

**AN ORDINANCE AMENDING TITLE XV LAND USAGE
OF THE MILLS RIVER CODE OF ORDINANCES**

**ARTICLE NO. 1
AUTHORITY**

This Ordinance is enacted by the Town Council of Mills River, North Carolina pursuant to Chapter 160D of the North Carolina General Statutes. 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, and with various amendments, is further amended as to the following articles, chapters, sections and subsections:

Chapter 153 Subdivisions

Amended to comply with North Carolina General Statutes Chapter 160D Local Planning and Development Regulation. See Exhibit A.

Chapter 154 Zoning

Amended to comply with North Carolina General Statutes Chapter 160D Local Planning and Development Regulation. See Exhibit B.

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

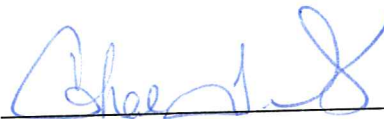
**ARTICLE III
SEVERABILITY**

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 12:01 AM on April 23, 2021 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 22nd day of April 2021.



Chae T. Davis
Mayor

ATTEST By:



Susan L. Powell, MMC, NCCMC
Finance Director/Town Clerk



TITLE XV: LAND USAGE

CHAPTER 153: SUBDIVISIONS

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- Appendix 10: A statement of understanding regarding family 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)

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24 **§ 153.004 AUTHORITY.**

25 The enactment of this chapter is authorized pursuant to G.S. Chapter [160D](#),
26 [Article 8](#)~~160A~~, [Article 19](#), [Part 2](#).

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

28 **§ 153.005 JURISDICTION.**

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

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

34 **§ 153.006 GENERAL APPROVAL FOR SUBDIVISIONS PLATS.**

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

40 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-
41 10-2017)

42 **§ 153.007 COMPLIANCE REQUIRED.**

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

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

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46 **§ 153.008 COMPLIANCE WITH OTHER PROVISIONS.**

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

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

54 **§ 153.009 TRAFFIC IMPACT ANALYSIS (TIA) REQUIRED.**

55 Residential developments that are defined as a major subdivision must
56 provide a traffic impact analysis (TIA) ~~prepared administered~~ by a [licensed North](#)
57 ~~Carolina civil engineer~~ ~~Certified Traffic Engineer~~ ~~certified or experienced traffic~~
58 ~~engineer~~. The analysis must be submitted with an application for a major subdivision.
59 The report shall document the traffic operational impacts and any recommended
60 improvements on the key roadway segments and intersections that have been
61 identified as primary accesses to the proposed development [from major roads within](#)
62 [the Town](#).

63 (Ord. 2018-02, passed 2-8-2018)

64 **DEFINITIONS AND WORD USAGE**

65 **§ 153.025 SUBDIVISION DEFINED.**

66 (A) Pursuant to G.S. § ~~160D-802~~ ~~160A-376~~ the word *SUBDIVISION*, as used
67 in this chapter, means all divisions of a tract or parcel of land into [two \(2\)](#) or more
68 lots, building sites or other divisions for the purpose of sale or building development
69 (whether immediate or future) and includes divisions of land involving the dedication

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70 of right-of-way for ~~of~~ a new road, whether by easement or dedication of property, or
71 a change in existing roads; however, the following are not included within this
72 definition and are not subject to any regulations enacted pursuant to this chapter:

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

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

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

81 (4) The division of a tract in single ownership the entire area of
82 which is no greater than two (2) acres into not more than three (3) lots, if no road
83 right-of-way dedication is involved and if the resultant lots are equal to or exceed the
84 standards of the town as shown in its subdivision regulations.

85 (5) The division of a tract into parcels in accordance with the terms of
86 a probated will or in accordance with intestate succession under Chapter 29 of the
87 General Statutes.

88 (b) A local government may provide for expedited review of
89 specified classes of subdivisions.

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

93 (1) The tract or parcel to be divided is not exempted
94 under subdivision (2) of subsection (a) of this section.

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95 (2) No part of the tract or parcel to be divided has been
96 divided under this subsection in the 10 years prior to division.

97 (3) The entire area of the tract or parcel to be divided is
98 greater than 5 acres.

99 (4) After division, no more than three lots result from the
100 division.

101 (5) After division, all resultant lots comply with all of the
102 following:

103 a. All lot dimension size requirements of the
104 applicable land-use regulations, if any.

105 b. The use of the lots is in conformity with the
106 applicable zoning requirements, if any.

107 c. A permanent means of ingress and egress is
108 recorded for each lot.

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

111 **§ 153.026 DEFINITIONS OF TERMS.**

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

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

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

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120 **BOND.** See **IMPROVEMENT GUARANTEE.**

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

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

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

130 **DESIGNATED PUBLIC WATER SUPPLY WATERSHED.** An area designated
131 by the North Carolina Environmental Management Commission, delineated on the
132 official map entitled "Henderson County Water Supply Watershed Protection Map,"
133 and regulated by the Water Supply Watershed Protection Ordinance for Henderson
134 County.

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

138 **DEVELOPER.** See **APPLICANT.**

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

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

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

156 **FINAL PLAT.** A plat representing a lot, parcel, subdivision or a tract of land
157 showing the boundaries and location of individual properties, street [rights-of-ways](#)
158 and other information required by this chapter and North Carolina General Statutes.
159 A final plat shall be prepared by a professional land surveyor, currently licensed and
160 registered in the State of North Carolina, in such a fashion as to be suitable for
161 recording by the Henderson County Register of Deeds and in accordance with G.S. §
162 47-30.

163 **IMPROVEMENT GUARANTEE.** Cash, letters of credit, trust agreements,
164 bonds or similar financial instruments deposited with the ~~€~~Town [or an agreed upon](#)
165 [third party](#) to assure that required improvements will be constructed or installed.

166 **LOT.** A portion of a subdivision or any other parcel of land intended as a unit
167 for transfer of ownership or for [residential or non-residential](#) development, or both.

168 **LOT AREA.** The total area within the lot lines of a lot exclusive of [property](#)
169 [dedicated for](#) street or highway rights-of-way. [Areas dedicated for street or driveway](#)
170 [right-of-way by easement are included in lot area calculations.](#)

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

173 **MAJOR SUBDIVISION.** A proposed subdivision of land where 11 or more
174 lots ~~or parcels~~ will result after the subdivision is complete.

175 **MINOR SUBDIVISION.** A proposed subdivision of land where not more than
176 10 lots ~~or parcels~~ will result after the subdivision is complete. One phase of a
177 development cannot be considered a minor subdivision unless the entire
178 development does not exceed 10 lots.

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

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

188 **PLANNING BOARD.** The Town of Mills River Planning Board.

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

192 **RECOMBINATION.** The combining of previously subdivided and recorded
193 lots or portions thereof where the total number of lots is not increased and the
194 resulting lots meet the requirements of this chapter.

195 **RECREATION AREA.** See **COMMON AREA.**

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

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

205 **ROAD.** A dedicated public or private right-of-way for vehicular [and](#)
206 [pedestrian](#) traffic; roads may be of any of the following types and classifications:

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

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

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

218 (a) Provides direct or indirect access from the entrance of
219 the subdivision inward to 25 or more existing or proposed residential lots and/or
220 dwelling units and is designed to be the main travel path for the residential access. In
221 calculating residential density, dwelling units having driveway access on the subject

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222 road and dwelling units on side roads which feed the subject residential collector
223 road shall be counted. The terminus or **LAST BLOCK** of a residential collector road
224 ending in a dead end may be designed to the standards of a local residential
225 subdivision road as long as the **LAST BLOCK** serves fewer than 25 units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

269 **STAFF.** Employees of the Town of Mills River or Mills River Town Council
270 designees.

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

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273 **STREET.** See **ROAD.**

274 **SUBDIVISION.** See **MAJOR SUBDIVISION, MINOR SUBDIVISION, FAMILY**
275 **SUBDIVISION** and **NONSTANDARDS SUBDIVISION** in this section. (See also §
276 153.025.)

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

285 **TOWNHOUSE.** Two or more single-family attached dwelling units within a
286 larger parcel where the land beneath each [planned and existing](#) unit, and any area
287 immediately adjacent thereto, is ~~individually~~ [separately](#) owned [as lots](#) and an
288 undivided interest in the common elements of the development is vested in the
289 individual [lot](#) owners.

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

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

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

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

302 (2) **PUBLIC WATER SYSTEM:**

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

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

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

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

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

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

322 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
323 2007)

324 **§ 153.027 WORD INTERPRETATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

346 **§ 153.028 ABBREVIATIONS.**

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

349 **G.S.** North Carolina General Statute.

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

352 **NCDOT.** The North Carolina Department of Transportation.

353 **Ref.** Refer to.

354 **ROW.** Right-of-way.

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

356 **PROCEDURE FOR SUBDIVISION APPLICATIONS**

357 **§ 153.045 SUBDIVISION TYPES.**

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

364 (B) *Certificate of understanding.* The following certificate of understanding
365 shall be required to accompany all final plats including the property owner's
366 signature before being approved for recordation by the Zoning Administrator.
367 Certificates of understanding not printed on the mylar plat must be notarized before
368 approval. The Zoning Administrator or their designee shall record the subdivision file
369 number on all certificates of understanding;

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370 **Certificate of Understanding**

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

380 _____

381 Date Owner(s)

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

386 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
387 2011; Am. Ord. 2018-10, passed 11-8-2017)

388 **§ 153.046 PROCEDURE FOR REVIEW OF MINOR SUBDIVISIONS.**

389 (A) An application (Appendix 1 and Appendix 3) for a minor subdivision
390 (10 or fewer lots) shall be submitted to the Subdivision Administrator on the required
391 forms along with applicable fees. The applicant must demonstrate to the Subdivision
392 Administrator that the division is in fact a minor subdivision. If the developable area
393 of the remaining parcel ~~(residual lot)~~ is greater than three (3) times the size of the

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394 proposed lot or lots and the residual ~~lot containing the~~ area has the potential for re-
395 division, then the applicant may be required by the Zoning Administrator to reapply
396 under the major subdivision procedure. The applicant for a minor subdivision shall
397 comply with the following:

398 (1) Expansion.

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

401 1. The expansion results in a total of 10 or fewer lots
402 within the boundaries of the tract that was the subject of the original minor
403 subdivision application.

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

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

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

410 5. Applications for phased minor subdivisions that
411 will ultimately contain four (4) or more lots must comply with the provisions of §
412 153.046(A)(5) and (6) at the time the original application is filed.

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

418 (2) Except in cases of expansions of approved minor subdivisions
419 allowed in division (A)(1)(a), above, the minor subdivision procedure may not be

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420 used a second time within three (3) years on property that is less than 1,500 feet from
421 the original property boundaries of the original tract which was the subject of a
422 previously approved minor subdivision application and which has been in common
423 ownership with the original tract at any time within the three (3) year period. No
424 person may utilize the minor subdivision procedures for the purpose of evading the
425 requirements of major subdivisions. In the event that a person is found to have used
426 this § 153.046 for purposes other than a bona fide minor subdivision, then the person
427 may be required to comply with any and all applicable requirements for a major
428 subdivision and may be required to re-record a plat. In addition, abuse of this §
429 153.046 will be deemed a violation of this chapter and may subject the violator to any
430 and all applicable penalties.

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

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

436 (5) Except as provided in this subsection, minor subdivision roads
437 must be constructed and must be designated as either public or private. If public, the
438 requirements in § 153.069(B) shall apply and, if private, the requirements of §
439 153.069(C) through (J) shall apply. A minor subdivision of fewer than four (4) lots
440 where private roads are proposed is exempt from all road requirements in this
441 chapter except the requirements for road name approval in § 153.071 and for right-
442 of-way access in § 153.075 shall apply. (See also § 153.046A(1)(a)5).

443 (6) Applications for minor subdivisions with (four) 4 or more lots
444 must contain a road development plan that has a scaled drawing of the proposed road
445 cross section and associated drainage improvements, which shall be in conformance

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446 with the standards in § 153.069. Upon review and approval of the drawings, the
447 Subdivision Administrator shall issue a conditional approval of the preliminary plat.
448 Upon completion and subsequent inspection and approval by the Subdivision
449 Administrator and upon satisfaction of the applicable requirements in division (A)(7)
450 below, the final plat may be approved by the Subdivision Administrator.

451 (7) In addition to the requirements above, a minor subdivision must
452 comply (where applicable) with § 153.067 (Sedimentation and Erosion Control Plan),
453 § 153.068 (Water supply and sewer system required), § 153.069 (Roads in general),
454 § 153.070 (Shoulder stabilization), § 153.071 (Road name approval), § 153.072
455 (Subdivision names and name signs), § 153.073 (Road name signs and regulatory
456 signs), § 153.074 (Conformance with approved thoroughfare plan), § 153.075 (Right-
457 of-way access), § 153.076 (Road frontage and existing off- site access), § 153.077
458 (Stormwater drainage), § 153.079 (Lot designs), and § 153.082 (Air quality) of this
459 chapter.

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

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

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

470 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-
471 10-2017)

472 **§ 153.047 PROCEDURE FOR REVIEW OF FAMILY SUBDIVISIONS.**

473 (A) The purpose of the family subdivision is to allow the creation of lots
474 from larger tracts for the use of bona-fide family members. Application does not
475 require submission of a development plan, only submission of the final plat for
476 approval. No application forms are required; however, § 153.116, Fees, shall apply.
477 The applicant, however, must satisfy the Subdivision Administrator that such division
478 is in fact a "family subdivision" by submitting a statement in a form substantially
479 similar to that provided in Appendix 10. Each family member may be deeded only [one](#)
480 [\(1\)](#) lot of record per family subdivision. The deed for each lot in a family subdivision
481 must contain an express statement that the conveyance is a conveyance of a lot within
482 a family subdivision and must contain an express grant of a right-of-way to a public
483 road.

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

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

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

498 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
499 2007)

500 **§ 153.048 PROCEDURE FOR REVIEW OF NONSTANDARD**
501 **SUBDIVISIONS.**

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

510 (B) Procedure for review of townhouse developments. In cases where
511 townhouse development review is not superseded by other regulations (such as
512 zoning), the townhouse developments, as defined herein, shall be reviewed by the
513 Planning Board. Application for review shall be made to the Subdivision
514 Administrator. Plans for each development shall be prepared in conformance with §
515 153.049 and with special provisions, general regulations, and exceptions and
516 modifications of this chapter, except that the following sections, upon request, may
517 be modified by the Planning Board: § 153.069(G) (Minimum curve radius), §
518 153.069(H) (Intersections), § 153.075 (Right-of-way access), § 153.079(A) (Lot
519 dimensions) and § 153.079(D) (Lot configuration and frontage). In such cases, the
520 Planning Board may use discretion in applying subdivision standards.

