

154.082
154.177
154.180
New 154.182

Please see highlighted note in client's cover letter which relates to this ord.

AN ORDINANCE AMENDING THE ZONING ORDINANCE FOR THE TOWN OF MILLS RIVER

**ARTICLE NO. 1
AUTHORITY**

This Ordinance is enacted by the Town Council of Mills River, North Carolina pursuant to Chapter 160A of the North Carolina General Statutes, particularly Article 18. Town Council does hereby ordain and enact into law the following amendments to the Zoning Ordinance for the Town of Mills River.

**ARTICLE II
AMENDMENT TO ZONING ORDINANCE**

The Zoning Ordinance of the Town of Mills River as enacted effective March 1, 2004, is amended to add the following revisions to the following articles, sections and subsections:

● **154.177 – DECISIONS OF ZONING BOARD OF ADJUSTMENT**

A. Remove existing language:

“The concurring vote of 4/5 of the members of the Zoning Board of Adjustment shall be necessary to reverse any order, requirement or decision of determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to affect any variation of this chapter. 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 of the Town of Mills River 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.”

B. Insert the following:

“The concurring vote of 4/5 of the members of the Zoning Board of Adjustment shall be necessary to approve a variance. All other reversal of any order, quasi-judicial matter, requirement or decision of determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to affect any variation of this chapter. 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 of the Town of Mills River 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.”

● **154.179 – POWERS AND DUTIES OF ZONING BOARD OF ADJUSTMENT**

A. 154.179 (A) Administrative Review.

Remove existing language:

“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.”

B. 154.179 (A) Administrative Review.

Insert the following:

“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. 160A-393(d) 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 six 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. 160A-400.9(e) 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. 160A-393(k).

(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.

(C) 154.179 (B) Variances.

Remove the existing language:

“(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 conditional use 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:

1. 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.

2. The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

3. The hardship is not the result of the applicant's own action.

(b) The variance is in harmony with the general purpose and intent of this chapter and will preserve its spirit.

(c) The variance will secure the public safety and welfare and will do substantial justice.

(2) 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.

(3) 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.”

(D) 154.179 (B) Variances.

Insert the following language:

“(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 conditional use 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.

(E) 154.179 (C) Conditional Use Permits.

Remove the existing language through 154.179 (C) (1) (b):

“(C) Conditional uses; conditions governing application. To grant, in particular cases and subject to appropriate conditions and safeguards, permits for conditional 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 conditional use permit unless and until:

(a) A written application for a conditional use permit shall be submitted indicating the section of this chapter under which the conditional use permit is sought.

(b) A public hearing is held. Notice of the public hearing shall be posted on the property for which the conditional use permit is sought by the Zoning Administrator and in a local newspaper at least 15 days and no more than 25 days prior to the public hearing. This legal notice

shall describe the request and appear at least once weekly for 2 consecutive weeks. All adjacent property owners shall be notified by certified mail of the conditional use sought.”

(F) 154.179 (C) Conditional Use Permits.

Insert the following language through 154.179 (C) (1) (b):

(C) Conditional uses; conditions governing application. To grant, in particular cases and subject to appropriate conditions and safeguards, permits for conditional 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 conditional use permit unless and until:

(a) A written application for a conditional use permit shall be submitted indicating the section of this chapter under which the conditional use permit is sought.

(b) A public hearing is held pursuant to § XXX. [NOTE: Reference is to new section number]

(G) 154.179 (F) Special Use Permits.

Remove the existing language:

“(F) Special uses. The Zoning Board of Adjustment shall have the authority to hear and grant, grant with conditions or deny an application for a 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).”

(H) 154.179 (F) Special Use Permits.

Insert the following language:

(F) Special uses. The Zoning Board of Adjustment shall have the authority to hear and grant, grant with conditions or deny an application for a 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 § XXX. shall apply.

• **154.180 – POWERS AND DUTIES OF MILLS RIVER TOWN COUNCIL**

A. 154.179 (A) (1).

Remove existing language:

“(A) 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 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) A public hearing is held. Notice of the public hearing shall be posted on the property for which the special use permit is sought by the Zoning Administrator and in a local newspaper at least 15 days and no more than 25 days prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for 2 consecutive weeks. All owners of adjacent property shall be notified by certified mail of the special use application and public hearing date.

B. 154.179 (A) (1).

Insert following language:

(A) 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 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) A public hearing is held. Notice of the public hearing shall be given per § XXX.

• **SECTION XXX – NOTICE REQUIREMENTS FOR QUASI-JUDICIAL PUBLIC HEARINGS.**

New Section to be numbered as codified. Insert the following language:

The following shall be required notice requirements when conducting quasi-judicial hearings:

(1) 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.

(2) Notice shall be placed via prominently posted notice of public 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.

• **154.082– MULTI-FAMILY DEVELOPMENT**

A. Remove the existing language from Section 154.082 (F) (2):

“(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 special use permit in accordance with § 154.179.”

B. Insert the following language into Section 154.082 (F) (2):

(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 special use permit in accordance with § 154.180.

Except as specifically amended herein, the Zoning Ordinance of the Town of Mills River shall remain valid and in full force and effect.


**ARTICLE III
SEVERABILITY**

Each section and subsection of said ordinance as adopted herein constitutes a separate and distinct provision. Whenever possible, each provision of such Ordinance shall be interpreted in a manner as to be effective and valid under applicable law. In the event that any provision so such Ordinance shall finally be determined by competent court or tribunal to be unlawful or unenforceable, such provision shall be deemed severed from such Ordinance but every other provision of the Ordinance shall remain in full force and effect.

**ARTICLE NO. IV
EFFECTIVE DATE**

This Ordinance and the Amendment to the Zoning Ordinance of the Town of Mills River, North Carolina shall take effect and be effective at 12:01AM on October 1, 2013 and shall be in full force and effect at all times thereafter until duly amended.

ADOPTED AND PASSED by the Town Council of the Town of Mills River, North Carolina, this the 10th day of October, 2013.



Roger D. Snyder, Mayor

ATTEST By:



Susan L. Powell, MMC, NCCMC
Town Clerk

