work commences if there is a 12-month period of intentional and voluntary discontinuance of work, unless otherwise specified by statute.

**D. SITE-SPECIFIC VESTING PLAN**

**01. DEFINED**

- a. For the purposes of this section, a Site-Specific Vesting Plan is defined as a plan of land development submitted to the Town for purposes of obtaining approval.
- b. A Site-Specific Vesting Plan must provide, with reasonable certainty, all of the following:
  - i. The boundaries of the development;
  - ii. Topographic and natural features affecting the site;
  - iii. The approximate location of proposed buildings, structures, and other improvements;
  - iv. The approximate dimensions, including height, of proposed buildings and other structures;
  - v. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;
  - vi. The type or types of proposed land uses; and
  - vii. The density or intensity of development.
- c. A Variance, Sketch Plan, Concept Plan, or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a Site-Specific Vesting Plan.
- d. The following development approvals constitute a Site-Specific Vesting Plan:
  - i. A Concept Plan associated with an Unlimited Conditional Rezoning application;
  - ii. A Preliminary Plat for a subdivision;
  - iii. Site Plans; and
  - iv. A Concept Plan associated with a Special Use Permit.

**02. ESTABLISHMENT**

- a. Development approvals identified by this Ordinance as Site-Specific Vesting Plans shall be granted a vested right to develop for a maximum period of two years from the date of the approval, provided the applicant has requested, in writing, that a vested right is sought, and provided the development subject to the approval complies with all applicable terms and conditions.
- b. In cases where a Concept Plan is associated with an approved Conditional Rezoning, the conditional zoning designation shall run with the land but the vesting status of the associated Concept Plan shall be in accordance with the standards for any other Site-Specific Vesting Plan or Multi-Phase Vesting Plan, as appropriate.



**03. EXTENSION**

- a. The two-year vesting duration of a Site-Specific Vesting Plan may be extended up to five years from the date of the approval only in accordance with Section <>, Vested Rights Certificate.
- b. Site-Specific Vesting Plans meeting the definition of a Multi-Phase Development shall be vested in accordance with Section <>, Multi-Phase Development Plan.

**E. MULTI-PHASE DEVELOPMENT PLAN**

- 01. A Multi-Phase Development Plan that occupies at least 25 acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval and includes more than one phase shall be considered as a Multi-Phase Development Plan that is granted a vested right to develop for a period of seven years from the date of approval of the first Site Plan associated with the development.
- 02. Vesting shall commence upon approval of the Site Plan for the first phase of the development.
- 03. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

**F. DEVELOPMENT AGREEMENT**

A Development Agreement shall be vested in accordance with the vesting term identified in the Development Agreement.

**G. VOLUNTARY ANNEXATION**

- 01. Any petition for Annexation filed with the Town in accordance with Section <>, Annexation, shall contain a signed statement from the applicant indicating if vested rights on the properties subject to the petition have been established in accordance with NCGS§160D-108.
- 02. A statement that declares that no zoning vested right has been established or the failure to provide a statement declaring whether or not vested rights have been established, shall result in a termination of any vested rights established prior to Annexation.

**H. NO IMPACT TO OTHER VESTED RIGHTS**

Approval of a vested right in accordance with this section shall not preclude or extinguish any other unexpired vested right attached to the same property.

**1.11.5. TERMINATION OF A VESTED RIGHT**

**A. GENERALLY**

- 01. Vested rights established in accordance with this Ordinance shall run with the land.
- 02. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval.
- 03. In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.
- 04. In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.
- 05. In no instance shall vested rights continue if the Town Council, after a duly noticed public hearing, makes a determination based on the evidence provided, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.
- 06. In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within 24 months of the discontinuance of work. This 24-month period shall not include the time associated with work stoppage resulting from an appeal or litigation.

**B. LIMITATIONS**

- 01. The establishment of a vested right does not preclude the Town's application of overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity.
- 02. A vested right shall not preclude the application of changes to building, fire, plumbing, electrical, or mechanical codes made after the development approval where a vested right was established.