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

522 **§ 153.049 PROCEDURE FOR REVIEW OF MAJOR SUBDIVISIONS.**

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

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

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

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

543 (2) The site analysis sketch shall be prepared based on aerial
544 photography, visual observations and an on-site inspection of the tract. The site
545 analysis sketch need not be professionally prepared. However, it shall be at a scale
546 that is clearly legible and provides sufficient detail to describe the general location of
547 proposed development and the stated features for discussion purposes. It is not

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548 necessary at the pre-application conference to have detailed plans with described lots
549 and rights-of-way. The conference is intended for the free exchange of information
550 between the applicant and the Subdivision Administrator and to explore how the
551 applicant intends to design the development, what density levels are contemplated
552 and what areas are proposed for preservation, and the like, before a great deal of time
553 and expense is expended on subdivision design.

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

558 (B) *Master plan submission.* A master plan developed in conformance
559 with Appendix 4, shall be submitted to the Planning Board through the Subdivision
560 Administrator for review and approval for any major subdivision at least 30 days
561 prior to the date of the regularly scheduled meeting of the Planning Board. The
562 purpose of the master plan is to present the development concept for the entire
563 project. The master plan is intended to provide general information about the
564 proposed development to allow for an assessment of its impact on the orderly growth
565 and development of the town, environmental quality, land values, natural features
566 identified on the site analysis sketch and the town's and governmental services. The
567 applicant shall submit [three \(3\)](#) full-sized copies and [one \(1\)](#) reduced-sized copy of
568 the master plan, all at a scale appropriate to clearly depict the property. If the
569 reduced-sized plan is larger than 11 inches by 17 inches, at least 10 copies shall be
570 submitted. The master plan may consist of multiple sheets, if needed. The Subdivision
571 Administrator may, upon receipt of the master plan, forward a copy to any review
572 agency for information purposes or for comment. Applicants proposing single section
573 or phase subdivisions may submit a combined master plan and development plan

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574 ("master/development plan") that shall be prepared in conformance with this
575 chapter and the requirements of a development plan, as enumerated in Appendix 5.
576 If during the development of the project, the master plan is revised to affect any of the
577 following: increase the number of building lots to be created or units to be
578 constructed; create a substantive change in the subdivision configuration, road
579 layout, and the like; substantially change the use of any portion of the tract; develop
580 or build in areas that were identified as features in the site analysis sketch (see
581 division (A) above) and that were identified in the master plan as open spaces or
582 protected areas, the applicant shall then submit a revised master plan for Planning
583 Board review and approval in accordance with this section.

584 (C) *Development plan submission and review.*

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

592 (2) The development plan may be submitted for the entire
593 subdivision or any section thereof Application shall be made and submitted to the
594 Subdivision Administrator at least 30 days prior to the date of a regularly scheduled
595 meeting of the Planning Board. The application, including all drawings, fees and
596 attachments, shall be submitted at [one \(1\)](#) time to the Subdivision Administrator. The
597 applicant shall submit [three \(3\)](#) full-sized copies and [one \(1\)](#) reduced-sized copy of
598 the development plan, all at a scale appropriate to clearly depict the property. If the
599 reduced-sized plan is larger than 11 inches by 17 inches, at least 10 copies shall be

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600 submitted. The development plan may consist of multiple sheets, if needed. Formal
601 review of the subdivision shall not begin until the Administrator has verified that the
602 application is complete. The verification should, when possible, be made within [two](#)
603 [\(2\)](#) business days of its receipt. The Subdivision Administrator shall notify the
604 applicant, in writing, of the application's status and the date of the Planning Board's
605 first consideration of the application.

606 (3) The Subdivision Administrator shall review the application with
607 regard to all applicable standards and conformity to this chapter. The Subdivision
608 Administrator shall submit to the Planning Board a summary of findings along with
609 comments from review agencies. A copy of the findings shall be given to the applicant
610 prior to the Planning Board's review. The Planning Board shall have a maximum of
611 60 days from the date of its first consideration of the plan within which to take action.
612 In the opinion of the Planning Board, if a development plan application is incomplete,
613 the Planning Board may return the application to the applicant identifying the specific
614 omissions, without invoking the 60 day action requirement. The Planning Board may
615 take the following actions: approve a development plan as submitted; or approve the
616 plan with conditions; or deny the plan. The Subdivision Administrator shall, within
617 10 days after Planning Board review, notify the applicant, in writing, of the Planning
618 Board's action and any conditions imposed by the Board. Unless otherwise stated by
619 the Planning Board, any conditions of development plan approval must be satisfied
620 within the time specified by the Planning Board. If the conditions on the development
621 plan are accepted by the applicant, the development plan shall be approved and the
622 conditions shall be put in writing and become binding. Failure to comply with any
623 conditions of approval set by the Planning Board, including failure to meet deadlines,
624 shall result in the development plan approval becoming null and void.

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625 (4) The applicant may, only upon receipt of approval of the
626 development plan from the Planning Board, proceed with the establishment of
627 erosion and sedimentation control measures, clearing and other land disturbing and
628 improvement activities associated with the project. Development plan approval shall
629 be valid for two (2) years, and the approval shall be annotated on the plan itself and
630 certified by the Subdivision Administrator. The Planning Board may, for just cause,
631 grant extensions of development plan approval for a maximum of (1) additional year.
632 The plan shall have the date of approval and the date of written notification to the
633 owner or owner's agent specifying the conditions, if any, of the approval. Where the
634 conditions involve the redesign of the plan, annotations shall be made on the "revised
635 development plan" only, and approval shall not be effective until the plan is certified
636 by the Subdivision Administrator. Following development plan approval, any
637 substantive changes to the plan such as those due to site conditions must be approved
638 by the Planning Board. The changes should be submitted to the Subdivision
639 Administrator on a plan titled "Revised development plan." Incidental changes may
640 be approved by the Subdivision Administrator as long as the changes do not
641 constitute a substantial deviation from the approved master plan.

642 (D) Final plat *submission and review*. A final plat, developed in
643 conformance with Appendix 7, shall be submitted to the Subdivision Administrator
644 with the required forms and applicable fees. The final plat may include the entire
645 subdivision or any section thereof. The Subdivision Administrator may approve a plat
646 for fewer than the number of lots approved but a surcharge may be assessed. The
647 Subdivision Administrator shall review the final plat for conformance with all
648 applicable standards and conformance to the approved development plan. The final
649 plat may be approved administratively if the plan meets all requirements of the
650 ordinance and satisfies all conditions imposed by the Planning Board. If the final plat

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651 is not administratively approved, it must be submitted to the Planning Board for
652 approval. The submission must be made to the Subdivision Administrator 15 days
653 prior to the regularly scheduled meeting of the Planning Board. Upon approval, and
654 before any lots are transferred, the applicant shall record the final plat at the office of
655 the Henderson County Register of Deeds. Incidental changes to the final plat which do
656 not in any way affect the character of the development may be submitted prior to or
657 after recordation and may be approved for ~~rerecordation~~[recordation](#) by the
658 Subdivision Administrator. No lots governed by this chapter may be sold or conveyed
659 until a final plat is approved and recorded in the office of the Register of Deeds of
660 Henderson County.

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

662 **MINIMUM DESIGN AND CONSTRUCTION STANDARDS FOR**
663 **MAJOR SUBDIVISIONS**

664 **§ 153.065 GENERAL.**

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

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

669 **§ 153.066 [RESERVED]**

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

671 **§ 153.067 SEDIMENTATION AND EROSION CONTROL PLAN.**

672 Any subdivision of land regulated by the terms of this chapter shall submit to
673 the Subdivision Administrator a written notice from the NCDENR, Land Quality
674 Section, verifying that a soil erosion and sedimentation control plan has been

675 received or a written notice from a professional land surveyor, engineer, landscape
676 architect, architect, or professional planner certifying that no plan is required. The
677 plans are required anytime [one \(1\)](#) acre or more of land is disturbed.
678 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

679 **§ 153.068 WATER SUPPLY AND SEWER SYSTEM REQUIRED.**

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

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

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

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

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

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

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

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

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

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

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

722 (3) Exceptions to this provision may be allowed on the basis of
723 terrain, availability of acquiring easements, denial of allocation by the public utility,
724 insufficient capacity of the public system or other circumstances which are unusual
725 or unique to this site. Requests for exceptions must be made, in writing, to the

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726 Subdivision Administrator who may require that such requests be supported by a
727 professional engineer's review of the subdivision plans and planned route of the
728 utility extension. If the Subdivision Administrator determines that it would not be
729 economically feasible for a subdivision to be connected to a public water or sewer
730 system, another system may be used, subject to approval by the appropriate agencies.

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

739 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
740 2007)

741 **§ 153.069 ROADS IN GENERAL.**

742 If the tract to be subdivided is located on both sides of an existing, recorded
743 private right-of-way that contains an existing private road, the applicant shall be
744 required to upgrade the portions of the existing private road which are contained on
745 the tract that is being subdivided to meet the road standards found in this chapter. It
746 should be understood that all roads proposed to be public must originate as private
747 roads until there is formal dedication and acceptance by the state or a municipality.
748 All roads proposed to be private may, if designed and constructed to public standards
749 and dedicated by those with the authority to do so, eventually become public. The
750 applicant shall determine at the time of application if the subdivision roads are to be

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751 public, private or a combination of both types. The designation shall be subsequently
752 noted on final subdivision plats. The applicant for a commercial or industrial
753 subdivision shall provide roads constructed at no less than state road standards for
754 public residential collector roads, regardless of whether the roads are proposed to be
755 public or private.

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

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

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

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776 roads indicated on this final plat need not meet the requirements of the North
777 Carolina Department of Transportation for acceptance into the state road system.

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

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

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

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

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

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

800 (2) **PRIVATE LOCAL RESIDENTIAL SUBDIVISION ROAD** is a road or
801 group of roads which abuts less than 25 residential lots or serves less than 25 existing

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802 or proposed residential dwelling units and does not connect thoroughfares. (NOTE:
803 See Table 1, "Local" column.)

804 (3) ***PRIVATE LIMITED LOCAL RESIDENTIAL SUBDIVISION ROAD*** is
805 a road which abuts no more than [three \(3\)](#) residential lots, each containing or to
806 contain no more than [one \(1\)](#) existing or proposed residential dwelling unit and its
807 associated driveway and which does not connect thoroughfares. (NOTE: See Table 1,
808 "Limited Local" column.) ~~Only 1 above provides any different definition than §~~
809 ~~153.026 but the repetition could create confusion. — I suggest taking the substance of~~
810 ~~1 and adding it to the definition of private residential collector road in § 153.026.~~
811 ~~This paragraph should simply refer to those definitions.~~

TABLE 1			
<i>Road Classification</i>			
Item	Collector	Local	Limited Local
Number of residential units served	25 +	1 to 24 (1)	1 to 3 (1)
<i>Right-of-way width</i>			
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)
<i>Maximum grade</i>			

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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)

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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 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.)

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813 Definitions:

814 ABC - Aggregate base course

815 I-2 - Asphalt

816 BST - Bituminous surface treatment (tar and gravel)

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

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

830 (F) Road *construction*. All roads must be constructed with suitable stone
831 and compacted properly. Used asphalt is unacceptable as a base course. The subbase
832 must be of suitable soil capable of supporting the road above. The road should be built
833 so that water will drain from the road surface into side ditches. Because of the
834 difficulty of operating vehicles on steep grades and the high potential for erosion,
835 where possible, roads should be constructed along the contour of the land. No stone-
836 based road may exceed the following grades: 15% local residential road and 12%
837 collector, and no paved road may exceed 18% and 16%, respectively. If combination
838 paved and stone-based road sections are proposed, the paved sections must extend

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839 50 feet from any point a road grade exceeds the minimum for a stone-based road. The
840 Subdivision Administrator may require that a professional engineer or professional
841 land surveyor certify on the final plat that no portion of the road(s) have grades that
842 exceed maximum allowable grade as defined herein or submit a final as-built graded
843 center line profile showing grade and alignment for all roads.

844 (G) *Minimum curve radius.* Where practical, roads shall be centered in
845 the road right-of-way. The minimum curve radius (the distance measured from the
846 centerline of the road to a fixed point inside the curve) shall be no less than 90 feet
847 except as provided below. The right-of-way must include sufficient width for the
848 travelway and the necessary shoulders, ditches and slopes. Where the existing cross
849 slope on private limited local residential subdivision roads or private local residential
850 subdivision roads is 15% or greater, a minimum centerline radius of 60 feet shall be
851 permitted. Where the existing cross slope on private residential collector roads is
852 15% or greater, a minimum centerline radius of 80 feet shall be permitted. Curve radii
853 must be noted on development plans.

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

863 (I) *Dead ends, culs-de-sac and turnarounds.* All roads or sections thereof
864 with dead-ends or culs-de-sac should not exceed 2,500 feet in length. Loop roads

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865 should be encouraged where possible in lieu of culs-de-sac. The Planning Board may
866 require the installation of a temporary turnaround at the end of a phased project or a
867 partial turnaround along any road that exceeds 1,500 feet in length. Vehicle
868 turnaround areas shall be provided at the end of all dead-end roads that exceed 300
869 feet. The required turnaround on a dead-end road shall have a roadway radius of not
870 less than 35 feet. Stub roads shall be designed in locations which will permit the
871 future extension of subdivision roads.

872 (J) Bridges.

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

885 (2) Bridges *on private roads in residential* subdivisions. If bridges on
886 private roads in residential subdivisions are proposed, the applicant must submit a
887 copy of bridge plans showing certification from a registered professional engineer
888 indicating that the bridge plans meet state road standards for public road bridges for
889 drainage, hydraulics and minimum live load. Bridges proposed for private roads shall
890 comply with state road standards for public road bridges for drainage, hydraulics and

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

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

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

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917 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
918 2007; Am. Ord. 00066, passed 4-28-2011)

919 **§ 153.070 SHOULDER STABILIZATION.**

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

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

925 **§ 153.071 ROAD NAME APPROVAL.**

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

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

936 **§ 153.072 SUBDIVISION NAMES AND NAME SIGNS.**

937 All major subdivisions may provide for, at the primary entrance, a subdivision
938 name sign to conform with Henderson County sign standards. The signs should be
939 located in dedicated sign easements, which must be shown on the final plat. The name

940 of a subdivision shall not duplicate a name that is identical to or phonetically similar
941 to any other subdivision or named community in Henderson County.
942 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

943 **§ 153.073 ROAD NAMES SIGNS AND REGULATORY SIGNS.**

944 Each subdivision shall provide road name signs and regulatory signs (speed
945 limit signs, stop signs, and the like) in accordance with the Henderson County
946 Property Address Ordinance and with applicable federal, state and local laws, rules
947 and regulations.
948 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

949 **§ 153.074 CONFORMANCE WITH APPROVED THOROUGHFARE**
950 **PLAN.**

951 No subdivision application shall be approved unless the application preserves
952 all lands proposed as future rights-of-way for any public road as may from time to
953 time be included in an adopted official thoroughfare plan for Town of Mills River.
954 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

955 **§ 153.075 RIGHT-OF-WAY ACCESS.**

956 All subdivision lots must abut on a private or public right-of-way. The right-of-
957 way shall, for public roads, meet or exceed the minimum width specified in the state
958 road standards or, for private roads, the minimum width specified in Table 1 of §
959 153.069 and must be capable of supporting a road. The right-of-way standards apply
960 within the boundaries of the property being developed. Proposed subdivisions which
961 abut an existing or recorded public or private right-of-way which do not meet the
962 minimum width requirements of this chapter shall be required to provide additional
963 rights-of-way to conform to the ordinance standards to the maximum extent possible,

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964 as provided below. The applicant shall provide up to [half \(½\)](#) of the required right-
965 of-way measured from the center line of the existing right-of-way. If the subdivision
966 is located on both sides of the existing road right-of-way, then the full right-of-way
967 requirement shall be required. (See also § 153.069.) Access to a proposed subdivision
968 through another jurisdiction shall meet or exceed all right-of-way requirements
969 herein. Exceptions to the state road standards for right-of-way or the right-of-way
970 standards shown in Table 1, whichever is applicable, may be provided for lots in
971 conservation areas and for planned unit developments, but the exceptions must be
972 specifically approved by the Planning Board.

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

974 **§ 153.076 ROAD FRONTAGE AND EXISTING OFF-SITE ACCESS.**

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

TABLE 2	
If Road Frontage or Existing Off-Site Access ROW at the Narrowest Point is Less than 30 feet	Then, the maximum number of lots allowed is 1 lot per acre

30 feet or greater	No maximum
--------------------	------------

983

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

987 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
988 2011)

989 **§ 153.077 STORMWATER DRAINAGE.**

990 (A) All development plans shall show the general drainage patterns of all
991 areas of the subdivision. Where the drainage of the subdivision does not follow the
992 natural drainage of the property, the applicant shall design the new drainage systems,
993 including swales, ditches, pipes, culverts, detention ponds, lakes or similar devices, to
994 minimize any adverse effect on the proposed subdivision and on adjacent and
995 downstream properties. Stormwater drainage improvements shall be designed and
996 constructed to minimize erosion and downstream sedimentation, to follow natural
997 drainage where possible, to minimize flooding or standing water conditions, to
998 maintain desirable groundwater conditions and to avoid excessive stormwater
999 discharge. Points of stormwater discharge shall be within the site unless otherwise
1000 approved by the Planning Board and adjoining property owners.

1001 (B) All roads, bridges and major culverts shall be designed according to
1002 state road standards.

1003 (C) An easement shall be reserved on-site by the applicant, or otherwise
1004 provided, conforming with the lines of any drainageway into which natural runoff has
1005 been diverted. Drainage improvements, where applicable, shall be designed in
1006 accordance with state road standards.

1007 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1008 **§ 153.078 PEDESTRIAN FACILITIES.**

1009 (A) All subdivisions of 100 or more lots shall provide one linear foot of
1010 sidewalk or walking trail for every linear foot of proposed roadway.

1011 (B) Sidewalks should be at least five (5) feet in width, made with
1012 permanent weather proof material, and located in a road right of way or sidewalk
1013 easement.

1014 (C) Maintenance provisions shall be recorded in the homeowner's
1015 association covenants at the Henderson County Register of Deeds with a copy
1016 submitted for review by the Zoning Administrator prior to final plat.

1017 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
1018 2011)

1019 **§ 153.079 LOT DESIGNS.**

1020 (A) *Lot dimensions.* The lot area, width, depth, shape, orientation and
1021 building setback lines shall be reasonable for the location of the subdivision and for
1022 the type of development and use contemplated and shall be sufficient to
1023 accommodate proposed utilities. The minimum lot area, depth, width and setbacks
1024 shall comply with the district requirements of the Town of Mills River Zoning
1025 Ordinance and/or the requirements of the Henderson County Water Supply
1026 Watershed Protection Ordinance, where applicable. Lot area shall be calculated
1027 excluding road right-of-way.

1028 (B) *Special use lots and common areas.* Special use lots that are not
1029 intended for sale and have restricted use such as entrance sign lots, common area,
1030 recreation areas, water tank or pump station sites, and the like, may be exempted for

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1031 the purpose of calculating the number of lots in a subdivision. Proposed structures on
1032 the lots must, however, meet any applicable zoning or watershed requirements. The
1033 special use lots must be clearly identified for their designated use on the development
1034 plan and the final plat.

1035 (C) *Future development.* Development plans and master plans should be
1036 drawn to show all short-term and long-term plans of the applicant, including the
1037 general location of roads, lots and other features. It is expressly acknowledged that
1038 long-term plans are subject to change; however, to the extent that an applicant has
1039 the long-term plans, they should be disclosed. Areas for which no future phases are
1040 known or disclosed should be labeled as "future development" on the master plans
1041 and development plans for major subdivisions. Subdivision of any "future
1042 development" areas on minor subdivisions must meet § 153.046 of the Subdivision
1043 Ordinance. When any "future development" areas of major subdivisions are to be
1044 subdivided, the development must comply with this chapter, including review by
1045 Planning Board under § 153.049.

1046 (D) *Lot configuration and frontage.* Where possible, side lot lines shall be
1047 at right angles or radial to the streets on which the lots face. Flag lots or lots which
1048 only have a narrow strip of land fronting the lot on a street may be approved by the
1049 Planning Board and/or the Subdivision Administrator (only for minor subdivisions)
1050 but only under unusual circumstances. The narrowest width of any lot abutting the
1051 right-of-way will be 30 feet. The 30 foot width may be waived for family subdivisions
1052 pursuant to § 153.047. Double-fronted lots should be used only when necessary.

1053 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1054 **§ 153.080 [RESERVED].**

1055 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1056 **§ 153.081 BUFFERS FOR MAJOR SUBDIVISIONS.**

1057 (A) Buffers for major subdivision shall be planted per the criteria found in
1058 § 154.232.

1059 (B) For residential subdivisions, a buffer strip of no less than 60 feet wide
1060 is required adjacent to a street and no less than 10 feet wide is required around the
1061 perimeter of the subdivision. For street buffers, the buffer strip area can be reduced
1062 to 30 feet with an earth berm.

1063 (C) For commercial or industrial subdivisions, a buffer strip of no less than
1064 10 feet wide is required where lots back up to or are adjacent to a street or between
1065 dissimilar uses of land such as a residential area.

1066 (D) Retention of existing vegetation that would provide an equivalent
1067 buffer is encouraged. The Planning Board shall have the authority to determine if
1068 existing vegetation fulfills the intent of the buffer requirement or if additional
1069 vegetation should be planted.

1070 (E) Street and perimeter areas shall be maintained by the developer or by
1071 an owner's association.

1072 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2018-01, passed 1-12-
1073 2018)

1074 **§ 153.082 AIR QUALITY.**

1075 As required by G.S. Chapter 143, Article 21, of the North Carolina General
1076 Statutes, all subdivisions shall show proof of compliance, if applicable, with air quality
1077 guidelines established by the Division of Air Quality and NCDENR.

1078 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1079 **§ 153.083 FARMLAND PRESERVATION PROGRAM.**

1080 If the property proposed for subdivision lies within [a half \(½\)](#) mile of any land
1081 in a Farmland Preservation District, the applicant must submit an affidavit (see
1082 Appendix 11) certifying that the applicant is aware of existing Farmland Preservation
1083 Districts as identified on maps provided by the Henderson County office of the
1084 Natural Resource Conservation Service. In addition, a note on the final plat shall state
1085 that the property lies within [a \(½\)](#) mile of land in a Farmland Preservation District.
1086 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1087 **§ 153.084 [RESERVED].**

1088 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1089 **§ 153.085 MISCELLANEOUS ~~ADVISORY~~ PROVISIONS.**

1090 The following provisions ~~should be reviewed and~~[shall be](#) followed, if
1091 applicable, by the applicant:

1092 (A) *Stream* setbacks. A minimum 30 foot setback for buildings or other
1093 structures, excluding bridges or culverts, is required along all perennial streams
1094 indicated on the most recent versions of USGS § 1:24,000 (7.5 minute) scale
1095 topographic maps. These maps are available for inspection in the Mills River Town
1096 Hall. The minimum 30 foot setback from perennial streams, where applicable, must
1097 be noted on development plans and final plats.

1098 (B) *Utility* easements. Utility easements are recommended and should
1099 be provided, preferably centered on rear or side lot lines, and should be at least 20
1100 feet in total width. The applicant should discuss easement locations with the
1101 appropriate utility agency.

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1102 (C) *Maintenance of buffers.* All buffer plant materials should be protected
1103 and maintained in a healthy and growing condition. Unhealthy or dead plants should
1104 be replaced with similar plants within 1 growing season.

1105 (D) *Street disclosure requirements.* North Carolina law, under G.S. § 136-
1106 102.6, requires that a developer make certain disclosures to each and every buyer of
1107 property, including whether the road serving the buyer's lot is public or private, who
1108 owns the road, how the road will be maintained and who shall be responsible for the
1109 maintenance. The law further requires certain road maintenance agreements be
1110 executed. A summary of G.S. § 136-102.6 is included in Appendix 9.

1111 (E) *Soils map.* Where subdivisions are proposed, with an average lot area
1112 of less than [one \(1\)](#) acre, and no public or community sewer is available, the applicant
1113 should review a soils map of the property and be knowledgeable of the suitability of
1114 ground absorption systems for his or her development.

1115 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1116 **SUBDIVISION IMPROVEMENT GUARANTEES**

1117 **§ 153.100 GENERAL.**

1118 [In accordance with 160D-804.1](#) ~~Where~~[when](#) the required improvements have
1119 not been completed, prior to the submission of the final plat for approval, the
1120 approval of the plat shall be subject to the applicant guaranteeing the installation of
1121 the improvements within a [two \(2\)](#) year period of time [with extensions possible](#)
1122 [within a timeframe established by the Subdivision Administrator](#). Plans,
1123 specifications, quantities, unit costs and estimated total costs shall be provided by the
1124 applicant to the Subdivision Administrator together with any required fee and a
1125 schedule indicating time of initiation and completion of the work, as a whole or in
1126 stages (see improvement guarantees application in Appendix 8)-. Estimates must be

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1127 prepared by a professional engineer, professional land surveyor or landscape
1128 architect at the applicant's expense. The applicant shall guarantee the installation of
1129 the improvements by either of the methods described below:

1130 (A) Filing a performance or surety bond ~~or~~, an irrevocable standby letter of
1131 credit, [or other form of guarantee that provides equivalent security to a surety bond](#)
1132 [or letter of credit](#) in the amount of 125% of the cost to complete the work as
1133 determined by cost estimates. Portions of the guarantee may be by authorization of
1134 the Subdivision Administrator released as work progresses.

1135 (B) Depositing or placing in escrow a certified check or cash in an amount
1136 equal to 125% of the cost to complete the work as determined by cost estimates
1137 amount. Portions of the guarantee may be released by authorization of the
1138 Subdivision Administrator as work progresses.

1139 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1140 **§ 153.101 AMOUNT AND TERMS OF GUARANTEE; TIME LIMITS.**

1141 All guarantees shall be accompanied by a written agreement (performance
1142 agreement) specifying the terms and the amount of the guarantee. Following receipt
1143 of an improvement guarantees application, the Subdivision Administrator shall
1144 prepare formal recommendations as to amount and terms of the guarantees for
1145 improvements, including time of initiation and completion of the work, to the Mills
1146 River Town Council for approval. The Town Council may, upon proof of difficulty,
1147 grant extension of completion dates set forth in its approval for a maximum of [one](#)
1148 [\(1\)](#) additional year, but the time between initiation and the completion of the
1149 required improvements shall not exceed [two \(2\)](#) years. Where the cost of
1150 uncompleted work is determined in the manner above to be less than \$10,000, the
1151 Subdivision Administrator may administratively approve security guarantees as

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1152 provided for in this section. The amount of the guarantee shall be sufficient to provide
1153 adequate funds to the Town of Mills River to ensure, in the case of default, the
1154 installation of all required improvements uncompleted at the time of default. All
1155 guarantees for improvements shall comply with applicable statutory requirements
1156 and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of
1157 execution. Guarantees employing lending institutions shall require that those
1158 banking corporations be licensed to do business in North Carolina.
1159 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1160 **APPLICATION, ENFORCEMENT AND LEGAL STATUS**
1161 **PROVISIONS**

1162 **§ 153.115 DESIGNATION OF AGENT.**

1163 The applicant for any subdivision review or approval procedure may submit,
1164 along with any initial application, an affidavit (see Appendix 2) specifying an agent
1165 who may represent the owner in all matters.
1166 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1167 **§ 153.116 FEES.**

1168 The applicant shall pay plan and plat review fees and, if applicable, an
1169 extension fee in an amount as may be set from time to time by the Mills River Town
1170 Council and posted at the Town Hall.
1171 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1172 **§ 153.117 APPROVAL PREREQUISITE TO PLAT RECORDATION.**

1173 Pursuant to G.S. § 160~~DA-372804~~, and except where otherwise provided in
1174 this chapter, no final plat of a subdivision within the jurisdiction of this chapter shall
1175 be recorded by the Register of Deeds of Henderson County until it has been approved

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1176 by the Subdivision Administrator, the Mills River Planning Board or as provided
1177 herein. The Register of Deeds shall not file or record a plat of the subdivision of land,
1178 any part of which is located within the jurisdiction of this chapter that has not been
1179 approved in accordance with these provisions. In addition to meeting the
1180 requirements of this chapter, subdivisions proposed within designated watershed
1181 areas shall be subject to the provisions of the Water Supply Watershed Protection
1182 Ordinance for Henderson County, and the Watershed Administrator or his or her
1183 designee shall certify on the plats that the subdivision complies with the provisions
1184 of the Water Supply Watershed Protection Ordinance. Subdivisions proposed within
1185 zoned areas of Mills River shall be subject to the appropriate zoning ordinance, and
1186 the Administrator of the ordinance shall certify that the subdivision complies with
1187 the applicable zoning regulations.

1188 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1189 **§ 153.118 CERTIFICATION OF EXEMPTIONS.**

1190 (A) Any plat of property exempted from the regulations of this chapter
1191 shall be certified by the Subdivision Administrator or a professional land surveyor as
1192 exempt, prior to the plat being recorded. The plat is not exempt from the Zoning,
1193 Water Supply Watershed or any other local ordinances. Pursuant to G.S. § 47-30(f)11
1194 (Duty of the Surveyor), a professional land surveyor may certify that the plat
1195 represents an exception to the definition of subdivision and is not subject to the
1196 provisions of the Subdivision Ordinance. The plat may be recorded without being
1197 certified by the Subdivision Administrator. Any exemption from the regulations of
1198 this chapter shall not be deemed an exemption from any other applicable ordinance.

1199 (B) Any court-ordered subdivision should comply, to the maximum extent
1200 possible, with the provisions of this chapter.

1201 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1202 **§ 153.119 PLAT APPROVAL REQUIRED FOR BUILDING PERMIT.**

1203 No building permit may be issued for any construction on any proposed lot
1204 shown on a development plan until a final plat has been approved and recorded,
1205 except that a building permit may be issued for [one \(1\)](#) structure on [one \(1\)](#) lot shown
1206 on any approved development plan prior to recordation of a final plat. The Henderson
1207 County Inspections Department shall deny building permits for subdivision lots
1208 created in violation with the terms and conditions of this chapter.

1209 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1210 **§ 153.120 LAND AUCTIONS.**

1211 Where application for major or minor subdivisions is made with the intent that
1212 the divided property will be sold at land auction, the final plat shall clearly state the
1213 following: "The property herein is to be sold by auction. Any further subdivisions
1214 must meet applicable standards set forth in the Mills River Subdivision Ordinance."
1215 In addition, restrictive covenants regarding road maintenance for any dedicated
1216 rights-of-way must be approved in advance by the Planning Board and recorded prior
1217 to the auction.

1218 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1219 **§ 153.121 [RESERVED].**

1220 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1221 **§ 153.122 VARIANCES.**

1222 The Mills River Town Council may authorize a technical variance from these
1223 regulations. An application for a variance must be made in conjunction with an

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1224 application for subdivision approval. In considering a request for a variance, the Mills
1225 River Town Council shall determine that an undue hardship may result from strict
1226 compliance with the terms of this chapter. The Council shall consider the physical
1227 characteristics of the land, adjacent land uses and the intensity of the proposed
1228 development. In determining an undue hardship, the Council shall consider unique
1229 conditions peculiar to the site and design flexibility to preserve and protect the site's
1230 natural features. The variance shall constitute the minimum variance necessary to
1231 mitigate the hardship and shall not violate the intent of this chapter, nor shall it
1232 constitute a detriment to the health, safety and welfare of other properties within and
1233 adjacent to the subdivision. Any modifications thus authorized must be entered, in
1234 writing, in the minutes of the Mills River Town Council and on the face of the final
1235 plat. In addition, a written decision must be prepared and delivered to the applicant
1236 stating the reasons on which the departure from the terms of the ordinance was
1237 justified.

1238 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1239 **§ 153.123 LIMITATIONS ON APPLICATIONS PENDING.**

1240 Only one (1) application for a subdivision may be reviewed by any board or
1241 agency at any one time on any of the original property boundaries.

1242 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1243 **§ 153.124 AMENDMENTS.**

1244 (A) The Mills River Town Council may from time to time amend the terms
1245 of this chapter, but no amendment shall become effective unless it shall have been
1246 proposed by or shall have been submitted to the Planning Board for review and
1247 recommendation.

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1248 (B) No amendment shall be adopted by the Mills River Town Council until
1249 it has held a ~~public~~ legislative hearing on the amendment. Notice of the hearing shall
1250 be published in a newspaper of general circulation in the county at least once a week
1251 for two (2) successive calendar weeks before the hearing. The initial notice shall
1252 appear not less than 10 days nor more than 25 days before the hearing date. In
1253 computing the period, the date of publication is not to be counted, but the date of the
1254 hearing shall be counted.

1255 (C) Any modifications to the appendixes of this chapter made necessary by
1256 changes in local, state or federal laws may be made administratively by the
1257 Subdivision Administrator, as necessary, without a public hearing being required.
1258 The applications, forms and appendixes attached to this chapter may be modified by
1259 the Subdivision Administrator, with Planning Board approval.

1260 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1261 **§ 153.125 APPEALS.**

1262 Appeals from decisions of the Subdivision Administrator shall be taken to the
1263 Mills River Board of Adjustment ~~the Planning Board; appeals from the decisions of~~
1264 ~~the Planning Board shall be taken to the Mills River Town Council~~ through an
1265 evidentiary hearing process; appeals from decisions of the Town Council shall be
1266 taken to the appropriate court of record as provided by law. Appeals must be filed, in
1267 writing, within 30 days from the date of the respective order or decision is issued.

1268 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1269 **§ 153.126 [RESERVED].**

1270 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1271 **§ 153.127 EFFECTIVE DATE.**

1272 This chapter shall take effect and be in force from and after 12:01 a.m. on
1273 March 1, 2004.

1274 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1275 **§ 153.999 PENALTY.**

1276 The construction or development of a subdivision in violation of this chapter,
1277 or failure to comply with any of the requirements of this chapter or with any
1278 application or plan submitted pursuant to this chapter may subject the applicant
1279 and/or the owner/developer to revocation of plan or plat approval and the penalties
1280 and enforcement provisions pursuant to G.S. § 160A-175, including, but not limited
1281 to, the following:

1282 (A) *Equitable remedies.* This chapter may be enforced by equitable
1283 remedies, and any unlawful condition existing in violation of this chapter may be
1284 enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

1285 (1) *Injunction.* Where necessary to effectuate compliance with this
1286 chapter, the Ordinance Administrator or the other official charged with the
1287 responsibility of enforcing the Town of Mills River Ordinances may institute an action
1288 in a court of competent jurisdiction seeking an injunction against the further violation
1289 of this chapter. The action may be joined with a civil action instituted to collect
1290 accrued civil penalties in accordance with the provisions herein.

1291 (2) *Order of abatement.* Where necessary to abate a condition
1292 existing upon land in violation of this chapter or a use made of land in violation of this
1293 chapter, the Ordinance Administrator or the other official charged with the
1294 responsibility of enforcing the Town of Mills River Ordinances may institute an action
1295 in a court of competent jurisdiction seeking an order of abatement of the use or

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1296 condition of land in violation of this chapter. The action may be joined to an action for
1297 an injunction and/or an action to recover civil penalties accrued against an individual
1298 for the use or condition of land in violation of this chapter.

1299 (3) *Other equitable remedies.* This chapter may be enforced by
1300 any other equitable remedy which a court of competent jurisdiction deems just and
1301 proper.

1302 (B) *Civil penalties.* Any individual who is found in violation of this
1303 chapter may be subject to a civil penalty ~~of \$50 or other amount as established by~~
1304 Town Council in the most recent version of the annual fee schedule. Each day's
1305 violation shall be treated as a separate offense.

1306 (1) ~~Compliance order~~Notice of Violation.

1307 (a) Upon making a determination that a person is in
1308 violation of this chapter, the Ordinance Administrator or the other official charged
1309 with the responsibility of enforcing the Town of Mills River Ordinances shall issue a
1310 ~~compliance order~~notice of violation to the owner of the property and/or
1311 owner/developer of the property in violation of this chapter in accordance with §
1312 154.999. ~~The compliance order shall notify the violator of the violation in writing.~~ The
1313 ~~order notice~~ shall identify the circumstances giving rise to the violation, including the
1314 times, dates and places of the violation. The ~~notification notice~~ shall further identify
1315 the action which is necessary to comply with this chapter. The ~~notification notice~~ shall
1316 state that if the violator does not comply within a reasonable time, not to exceed 15
1317 days, the individual will be subjected to a civil penalty. If circumstances exist such
1318 that the violator cannot come into compliance within 15 days, the Ordinance
1319 Administrator or the other official charged with the responsibility of enforcing the
1320 Town of Mills River Ordinances may grant an extension of time after which the
1321 individual will be subjected to a criminal penalty commensurate with the magnitude

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1322 of the violation. The ~~compliance order~~notice of violation shall further state that
1323 failure to comply with the terms of the notice of violation~~compliance order~~ will
1324 subject the violator to a civil penalty and shall further state the amount of the civil
1325 penalty.

1326 (b) Failure to comply with the terms of a ~~compliance~~
1327 ~~order~~notice of violation issued by the Ordinance Administrator or the other official
1328 charged with the responsibility of enforcing the Town of Mills River Ordinances
1329 within the time stated in the order shall subject the violator to a civil penalty of \$50
1330 or other amount as established by Town Council. Each day that the violation
1331 continues shall be considered a separate offense, and the violator may be subject to
1332 an additional civil penalty for each separate offense.

1333 (2) *Civil action.* When necessary to collect any civil penalty or
1334 accrued civil penalties, a civil action may be instituted against an individual for the
1335 collection of all accrued penalties by the Ordinance Administrator or the other official
1336 charged with the responsibility of enforcing the Town of Mills River Ordinances.

1337 (C) *Criminal penalties.* Unless otherwise provided by this chapter or
1338 other applicable law, violation of this chapter shall constitute a Class 3 misdemeanor
1339 punishable by a fine not to exceed \$500. Each day's violation shall be treated as a
1340 separate offense.

1341 (1) *Warning ticket.* Upon the initial violation of a particular
1342 provision of this chapter, an individual may be issued a warning ticketor notice of
1343 violation. The warning ticket shall identify the particular practice which is in violation
1344 of this chapter and shall state the time, date and place of the violation. The warning
1345 ticket shall further state that if the individual commits further similar violations
1346 within the 6 months following the date of the warning ticket, the Ordinance
1347 Administrator or the other official charged with the responsibility of enforcing the

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1348 Town of Mills River Ordinances may issue a notice of violation or cause a warrant to
1349 be issued for the individual's arrest.

1350 (2) *Warrant.* If an individual violates this chapter within the 6
1351 months following the issuance of a warning ticket or notice of violation in a manner
1352 that is similar to the violation specified in the warning ticket or notice of violation, the
1353 Ordinance Administrator or the other official charged with the responsibility of
1354 enforcing the Town of Mills River Ordinances may cause a warrant to be issued for
1355 the arrest of the individual.

1356 (3) *Issue.* Notwithstanding any other provisions of this chapter,
1357 the Ordinance Administrator or the other official charged with the responsibility of
1358 enforcing the Town of Mills River Ordinances may issue a notice of violation or cause
1359 a warrant to be issued without having first issued a warning ticket where he or she
1360 deems it necessary to effectively enforce the terms of this chapter.

1361 (D) Revocation of Development Approvals. In addition to initiation of
1362 enforcement actions under 160D-404, development approvals may be revoked by
1363 notifying the holder in writing stating the reason for the revocation. The Town shall
1364 follow the same development review and approval process required for issuance of
1365 the development approval, including any required notice or hearing, in the review
1366 and approval of any revocation of that approval. Development approvals shall be
1367 revoked for any substantial departure from the approved application, plans, or
1368 specifications; for refusal or failure to comply with the requirements of any applicable
1369 element of this chapter; or for false statements or misrepresentations made in
1370 securing the approval. Any development approval mistakenly issued in violation of
1371 an applicable State law or local ordinance may also be revoked. The revocation of a
1372 development approval by a staff member may be appealed pursuant to G.S. § 160D-
1373 405.

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1374

1375 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

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1402 Fee: \$ _____ Paid

1403 Method

1404 I certify that the information shown above is true and accurate and is in conformance
1405 with the Town of Mills River Subdivision Ordinance.

1406 APPLICANT (OWNER OR AGENT) DATE

1407 *****

1408 TOWN USE ONLY

1409 Received by:

1410 Date:

1411 Fee Paid: Received by:

1412 Date:

1413 Development Plan Approval / Conditions

1414 Final Plat Approval:

1415 Plat Recorded

1416 **APPENDIX 2: APPOINTMENT OF AGENT FORM (OPTIONAL)**

1417 I _____ owner of property located

1418 on _____,

1419 (name)

1420 _____ (street name)

1421 recorded in _____ and having a parcel

1422 identification number (PIN) of _____,

1423 (deed book / page)

1424 located in the Town of Mills River, North Carolina, do hereby appoint

1425

1426

1427 _____ (agent's name)

1428 to represent me in an application for subdivision of land and authorize him/her to act

1429 as my agent in all matters, formal and informal except as stated herein, and authorize

1430 him / her to receive all official correspondence. I however understand that as

1431 the listed property owner, I must sign all affidavits and statements required by this

1432 Ordinance.

1433 Property Owner

1434 _____ date

1435 *****

1436 TOWN USE ONLY

1437 Received by:

1438 Date:

1439 Comments:

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1466 Do private roads meet minimum private road
1467 standards?

1468 Has the applicant familiarized himself with street
1469 disclosure requirements?

1470 Is a road plan submitted showing location and
1471 type construction?

1472 Is the plan in conformance with latest approved
1473 Thoroughfare Plan?

1474 Does existing off-site access meet Town
1475 standards?

1476 Does the development meet the minimum access
1477 requirements?

1478 Are minimum setbacks shown on the plats?

1479 Have road and drainage improvements be
1480 completed?

1481 Will improvement guarantees be provided in lieu
1482 of completing road and drainage improvements?

1483 Is the application form signed by the property
1484 owner or agent?

1485 Are application fees included?

1486 Are any other attachments included? If so,
1487 please list below:

1488 To whom should all official correspondence regarding review of this subdivision be
1489 sent:

1490 Application completed and submitted by:

1491 Date:

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1492

1493

TOWN USE ONLY

1494

Received by:

1495

Date:

1496

Comments:

1497

1498

1499

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

1500

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1501 **APPENDIX 4: MASTER PLAN REQUIREMENTS**

1502 **Town of Mills River**

1503 **MASTER PLAN REQUIREMENTS**

1504 A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or
1505 Professional Planner may prepare the Master Plan. The following information shall
1506 be shown on the plan for information and discussion purposes unless not applicable
1507 or specifically waived by the Subdivision Administrator*. **If the Master Plan does**
1508 **not contain the required items by the submittal deadline, the application will**
1509 **be considered incomplete and the plan will not be presented to the** Planning
1510 Board. Combined Master and Development Plans must be prepared in accordance
1511 with Appendix 5 [per Section § 153.049(B)]. For each item below, please indicate
1512 whether the requested information has been provided

1513 **General Legend**

1514 **Yes No**

1515 Scale (written and graphic): Scale for full-sized
1516 and reduced copies should be appropriate to clearly depict
1517 property

1518 North arrow

1519 Owner's and applicant's name(s) and address(es)

1520 Vicinity map

1521 If no was checked for any above, please explain:

1522

1523 **Title Block**

1524 **Yes No**

1525 Project name

1526 Title of map (must state "Master Plan")

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1527

Date

1528

Name, title, address, and phone number of

1529

individual, firm, or corporation preparing the plan If no was

1530

checked for any above, please explain:

1531 **Plan Details**

1532

Yes

No

1533

Contours at maximum of twenty-foot (20')

1534

intervals

1535

Location of existing ponds, lakes or watercourses

1536

with direction of flow

1537

Boundaries of the proposed project

1538

Approximate location of the 100-year floor

1539

hazard line, if applicable

1540

Location of existing street/roads, bridges,

1541

culverts, utilities, or other major elements affecting the

1542

property

1543

Water supply watershed boundaries, zoning

1544

district lines, fire district boundaries and municipal, county,

1545

state boundaries (except townships lines), if applicable

1546

General layout of proposed road system

1547

General lot layout

1548

Location of utility sites (if known)

1549

Names of adjoining property owners or

1550

subdivisions

1551

Proposed project phasing lines, if applicable

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1552 **Project summary containing the**
1553 **following information:**

1554 Total project area in acres
1555 Number of proposed lots/units by type
1556 Approximate length of road system (public;
1557 private)

1558 Type of Water system
1559 (public/private/individual)

1560 Type of Sewer system
1561 (public/private/individual)

1562 If no was checked for any above, please explain:

1563 **Other Master Plan Application Requirements**

1564 The following information or other items shall be provided or otherwise addressed
1565 in writing by the submittal deadline of the application for Master Plan approval unless
1566 not applicable or specifically waived by the Subdivision Administrator*, otherwise
1567 the application will be considered incomplete and will not be presented to the
1568 Planning Board.

1569 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1570 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1571 or less.

1572 **Yes No**

1573 Application Form

1574 Fee

1575 Master Plan (3 full-sized copies and 1 reduced
1576 copy per § 153.049(B))

1577

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1578 If no was checked for any above, please explain:

1579 Application completed and submitted by:

1580 Date:

1581 TOWN USE ONLY

1582 Received by:

1583 Date

1584 Received by:

1585 Date:

1586 Comments:

1587

1588

1589 (Am. Ord. 00066, passed 4-28-2011)

1590 **APPENDIX 5: DEVELOPMENT PLAN REQUIREMENTS**

1591 **Town of Mills River**

1592 **DEVELOPMENT PLAN REQUIREMENTS**

1593 A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or
1594 Professional Planner may prepare the Development Plan. The following information
1595 shall be shown on the plan for information and discussion purposes unless not
1596 applicable or specifically waived by the Subdivision Administrator*. **If the**
1597 **Development Plan does not contain the required items by the submittal**
1598 **deadline, the application will be considered incomplete and the plan will not be**
1599 **presented to the** Planning Board. Combined Master and Development Plans must be
1600 prepared in accordance with Appendix 5 [per § 153.049(B)]. For each item below,
1601 please indicate whether the requested information has been provided.

1602 **General Legend**

1603 **Yes** **No**

- 1604 Scale (written and graphic):
1605 Scale for full-sized and reduced copies should be
1606 appropriate to clearly depict property
1607 North arrow
1608 Owner's and applicant's names and addresses
1609 Legend provide appropriate symbols
1610 Vicinity map
1611 Phase map showing location of phase in the entire
1612 development (if applicable)

1613 If no was checked for any above, please explain:

1614 **Title Block**

1615 **Yes** **No**

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1616 Project name (include phase number, if
1617 applicable)

1618 Title of map (must state "Development Plan" or
1619 "Combined Master & Development Plan," as applicable)

1620 Name, address, and phone number of individual
1621 or firm preparing the various elements of the plan

1622 Date and revision date(s), if required

1623 If no was checked for any above, please explain:

1624 **Plan Details**

1625 **Yes** **No**

1626 Contours at no more than five foot (5') intervals

1627 Location of existing ponds, lakes or watercourses
1628 and directions of flow

1629 Outside boundaries of the proposed project with
1630 bearings and distances

1631 Approximate location of the 100-year flood
1632 hazard line, if applicable

1633 Location of existing roads with rights-of-way,
1634 easements, bridges, water features, culverts (showing size),
1635 utilities, structures, etc.

1636 Cross-section of typical street for each proposed
1637 road classification used (collector, local, etc.) and/or cul-de-sac
1638 with indication of design standards of paving/base to be met,
1639 road width, right-of-way width, shoulder width, cut and fill
1640 slope, and ditch slope

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- 1641 All roads or sections thereof with dead-ends or
1642 culs-de-sac no more than 2,500 feet in length
- 1643 Location of proposed streets/roads (with rights-
1644 of-way, approximate finished grades and approximate curve
1645 radii), bridges, and easements
- 1646 Proposed road(s) named and received name(s)
1647 approval from Henderson County Property Addressing and are
1648 designated as public/private
- 1649 Location of proposed ponds and lakes shown with
1650 approximate elevation, and proposed alterations to existing
1651 water courses, if applicable
- 1652 Names of adjoining property owners or
1653 subdivisions
- 1654 Proposed locations of multi-family units shown, if
1655 applicable
- 1656 Proposed lot lines and approximate length
- 1657 Proposed lot numbers shown
- 1658 Size of lots to 0.1 acres (not including road right-
1659 of-way)
- 1660 Proposed open space or common area
- 1661 Location of proposed project sign(s), if applicable
- 1662 Water supply watershed boundaries, zoning
1663 district lines, fire district lines and municipal, county, or state
1664 boundaries, if applicable

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1716 Development Plan (or combined Master and
1717 Development Plan [3 full-sized copies & 1 reduced copy per
1718 Section § 153.049(C))

1719 Where connection to a public or community
1720 water and/or sewer system is required or otherwise proposed,
1721 the applicant shall submit a letter from the appropriate review
1722 authorities for the water and/or sewer system indicating that
1723 water and/or sewer system has sufficient capacity for the
1724 proposed development.

1725 List any additional attachment(s) below: (if
1726 applicable)

1727 To whom should all official correspondence
1728 regarding review of this subdivision is sent

1729

1730 If no was checked for any above, please explain:

1731

1732 The following information shall be provided or otherwise addressed in writing by
1733 submittal deadline of the application for Development Plan approval; however, the
1734 Planning Board may conditionally approve the Development Plan subject to receipt
1735 of such information if it is not available at the time of the Planning Board review:

1736 **Yes**

No

1737 Additional information as required to adequately
1738 explain the character or services of the proposed development

1739 Approval of intermediate water and sewer
1740 systems to be used, if applicable

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1741 Final Approval of plans for proposed water and
1742 sewer systems

1743 Erosion and sedimentation control plan approval
1744 from NCDENR, evidence of submission from NCDENR, or
1745 certification that no plan is required in accordance with §
1746 153.067

1747 Any other approvals as required by Federal, State,
1748 or Local agencies

1749 Bridge design plans, if applicable

1750 Affidavit of Understanding of Farmland
1751 Preservation District (if applicable)

1752 If no was checked for any above, please explain:

1753 Submitted by:

1754 Date:

1755 *****

1756 TOWN USE ONLY

1757 Received by:

1758 Date:

1759 Comments:

1760

1761

1762 (Am. Ord. 00066, passed 4-28-2011)

1763 **APPENDIX 6: SUBDIVISION PLAN CHECKLIST FOR MAJOR**
1764 **SUBDIVISIONS**

1765 **Town of Mills River**

1766 **SUBDIVISION PLAN CHECKLIST FOR MAJOR SUBDIVISIONS**

1767 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1768 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1769 or less.

1770 Please check appropriate space. If item does not apply, mark "N/A" in the YES
1771 column. Attach this checklist to your application for Major Subdivisions being
1772 considered under § 153.049 of the Town of Mills River Subdivision Ordinance. Note
1773 : this is not a complete list of requirements; its purpose is to expedite the
1774 review process.

1775 **Name of Subdivision:**

1776 Section

1777 **Yes _____ No**

1778 Master Plan attached or on file? (3 blue line
1779 copies plus 1 reduced copy required)

1780 Development Plan attached? (3 blue line copies
1781 plus 1 reduced copy)

1782 This Development Plan includes vicinity map,
1783 contour map, drainage improvements, lot sizes, setbacks,
1784 project summary, adjacent owner's names, required R-O-W
1785 widths, road & cul-de-sac cross sections, etc.?

1786 Are streets marked "Public" or "Private" as
1787 proposed?

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1788 Have street names been approved by the
1789 Henderson County Property Address Office?

1790 Are all cul-de-sacs less than 2500 feet in length?

1791 Have drainage improvements been designed
1792 according to NCDOT standards?

1793 Do public roads meet minimum NCDOT design
1794 standards and have they been approved by NCDOT?

1795 Do private roads meet minimum private road
1796 standards?

1797 Has the applicant familiarized himself with street
1798 disclosure requirements?

1799 Is the plan in conformance with latest approved
1800 Thoroughfare Plan?

1801 Are any off-site road or utility improvements
1802 required?

1803 Does the development meet the minimum access
1804 requirements?

1805 Are proposed subdivision covenants and
1806 restrictions attached?

1807 Does the property require a US Army Corps of
1808 Engineers "Section 404" permit for filling wetlands?

1809 Is any of the property within the 100-year flood
1810 hazard area?

1811 Are any common areas marked accordingly?

1812 Are there any Farmland Preservation Districts
1813 within one half mile?

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1814 Are there any natural areas on the property, as
1815 identified in the publication titled: Preliminary Inventory
1816 of the Natural Areas of Henderson County?

1817 **Yes** _____ **No**

1818 Is a letter attached from the appropriate review
1819 authority (MDS, City of Hendersonville Sewer Dept., private
1820 sewer company, etc.) indicating that sewer is available for the
1821 project?

1822 Is a letter attached from the appropriate review
1823 authority (Hendersonville City Water Dept.) indicating that
1824 water is available for the project?

1825 Is the application form signed by the property
1826 owner or owner's agent?

1827 Are application fees included?

1828 Are any other attachments included? If so,
1829 please list below:

1830 To whom should all official correspondence regarding review of this subdivision be
1831 sent?

1832 Submitted by:

1833 Date

1834 *****

1835 *****

1836 TOWN USE ONLY

1837 *****

1838 *****

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1839 Received by

1840 Date

1841 Comments:

1842

1843

1844 (Am. Ord. 00066, passed 4-28-2011)

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1871 The accurate locations and descriptions of all
1872 monument markers and control points.

1873 The blocks numbered consecutively throughout
1874 the entire subdivision and the lots numbered consecutively
1875 throughout each block.

1876 Street names and right-of-way lines of all streets.

1877 Streets are to be designated as public or private.

1878 If private roads are shown, the plat must include a note stating: **The private roads**
1879 **indicated on this Final Plat may not meet the requirements**
1880 **of the North Carolina Department of Transportation for**
1881 **acceptance into the state road system.**

1882 The location and dimension of all rights-of-way,
1883 utility or other easements, riding trails, natural buffers,
1884 pedestrian or bicycle paths, and areas to be dedicated to public
1885 use with the purpose of each stated.

1886 All parcels proposed for either general or limited
1887 public use, such as parks, playgrounds and building sites with a
1888 statement of the purpose of each (if applicable).

1889 Farmland Preservation District note (see §
1890 153.083), if applicable

1891 If no was checked for any above, please explain:

1892 **REQUIRED CERTIFICATES**

1893 The following certificates are to appear on the Final Plat in such a manner as to ensure
1894 that the said certificate will be legible on any prints made
1895 therefrom or are to be submitted with, and recorded with the

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1896 Final Plat in accordance with the provisions of this chapter(if
1897 applicable).

1898 **Yes** **No**

1899 Certificate of Survey and Accuracy signed by the
1900 Surveyor

1901 Certificate of Compliance to Construction
1902 Standards of Public Roads by NCDOT Engineering Certificate of
1903 Compliance by the Subdivision Administrator or Planning Board
1904 as applicable

1905 Certificate from officials of other jurisdictions if
1906 the subdivision includes property that falls in multiple planning
1907 jurisdictions

1908 Certificate for Plat Review Officer

1909 Certificate of Understanding

1910 If no was checked for any above, please explain:

1911 Submitted by:

1912 Date:

1913 *****

1914 TOWN USE ONLY

1915 Received by:

1916 Date:

1917 Comments:

1918

1919

1920 (Am. Ord. 00066, passed 4-28-2011)

1921 **APPENDIX 8: APPLICATION FOR IMPROVEMENT GUARANTEES**

1922 **TOWN OF MILLS RIVER**

1923 **APPLICATION FOR IMPROVEMENT GUARANTEES**

1924 Name of Subdivision

1925 Name of Owner

1926 Address

1927 Phone:

1928 Agent Phone:

1929 Date of Preliminary Plan Approval by Planning Board

1930 Significant Conditions Imposed:

1931

1932 Type of improvement requested:

1933 Cash on Deposit (Certified Check)

1934 Bank Escrow Account

1935 Irrevocable Letter of Credit

1936 Surety Performance Bond

1937 Trust Agreement

1938 Name of bank or bonding company

1939 Amount of guarantee (including 25% overhead) \$

1940 Projected completion date

1941 Are cost estimates attached (with quantities and unit costs)? yes

1942 no

1943 Have engineering and design work been completed? complete partially

1944 complete incomplete

1945 I have read and understand all requirements stated in Article V of the Town of Mills

1946 River Subdivision Ordinance regarding subdivision improvement guarantees.

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1947 Owner's Signature Date

1948 Submitted By

1949 Date

1950 *****

1951 TOWN USE ONLY

1952 Received by: Date:

1953 Comments:

1954

1955 **APPENDIX 9: SUMMARY OF G.S. 136-102.6**

1956 **COMPLIANCE OF SUBDIVISION STREETS WITH MINIMUM STANDARDS OF**
1957 **THE [NORTH CAROLINA] BOARD OF TRANSPORTATION REQUIRED OF SELLERS**
1958 *(Includes Street Disclosure Statement Requirements)*

1959 (a) Requires that subdivision plats be recorded where new streets are dedicated.

1960 (b) On such plats, right-of-way must be designated either “public” or “private.”
1961 Streets designated “public” shall be considered as an offer of dedication.

1962 (c) Public streets shall meet minimum NCDOT construction standards. A plat
1963 for subdivision with such streets [public] must have both Town approval and NCDOT
1964 District Engineer approval on the plat itself before it may be recorded.

1965 (d) Public streets shall have right-of-way, construction plans (including street
1966 drainage) reviewed by NCDOT prior to recording the subdivision plat. Such
1967 approval by the State (plat certification) shall not be deemed acceptance of the roads
1968 by the State.

1969 (e) Written approval (enforcement agreement) is required for public utilities
1970 proposed to be located in NCDOT right-of-way.

1971 (f) Requires a Street Disclosure Statement be executed by both buyer and seller
1972 at closing anytime a subdivision lot is sold. Such statement shall fully disclose
1973 whether the abutting street right-of-way is public or private. If the street is public,
1974 the seller shall certify that the right-of-way and design is NCDOT approved. If the
1975 street is private, the seller shall disclose how the street shall be constructed and
1976 maintained, who will be responsible for such maintenance and that the street is not
1977 constructed to NCDOT minimum standards.

1978 (g) States that these provisions apply to all subdivisions outside municipal limits.

1979 (h) Exempts certain subdivision in Catawba County.

1980 (i) States the purpose of the State rules.

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1981 (j) States that subdivisions located in roadway corridors approved by NCDOT are
1982 affected by these rules.

1983 (k) A violation of these rules is a Class 1 misdemeanor.

1984 Note: This summary is for general information only. It reflects changes made to
1985 the law through 1997.

1986

1987 **APPENDIX 10: A STATEMENT OF UNDERSTANDING - REGARDING**
1988 **FAMILY SUBDIVISIONS**

1989 1. I understand that all subdivisions of land are regulated and must comply with the
1990 Town of Mills River Subdivision Ordinance.

1991 2. I have read and understand the definition of a Family Subdivision as stated in §
1992 153.026 of the Town of Mills River County Subdivision Ordinance and is as
1993 follows:

1994 **The division of land into two or more parcels or lots for the purpose of**
1995 **conveying the resulting parcels or lots to a grantee or grantees who are**
1996 **in any degree of lineal kinship to the grantor, or to a grantee or grantees**
1997 **who are within four (4) degrees of collateral kinship to the grantor,**
1998 **such division to be referred to herein as a “family subdivision.” Degrees**
1999 **of kin-ship shall be computed in accordance with G. S. 104A-1.**

2000 3. I understand the procedure for review of a Family Subdivision as stated in §
2001 153.047 of the Town of Mills River Subdivision Ordinance.

2002 4. I understand that to meet the requirements of § 153.047 that any and all lots
2003 subdivided must be conveyed to a bonafide family member as defined in North
2004 Carolina General Statute 104A-1. Examples are as follows:

2005 **An example of lineal kinship for a man would include: his parents,**
2006 **children, grandparents, and grandchildren. An example of four**
2007 **degrees collateral kinship would include brothers/sisters,**
2008 **aunts/uncles, first cousins, and their respective spouses.**

2009 5. I understand that any further subdivision of this property shall be reviewed in
2010 accordance with the provisions set forth in the Town of Mills River Subdivision
2011 Ordinance.

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2012 6. I have read and understand § 153.99 of the Town of Mills River Subdivision
2013 Ordinance regarding penalties for violations.

2014 (Signature of Property Owner / Agent)

2015 (Date)

2016

2017

2018 Witness

2019 (Date)

2020 *****

2021 TOWN USE ONLY

2022 Received by:

2023 Date:

2024 Comments:

2025

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2052 Notary Public

2053 My Commission Expires:

2054 *****

2055 TOWN USE ONLY

2056 Received by:

2057 Date:

2058 Comments:

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

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154.049	(Reserved)
154.050	(Reserved)
154.051	(Reserved)
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154.053	(Reserved)
154.054	(Reserved)
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154.059	(Reserved)
154.060	(Reserved)
154.061	(Reserved)
154.062	(Reserved)
154.063	(Reserved)

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- 154.064 (Reserved)
- 154.065 (Reserved)
- 154.066 MR-mixed use district

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154.260 Changeable copy signs

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154.261	Signs exempt from obtaining a sign permit
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154.266	Sign maintenance
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154.270	(Reserved)
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1

GENERAL PROVISIONS

2 § 154.001 TITLE.

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

7 § 154.002 STATUTORY AUTHORITY.

8 In pursuance of the authority conferred by the G.S. Chapter 160A [and 160D](#),
9 [Article 19, Part 3](#), the Town Council of Mills River, North Carolina, hereby ordain and
10 enact into law the following subchapters and sections.

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

13 § 154.003 PURPOSE.

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

17 (A) An adequate highway system will be facilitated by regulating building
18 setbacks from existing and proposed roads.

19 (B) Adequate light and air will be ensured by regulating the width and
20 depth of yards.

21 (C) Healthful sanitary conditions will be maintained by regulating lot sizes
22 in accordance with soil characteristics in the town.

23 (D) Certain specialized developments, such as planned unit developments
24 and manufactured home parks, may be permitted under specific conditions. These

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25 developments must be constructed in full accordance with an approved site plan and
26 general development criteria which are intended to give latitude and flexibility in
27 design and, at the same time, ensure the protection of surrounding properties.

28 (E) By regulating the uses permitted in an established zoning district, areas
29 can be developed to their full potential without fear of nearby incompatible
30 development within zoned areas.

31 (F) The neighborhood impact from certain uses will be mitigated through
32 the use of minimum specific site standards combined with general standards which
33 provide the flexibility to impose a higher level of specific site standards, dependent
34 upon the degree of neighborhood impact ~~in the MR—Mixed Use District.~~

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

37 **§ 154.004 JURISDICTION.**

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

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

42 **§ 154.005 FARM EXEMPTION.**

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

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

48 **§ 154.006 WATERSHED BUFFER REQUIREMENTS.**

49 All uses within watersheds, as designated by Chapter 192, Article I of the
50 Henderson County Code, Water Supply Watershed Protection, shall be required to
51 maintain a minimum 30 foot vegetated buffer from perennial stream banks; provided,
52 however, that where development is proposed as a high-density development as
53 allowed by Chapter 192, Article I of the Henderson County Code, Water Supply
54 Watershed Protection, the setback from perennial streams shall be 100 feet. Water-
55 dependent structures and public projects, such as road crossings and greenways, may
56 be allowed where no practical alternative exists. The activities shall minimize built-
57 upon surface area and maximize the use of stormwater best management practices.
58 Where provisions contained in this Chapter 154, Zoning, conflict with those
59 provisions contained in Chapter 192, Article I of the Henderson County Code, Water
60 Supply Watershed Protection, the most restrictive provisions shall be deemed to
61 govern.

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

64 **§ 154.007 WORD USAGE AND DEFINITIONS.**

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

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

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

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

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

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

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

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

81 ~~(8) The word **LOT** includes the word **PLOT** or **PARCEL**.~~

82 (98) The word **BUILDING** includes the word **STRUCTURE**.

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

84 (1110) The word **PERSON** or **APPLICANT** includes a firm, association,
85 organization, partnership, corporation, company, trust and individual or
86 governmental unit.

87 (1211) The words **ZONING MAP** or **MILLS RIVER ZONING MAP** shall
88 mean the Official Zoning Map of the Town of Mills River, North Carolina.

89 (1312) Provisions contained within the MR - Mixed Use District, §
90 154.066, shall not be used to interpret the meaning of the remainder of the provisions
91 of this chapter unless the other provisions of this chapter specifically reference §
92 154.066.

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

95 **ACCESSORY USE.** A use customarily incidental and subordinate [use](#)
96 to a principal use or building and located on the same lot with the principal use or
97 building.

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

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

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

110 **ADULT DAY CARE HOME.** A non--residential facility certified by the
111 State of North Carolina which provides an organized program of services for adults
112 during the day in a community group setting for the purpose of supporting adults'
113 personal independence out of the provider's home. There may be between 4 and
114 16 unrelated participants in an adult day care home. Care is provided for more than
115 6 but less than 24 hours per day.

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

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

120 **ADULT ESTABLISHMENTS.** Any establishment which would be
121 considered an adult bookstore, adult motion-picture theater, adult mini-motion-
122 picture theater or adult live entertainment business as each is defined in G.S. § 14-
123 202.10. This definition does not include bona-fide massage parlors.

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

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

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

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

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

149 **APARTMENT.** The same as **ACCOMMODATION**.

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

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

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

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

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

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

180 **BUILDING.** Any structure having a roof supported by columns or by
181 walls and intended for shelter, housing or enclosure of persons, animals or chattels.
182 Two buildings connected by a common roof shall be considered as [one \(1\)](#) building,
183 provided that the width of the connecting roof shall be at least 20% of the principal
184 building width, but in no case less than [six \(6\)](#) feet in width. The connection of [two](#)
185 [\(2\)](#) buildings by means of an open porch, breeze way or passageway without a roof,
186 or with a roof less than [six \(6\)](#) feet in width, shall not be deemed to make them [one](#)
187 [\(1\)](#) building.

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

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

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

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

199 **BUILDING SETBACK LINE.** A line measured horizontally delineating
200 the minimum allowable distance between the property line and a building on a lot,
201 within which no building or other structure shall be placed except as otherwise

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202 provided. If the property line extends into a roadway or highway itself, then the
203 setback line shall be measured from the [outside edge of pavement](#) ~~centerline~~ of the
204 traveled way when computing setback requirements on lots abutting highways. For
205 purposes of measuring setback lines, lines extended vertically from overhanging
206 roofs which do not extend beyond 30 inches from the foundation wall of a building
207 shall not be used for establishing building location. This definition shall not be
208 applicable in the MR - Mixed Use District.

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

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

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

223 **CHIP MILLS.** Any non-portable wood-chipping facility that stands
224 alone and apart from a sawmill or a pulpmill, and whose purpose is to provide wood
225 chips to an off-site fabricating facility including but not limited to a papermill or
226 oriented strand board (OSB) mill. For purposes of the MR Mixed-Use District,

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227 specifically excluded from this definition are those facilities that produce less than
228 50,000 tons of wood chips or other materials per year.

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

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

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

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

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

248 **CONDITIONAL USE.** [Conditional uses are those approved under a](#)
249 [specific procedure that was removed from the Mills River Town Code following the](#)
250 [adoption of 160D updates in 2021. Approved conditional uses remain in effect.](#)
251 [Updates, expansions or revocations of conditional uses shall be handled under the](#)
252 [Special Use process as defined in this chapter.](#) ~~A use that would not adversely affect~~

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253 ~~the health or safety of persons residing or working in the neighborhood of the~~
254 ~~proposed use and will not be detrimental to the public welfare or injurious to~~
255 ~~property or public improvements in the neighborhood. The uses may be permitted in~~
256 ~~a zoning district as a conditional use if specific provision for the conditional use is~~
257 ~~made in this chapter. Conditional uses and their accessory uses may be permitted in~~
258 ~~specified districts after review, public hearing and approval by the Board of~~
259 ~~Adjustment in accordance with procedures and standards established in § 154.179 of~~
260 ~~this chapter.~~

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

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

270 **DENSITY.** The number of dwellings units ~~or principal buildings or~~
271 ~~uses~~ permitted per acre of land.

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

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

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

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

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

289 ~~***DWELLING, 2-FAMILY.***~~ ~~A building arranged or designed to be~~
290 ~~occupied by 2 families living independently of each other.~~

291 ***DWELLING UNIT.*** ~~A building, or portion thereof,~~single unit providing
292 complete, independent ~~and permanent~~ living facilities for ~~1 family~~ one or more
293 persons, including permanent provisions for living, sleeping, eating, cooking and
294 sanitation.

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

297 ***ELECTRONIC GAMING OPERATIONS.*** Any business enterprise,
298 whether as a principal or accessory use, where persons utilize electronic machines,
299 including but not limited to computers and gaming terminals, to conduct games of
300 chance, including sweepstakes, and where cash redeemed or otherwise distributed,
301 whether or not the value of such distribution is determined by electronic games
302 played or by predetermined odds. ***ELECTRONIC GAMING OPERATIONS*** may include,
303 but are not limited to, internet cafes, internet sweepstakes, electronic gaming
304 machines/operations, or cybercafés. This does not include any lottery approved by

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305 the State of North Carolina or any nonprofit operation that is otherwise lawful under
306 state law (for example, church or civic organization fundraisers).

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

309 (a) This term shall include the following:

310 1. **COMBINATION HOME.** A nursing home
311 offering [one \(1\)](#) or more levels of care, including any combination of skilled nursing,
312 intermediate care and domiciliary home.

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

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

328 4. **HOSPITAL.** Any facility which has an organized
329 medical staff and which is designed, used and operated to provide health care,
330 diagnostic and therapeutic services and continuous nursing care primarily to

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331 inpatients where the care and services are rendered under the supervision and
332 direction of physicians licensed under G.S. Chapter 90, Article 1, to 2 or more persons
333 over a period in excess of 24 hours. The term includes facilities for the diagnosis and
334 treatment of disorders within the scope of specific health specialties. The term does
335 not include private mental facilities licensed under G.S. Chapter 122C, Article 2,
336 nursing homes licensed under G.S. § 131E-102 and domiciliary homes licensed under
337 state law.

338 5. **NURSING HOME.** A facility, however named,
339 which is advertised, announced or maintained for the express or implied purpose of
340 providing nursing or convalescent care for 3 or more persons unrelated to the
341 licensee or operator. A **NURSING HOME** is a home for chronic or convalescent patients
342 who, on admission, are not as a rule acutely ill and who do not usually require special
343 facilities, such as an operating room, X-ray facilities, laboratory facilities and
344 obstetrical facilities. A **NURSING HOME** provides care for persons who have remedial
345 ailments or other ailments for which medical and nursing care are indicated, who,
346 however, are not sick enough to require general hospital care. Nursing care is their
347 primary need, but they will require continuing medical supervision.

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

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

355 **FAMILY.** One or more persons living ~~independently~~ as a single
356 housekeeping unit and using cooking facilities and certain rooms in common. A

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357 **FAMILY** shall not include a group occupying a boardinghouse, lodging house, club or
358 fraternity house or similar dwelling.

359 **FAMILY CARE HOME.** An adult care home with support and
360 supervisory personnel that provides room and board, personal care and habilitation
361 services in a family environment for not more than 6 resident handicapped persons
362 and licensed by the state of North Carolina as a family care home. For zoning
363 purposes, a **FAMILY CARE HOME** shall be deemed a residential use of property and
364 shall be a permitted use in all residential districts.

365 **FAMILY CHILD CARE HOME.** A child-care provider licensed by the
366 state to provide child care for five or fewer preschool aged children, and an additional
367 three school age children. Care is provided at the licensed care provider's
368 residence.

369 **FARM, BONA FIDE.** All land on which agricultural operations are
370 conducted.

371 **FENCING.** The use of a translucent, opaque or perforated barrier
372 extending from the surface of the ground to a uniform height at all points around the
373 portions of the property containing the regulated principal use, including but not
374 limited to storage or use of inventory, materials or equipment associated with the
375 principal use, if the use(s) is unenclosed. The fencing must be constructed of wood,
376 wire, steel or of any substance of a similar nature and strength, but which
377 perforations or openings are not larger than 16 square inches.

378 **FIRE PROTECTION.** The design, construction and installation of
379 buildings and facilities, equipment, appliances and infrastructure or the protection of
380 the facilities and buildings, and the occupants thereof, from the effects or potential
381 effects of fire. All uses requiring fire protection in this chapter shall be required to
382 comply with the standards of the National Fire Protection Association.

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383 **GARBAGE.** All putrescible wastes, including animal offal and
384 carcasses, and recognizable industrial by-products, but excluding sewage and human
385 waste.

386 **GOLF COURSE.** A tract of land laid out, landscaped and used
387 primarily for the playing of golf but may additionally include swimming pools, tennis
388 courts and other facilities for outdoor recreation normally associated with
389 tournament-type 18 hole golf courses. The term shall include buildings and structures
390 located on a golf course tract which are incidental to outdoor recreation, such as rain
391 shelters, maintenance and storage sheds, swimming pool shower and dressing rooms
392 and also clubhouses and/or other buildings having facilities for the sale, rental and
393 storage of sports equipment, serving of food and beverages and accommodations
394 (including lodging) for members of private golf clubs and their guests, which
395 buildings and structures are normally associated with tournament-type 18 hole golf
396 courses, provided that no single 18 hole course shall have more than 20 units of
397 lodging; and provided, further, that any commercial activity permitted by this
398 sentence shall terminate if the golf course served by it shall cease to operate as a golf
399 course as defined in the preceding sentence. Public commercial hotels, motels,
400 restaurants, stores, snack bars and beverage service bars and lounges are not
401 permitted. This definition does not include illuminated golf facilities.

402 **GRAVEYARD.** Any vehicle graveyard or mobile/manufactured home
403 graveyard; this definition specifically excludes all cemeteries, including public human
404 cemeteries, church cemeteries, family cemeteries and pet cemeteries.

405 **GROSS FLOOR AREA.** The total floor area of all buildings in a project,
406 including basements, mezzanines and upper floors, exclusive of stairways and
407 elevator shafts. It excludes separate service facilities outside the main building, such
408 as boiler rooms and maintenance shops.

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409 **GROUP DEVELOPMENT.** A group of 2 or more principal structures
410 built on a single lot, tract or parcel of land not subdivided into the customary streets
411 and lots and which may not be subdivided, and designed for occupancy by separate
412 families, businesses or other enterprises. Examples would be ~~cluster-type~~
413 ~~subdivisions~~, school campuses and hospitals, shopping centers and industrial parks.

414 **HANDICAPPED PERSON.** A person with a temporary or permanent
415 physical, emotional, or mental disability including, but not limited to, mental
416 retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments,
417 emotional disturbances and orthopedic impairments, but not including mentally ill
418 persons who are dangerous to others as defined in G.S. § 122C-3(11)b.

419 **HAZARDOUS WASTE DISPOSAL FACILITY.** Any hazardous waste
420 disposal facility whose operations or facility must be permitted by or is regulated by
421 the federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, or the North Carolina
422 Solid Waste Management Act (G.S. §§ 130A-290 *et seq.*), as they may be amended or
423 replaced.

424 **HEALTHCARE FACILITY.** Any residential or in-patient medical
425 facility, whether public or private, including but not limited to the following: general
426 hospitals; chronic disease, maternity, mental, tuberculosis and other specialized
427 hospitals; facilities for intensive care and self-care; nursing homes, including skilled
428 nursing facilities and intermediate care facilities; and facilities for continuing care of
429 the elderly and infirm.

430 **HOURS OF OPERATION.** The times of day during which an
431 establishment may conduct its principal operations.

432 **INCIDENTAL HOME OCCUPATION.** Any use conducted entirely
433 within a dwelling and carried on by the occupants thereof, which use is clearly
434 incidental and secondary to the use of the dwelling for residential purposes and does

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435 not change the character thereof; provided, further, that no mechanical equipment is
436 installed or used except such as is normally used for domestic or professional
437 purposes and that not over 25% of the total floor space of any structure is used for a
438 home occupation. No home occupation shall be conducted in any accessory building.
439 Incidental home occupations permitted as accessory uses in a residence include, but
440 are not limited to, dressmaking, cooking, baking, music instruction, woodworking,
441 arts and crafts, personal care services, family child care homes, internet retail sales
442 and the practice of the professions as insurance, medicine, artistry, architecture and
443 accounting. This definition shall not be used to regulate home schools in any way.
444 There shall be no change in the outside appearance of the building or premises, or
445 other visible evidence of the conduct of such home occupation other than one sign,
446 not exceeding one square foot in area, non-illuminated, and mounted flat against the
447 wall of the principal building.

448 ***INCINERATOR.***

449 (a) Any enclosed device that burns more than 250 pounds of
450 any material per hour other than the classic boiler fossil fuels, such as natural gas,
451 coal or fuel oil, is a principal use on any lot or parcel, and:

452 1. Uses controlled flame combustion and neither
453 meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration
454 unit, nor is listed as an industrial furnace; or

455 2. Meets the definition of ***INFRARED INCINERATOR***
456 or ***PLASMA ARC INCINERATOR.***

457 (b) This definition does not apply to afterburners, flares,
458 fume incinerators and other similar devices used to reduce process emissions of air
459 pollutants. Specifically excluded from this definition and any regulation under this
460 chapter are those incinerators that are constructed and/or operated by or on behalf

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461 of any federal, state or local governmental entity; provided, however, that this
462 exclusion from regulation only applies to those incinerators not operating as a
463 hazardous waste disposal facility or radioactive waste disposal facility (which are
464 prohibited in all zoning districts).

465 **INDUSTRIAL USE.** Entails manufacturing, assembling, processing,
466 fabricating, machining and/or warehousing. **INDUSTRIAL USE** includes
467 establishments engaged in the mechanical or chemical transformation of materials or
468 substances into new products. These establishments are usually described as plants,
469 factories or mills and characteristically use power-driven machines and materials
470 handling equipment. Establishments engaged in assembling component parts of
471 manufactured products are also considered industrial if the new product is neither a
472 structure nor other fixed improvement. Also included is the blending of materials,
473 such as lubricating oils, plastics, resins or liquors. The materials processed by
474 industrial establishments include products of agriculture, forestry, fishing, mining
475 and quarrying as well as products of other industrial establishments. [This definition
476 is based upon excerpts from the Standard Industrial Classification Manual (SIC),
477 1987. Specific examples of industrial uses as listed in the SIC are not considered to be
478 a limitation on this definition.]

479 **JUNK.** Any discarded or scrapped copper, brass, metal, rope, rags,
480 batteries, appliances, paper or rubber; discarded, dismantled or wrecked
481 automobiles or other vehicles or parts thereof; dismantled or abandoned
482 mobile/manufactured homes or RV's or travel trailers or parts thereof; discarded,
483 dismantled or wrecked motorized or non-motorized equipment or parts thereof;
484 discarded or scrapped iron, steel or other scrapped ferrous material; or any other
485 materials, items or equipment similar to those listed herein. This definition
486 specifically excludes solid waste.

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487 **JUNKYARD.** Any land parcel having a principal use consisting of the
488 storing, keeping, buying or selling of junk. This definition excludes any vehicle
489 graveyard or any mobile/manufactured home graveyard.

490 **LANDFILL.** A disposal facility or part of a disposal facility where solid
491 waste is placed in or on land and which is not a land treatment facility, a surface
492 impoundment, an injection well, a hazardous waste long-term storage facility or a
493 surface storage facility.

494 **LANDOWNER, OR OWNER.** The holder of the title of a property in fee
495 simple. Absent evidence to the contrary, the county tax records are used to determine
496 who is a landowner. A landowner may authorize a person holding a valid option,
497 lease, or contract to purchase to act as his or her agent or representative for the
498 purpose of making applications for development approvals.

499 **LARGE WIND ENERGY SYSTEM.** A wind energy conversion system
500 consisting of one or more wind turbine(s), a tower(s), and associated control or
501 conversion electronics, which has a rated capacity of more than 20 kW.

502 **LEGISLATIVE HEARING.** A hearing to solicit public comment on a
503 proposed legislative decision.

504 **LIGHT INDUSTRY.** Any use which is listed as permitted by right in
505 the MR - Light Industrial District, § 154.055 of this chapter.

506 **LIGHTING.** Outdoor lighting fixtures installed and operated in such a
507 manner as to provide for the safety of those persons residing or working on the
508 property and which protect the streets and neighboring properties from direct glare
509 or hazardous interference of any kind.

510 **LOT.** A parcel of land occupied or capable of being occupied by a
511 building or group of buildings as regulated by the Town of Mills River Code ~~devoted~~

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512 ~~to a common use~~, together with the customary accessories and open spaces belonging
513 to same. ~~This definition shall not be applicable in the MR – Mixed Use District.~~

514 **LOT DEPTH.** The mean horizontal distance between front and rear
515 lot lines. ~~This definition shall not be applicable in the MR – Mixed Use District.~~

516 **LOT OF RECORD.** A lot which is part of a subdivision, a plat of which
517 has been recorded in the Register of Deeds office of Henderson County, or a lot
518 described by metes and bounds, the description of which has been so recorded. ~~This~~
519 ~~definition shall not be applicable in the MR – Mixed Use District.~~

520 **LOT WIDTH.** The distance between side lot lines measured at the
521 building setback line. ~~This definition shall not be applicable in the MR – Mixed Use~~
522 ~~District.~~

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

525 **MAJOR STREET.** The following are classified major streets in the
526 Town of Mills River for purposes of this chapter: Boylston Highway (NC 280),
527 Haywood Road (NC 191).

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

532 **MANUFACTURED HOME PARK (PARK).** A tract of land designed to
533 accommodate 3 or more manufactured or mobile home spaces, 3 or more
534 manufactured or mobile homes or any combination of such for rent or lease. This
535 definition shall not apply to approved seasonal agricultural worker developments in
536 the MR - Mixed Use District. Notwithstanding the foregoing, manufactured home
537 parks which consist of no more than 10 manufactured or mobile homes and in which

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538 all of the units provide or are intended to provide migrant housing subject to and in
539 accordance with the Migrant Housing Act of North Carolina (G.S. § 95-222) are
540 specifically exempted from all provisions of § 154.080 of this chapter.

541 **MANUFACTURED HOME PARK, MAJOR.** Any manufactured home
542 park consisting of 11 or more manufactured homes and/or spaces; may be referred
543 to as **MAJOR PARK** in this and other ordinances duly adopted by the Mills River Town
544 Council.

545 **MANUFACTURED HOME PARK, MINOR.** Any manufactured home
546 park consisting of 10 or fewer manufactured homes and/or spaces; may be referred
547 to as **MINOR PARK** in this and other ordinances duly adopted by the Mills River Town
548 Council.

549 **MATERIALS RECOVERY FACILITY.** An establishment primarily
550 engaged in:

551 (a) Operating facilities for separating and sorting recyclable
552 materials from nonhazardous waste streams (i.e. garbage); and/or

553 (b) Operating facilities where commingled recyclable
554 materials such as paper, plastics, used beverage cans and metals are sorted into
555 distinct categories.

556 **MINING AND EXTRACTION OPERATION.** Any establishment or
557 business primarily engaged in dressing and beneficiating of ores; the breaking,
558 washing and grading of coal; the crushing and breaking of stone; and the crushing,
559 grinding or otherwise preparing of sand, gravel and nonmetallic chemical and
560 fertilizer minerals. Specifically excluded from this definition are:

561 (a) Those establishments or businesses with a principal use
562 of the extraction of sand if that operation is not required to obtain a mining permit
563 from the North Carolina Department of Environment and Natural Resources; and

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564 (b) Those establishments or businesses with a principal or
565 accessory use of the grading or extraction of soils.

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

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

572 **MOBILE HOME PARK.** See **MANUFACTURED HOME PARK.**

573 **MOBILE/MANUFACTURED HOME GRAVEYARD.** Any parcel of land
574 having an accessory use consisting of the storage or keeping of 3 or more wrecked,
575 dismantled, scrapped, ruined or dilapidated mobile/manufactured homes, RV's or
576 travel trailers, which are not occupied by humans.

577 **MODULAR HOME.** A dwelling unit constructed in accordance with
578 the standards set forth in the North Carolina State Building Code (NCSBC) and
579 composed of components substantially assembled in a manufacturing plant and
580 transported to the building site for final assembly on a permanent foundation. Among
581 other possibilities, a modular home may consist of 2 or more sections transported to
582 the site in a manner similar to a manufactured home (except that the modular home
583 meets the NCSBC) or may consist of a series of panels or room sections transported
584 on a truck and erected or joined together on the site.

585 **MOTOR SPORTS FACILITY.** Any facility, track or course upon which
586 racing events are conducted.

587 **MOTOR SPORTS FACILITY, MAJOR.** A motor sports facility having a
588 seating or standing capacity of 1,000 or more persons. For purposes of this definition,

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589 standing capacity shall be computed based on 3 persons for each 200 square feet of
590 space directed to patron use.

591 **MOTOR SPORTS FACILITY, MINOR.** A motor sports facility having a
592 seating or standing capacity of less than 1,000 persons. For purposes of this definition
593 standing capacity shall be computed based on 3 persons for each 200 square feet of
594 space directed to patron use.

595 **MOTOR VEHICLE.** Any vehicle which is, or is designed to be, self-
596 propelled or is designed or used for transporting persons or property. This definition
597 includes watercraft, but excludes airplanes or aircraft.

598 **NEIGHBORHOOD.** Any area impacted by a principal use.

599 **NOISE MITIGATION.** A good-faith effort to reduce the noise effects, if
600 any, that the principal use may have on the neighborhood.

601 **NONCONFORMING USE.** Any ~~lot, parcel of land,~~ use of land, building,
602 ~~or~~ structure, [or sign](#) lawfully existing at the time of adoption of this chapter, or any
603 amendment thereto, that does not conform to the use requirements, dimensional or
604 other requirements of the district in which it is located.

605 **OCCUPIED BUILDING.** Any residential dwelling or other building
606 which is inhabited on a regular basis by [one \(1\)](#) or more persons. The buildings
607 include, but are not limited to, residences, schools, churches, other buildings for
608 public assembly, hospitals and clinics, commercial and industrial entities, and the like.
609 The buildings must have been in existence, or otherwise be under a validly issued
610 building permit, at least 30 days prior to the date of a tower permit application in
611 order to be considered an occupied building as defined in this chapter.

612 **OFFAL.** The waste or by-product of a process, especially the viscera
613 and trimmings of a butchered animal removed in dressing.

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614 **OPEN SPACE, ACTIVE.** Any park and recreational area that is not
615 dependent upon a specific environmental or natural resource, which is developed
616 with recreation and support facilities that can be provided anywhere for the
617 convenience of the user. Areas include, but are not limited to, playgrounds, golf
618 courses, baseball or softball fields, football or soccer fields, basketball courts,
619 swimming pools, clubhouses, equestrian facilities, and tennis courts.

620 **OPEN SPACE, PASSIVE.** Area in and located due to the presence of a
621 particular natural or environmental setting. Area include, but are not limited to,
622 boating, fishing, camping, nature trails, and nature study. Farms [and land](#)
623 [designated for agricultural use](#) may be considered as passive open space.

624 ~~**ORDINANCE ADMINISTRATOR.** The Town of Mills River official~~
625 ~~assigned by the Town Manager or Town Council to enforce this chapter.~~

626 **PARK.** Those areas developed for both passive and active
627 recreational activities. The development may include, but shall not be limited to,
628 walkways, benches, open fields, multiuse courts, swimming and wading pools,
629 amphitheaters, and the like. The term **PARK** shall not include zoos, recreational
630 vehicle parks, manufactured home parks, amusement parks or vehicle, equestrian or
631 dog racing facilities.

632 **PARK MODEL HOME.** A recreational vehicle consisting of [one \(1\)](#) or
633 more sections, typically built in accordance with the construction requirements of the
634 HUD Housing Code but not in accordance with the standards set forth in the NCSBC;
635 the vehicles have 480 square feet or less of living space and are used as temporary
636 dwelling units designed to be easily transported.

637 **PERENNIAL STREAM.** A constantly flowing, drought-resistant
638 stream that is typically depicted by a thin continuous blue line on the most recent

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639 version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined
640 by local government studies), unless other provisions have been made.

641 **PERMIT.** The permit issued by the ~~Ordinance~~[Zoning](#) Administrator
642 as designated by this chapter, to an individual, corporation, partnership or other
643 entity to construct a communications tower, to collocate an antenna on an existing
644 tower, to locate an antenna on an alternative structure or to replace an existing tower
645 as required by this chapter.

646 **PLANNED UNIT DEVELOPMENT.** A land use designed to provide for
647 developments incorporating a single type or a variety of residential and accessory
648 uses which are planned and developed as a unit. The development may consist of
649 individual lots and common building sites. Common land and facilities may be an
650 element of the plan related to affecting the long-term value of the entire development.
651 A planned unit development must conform to the requirements of §§ 154.080 and
652 154.180.

653 **POULTRY/SMALL GAME.** All chicken, waterfowl and rabbits and
654 other similar species raised domestically for meat or eggs. This definition specifically
655 includes, but is not limited to, quail, turkey, chicken, ducks and geese.

656 **PRINCIPAL USE.** A primary purpose for which land or a building is
657 arranged, designed, intended or used, including the storage or use of inventory,
658 materials or equipment associated therewith.

659 **PROPERTY.** [All real property subject to regulation under the Mills
660 River Town Code, including land and improvements or structures thereon.](#)

661 **PROTECTED MOUNTAIN RIDGE.** A ridge with an elevation of 500
662 feet or more above the elevation of an adjacent valley floor.

663 **PUBLIC LIBRARY.** Any library established by the state; a county, city,
664 township, village, school district or other local unit of government or authority or

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665 combination of local units of governments and authorities; community college or
666 university; or any private library open to the public.

667 ***PUTRESCIBLE WASTES.*** Solid waste capable of being decomposed
668 by microorganisms with sufficient rapidity as to cause nuisance from odors and gases,
669 such as kitchen wastes, offal and carcasses.

670 [***QUASI-JUDICIAL DECISION.*** A decision involving the finding of facts](#)
671 [regarding a specific development approval that requires the exercise of discretion](#)
672 [when applying the standards of the regulation. The term includes, but is not limited](#)
673 [to, decisions involving variances, special use permits, and appeals of administrative](#)
674 [determinations.](#)

675 ***RACING EVENT.*** Any time, speed or distance competition using
676 motor vehicles, whether or not conducted under the auspices of a recognized
677 sanctioning body, including but not limited to events on the surface of land and water.
678 ***RACING EVENTS*** shall be deemed to include any practice sessions, time trials,
679 qualification rounds or any other similar activity.

680 ***RADIOACTIVE WASTE DISPOSAL FACILITY.*** Any disposal facility for
681 low-level radioactive materials, high-level radioactive materials or special nuclear
682 materials. Specifically included, but without limitation, are any disposal facilities
683 whose operations or facility must be permitted by or are regulated by [one \(1\)](#) or more
684 of the following (as they may be amended or replaced): United States Nuclear
685 Regulatory Commission, or its successors; the Atomic Energy Act of 1954; the Low-
686 Level Radioactive Waste Policy Amendment Act of 1985 (42 U.S.C. §§2021b *et seq.*);
687 or the North Carolina Radiation Protection Act (G.S. §§ 104E-1 *et seq.*).

688 ***RECREATIONAL VEHICLE (RV).*** A vehicular-type unit primarily
689 designed as temporary and mobile living quarters for recreational, camping or travel
690 use, which either has its own motive power or is mounted on and drawn by another

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691 vehicle. The units do not satisfy the dimensional requirements of a manufactured
692 home.

693 **RECREATIONAL VEHICLE PARK.** Any grouping of no fewer than 2
694 units on a tract of land in single ownership, catering to temporary parking of park
695 model homes or recreational vehicles. Recreational vehicle parks may include
696 buildings and structures ancillary to such use.

697 **RECYCLING.** The collection, separation and/or processing and reuse
698 or return to use in the form of raw materials or products of those materials which
699 would otherwise become solid waste.

700 **RECYCLING CENTER, DROP-OFF.** A facility designed to be a
701 collection point where only recyclable materials are collected and/or temporarily
702 stored prior to delivery to a permanent disposal site or shipment to others for reuse
703 or processing.

704 **RECYCLING FACILITY.** A facility having a principal use consisting of
705 recycling.

706 **REFUSE.** All non-putrescible waste.

707 **RELIGIOUS INSTITUTION.** Any church, ecclesiastical or
708 denominational organization, or any established physical place for worship at which
709 nonprofit religious services and activities are regularly conducted.

710 **REPLACEMENT TOWER.** A new communications tower intended to
711 replace an existing tower where the new tower is sited as close to the existing tower
712 as is reasonably feasible, but in no event more than 100 hundred feet from the base
713 of the existing tower, and no higher than the height of the original tower.

714 ~~—————**RESIDENTIAL DENSITY.**~~

715 ~~—————(a)————The number of residential dwelling units per acre within~~
716 ~~a specified radius measured from the approximate center (centroid as determined by~~

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717 ~~the Henderson County Assessor's office) of the property on which a regulated use is~~
718 ~~proposed and extending to the external property lines of the properties falling within~~
719 ~~the specified radius. Where the actual residential density exceeds (is more dense~~
720 ~~than) the specified maximum residential density, the use will be prohibited. For uses~~
721 ~~specifying a residential density, the following information must be listed: maximum~~
722 ~~number of units per acreage (acreage must be specified as 1 acre, 2 acres, and the~~
723 ~~like) and the radius in which the units and acreage should be calculated (i.e., 1/2 mile,~~
724 ~~1 mile, and the like). The following formula will be used to calculate residential~~
725 ~~density:~~

726 ~~_____ 1. First: Determine the number of dwelling units~~
727 ~~within the specified radius by consulting the Henderson County Assessor's office or~~
728 ~~by field verification; this number = A units~~

729 ~~Example: Assessor's office finds 250 dwelling units.~~

730 ~~_____ A = 250 units~~

731 ~~_____ 2. Second: Determine the total area in acres within~~
732 ~~the radius specified for the use [501.48 acres in a 1/2 mile radius; 2,009.6 acres in a 1~~
733 ~~mile radius]; this number = B acres~~

734 ~~Example: The use has a specified radius of 1/2 mile.~~

735 ~~_____ B = 501.48 acres~~

736 ~~_____ 3. Third: Compose a fraction by placing number A~~
737 ~~over number B; this fraction represents the total number of units over the total acres,~~

738 ~~A/B~~

739 ~~Example:~~

~~_____~~
~~250 units~~
~~_____~~

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~~501.48~~

~~acres~~

740

741

~~_____ 4. *Fourth:* Determine the residential density by
reducing the fraction composed above by dividing both the numerator and
denominator by the numerical value of A.~~

742

743

744

~~Example:~~

~~250 units~~

$$\frac{\del{250}}{\del{250}} = 1 \text{ unit} = \text{residential density}$$

745

746

~~_____ 501.48 acres/250 _____ 2 acres~~

747

748

749

~~_____ (b) For purposes of calculating residential density, the data
available from the Henderson County Assessor's office must be provided and shall be
presumed correct; however, the presumption can be rebutted by competent and
material testimony and documentary evidence submitted to the Mills River Town
Council during the quasi-judicial public hearing on the regulated use.~~

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~~**RESIDENTIAL DWELLING UNIT.** Any separately owned residence,
including mobile homes or mobile home spaces, for use of 1 or more persons as a
housekeeping unit with space for eating, living and permanent provisions for cooking
and sanitation, whether or not attached to other such residences, and the structure
and facilities and appurtenances therein and grounds, areas and facilities normally
held out for the use of residents who are using the dwelling unit as their primary
residence.~~

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~~**RETAIL BUSINESS.** Includes establishments engaged in selling
merchandise directly to ~~the~~ residential, business or institutional consumer customers
and rendering services incidental to the sale of the goods. The establishment is~~

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762 usually a place of business which is engaged in activities to attract the general public
763 to buy. Processing incidental or subordinate to selling often is conducted at retail
764 businesses. Buying of goods for resale to ~~the consumer~~[customers on site](#) is a
765 characteristic of retail trade establishments that particularly distinguishes them
766 from, [wholesaling operations, industrial production, and](#) the agricultural and
767 extractive industries. Specifically excluded from this definition are adult
768 establishments. [This definition is based upon excerpts from the Standard Industrial
769 Classification Manual (SIC), 1987. Specific examples of retail uses as listed in the SIC
770 are not considered to be a limitation on this definition.]

771 **RETAIL SERVICES.** Includes establishments primarily engaged in
772 providing a wide variety of services for individuals, business and government
773 establishments and other organizations. Includes establishments providing personal,
774 business, repair, health, legal, engineering and other professional services;
775 membership organizations; and other miscellaneous services. Specifically excluded
776 from this definition are adult establishments. [This definition is based upon excerpts
777 from the Standard Industrial Classification Manual (SIC), 1987. Specific examples of
778 services as listed in the SIC are not considered to be a limitation on this definition.]

779 **RUBBISH.** Solid or liquid waste from residences, commercial
780 establishments or institutions.

781 **RURAL ACCESSORY BUSINESS.** A business which is traditionally
782 found in rural settings and which is established as follows:

783 (a) A building containing a rural accessory business shall be
784 located according to the dimensional requirements specified for the zoning district.

785 (b) A rural accessory business shall be contained entirely
786 within [one \(1\)](#) building separate from a residential dwelling with a maximum floor
787 area of 2,500 feet. Outside storage of materials and equipment shall be restricted to

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788 areas adjacent to the building with the areas under shed-roof cover and not exceeding
789 20% of the floor area of the business.

790 (c) One rural accessory business shall be permitted per lot.

791 (d) The operator of the rural accessory business must reside
792 on the same lot or on an adjoining parcel of land in the same ownership upon which
793 the rural accessory business is located.

794 (e) The rural accessory business shall not create smoke,
795 odor, dust or noise which would cause a health hazard or a nuisance to surrounding
796 property.

797 (f) Rural accessory businesses shall include those uses
798 typically defined as **INCIDENTAL HOME OCCUPATIONS**.

799 (g) This definition shall not be used to regulate home schools
800 in any way.

801 **SCHOOL.** Any elementary or secondary school, whether public or
802 private, established under Chapter 115C of the North Carolina General Statutes, and
803 any community college established under the provisions of G.S. Chapter 115D.

804 **SCHOOL, CHARTER.** Any school authorized and operating under G.S.
805 Chapter 115C, Article 16, Part 6A.

806 **SCHOOL, HOME.** A nonpublic school in which 1 or more children of
807 not more than 2 families or households receive academic instruction from parents or
808 legal guardians or a member of either household. The schools must be qualified in
809 accordance with G.S. Chapter 115C, Article 39, Part 3. **HOME SCHOOLS** shall be
810 considered a permitted use of property in all zoning districts listed in § 154.025.

811 **SCHOOL, PUBLIC.** A school operated under the jurisdiction of the
812 Henderson County Board of Education and supported by tax revenue, or any charter
813 school.

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814 **SCREENING.** The use of any device or natural growth, including but
815 not limited to fencing, walls, berms, vegetation, or any combination thereof, that
816 serves as a barrier of vision between adjoining properties. Screening may be partial
817 or full as may be required by this chapter.

818 **SEPARATION.** Where separation restrictions are required no
819 portions of the property containing the regulated principal use, including but not
820 limited to storage or use of inventory, materials or equipment associated with the
821 principal use, shall be situated within the stated distance from the approximate
822 center (centroid as determined by the Henderson County Assessor's office) of the
823 property on which a protected use is located, whether the protected use(s) is (are)
824 located within the municipal boundaries of the Town of Mills River

825 **SHOPPING CENTER.** A group of commercial establishments located
826 on a tract of land that is planned, developed, owned ~~and/or~~ managed as a unit, with
827 off-street parking provided on the property, and related in its location, size, and type
828 of shops to the trade area which the unit serves.

829 **SIGN, BUSINESS.** An attached or freestanding structure on which are
830 announced the business use or uses of the premises and/or the name of the operator
831 of the ~~business~~premises.

832 **SIGN, OUTDOOR ADVERTISING.** An attached or freestanding
833 structure conveying some information, knowledge or idea to the public.

834 ~~**SIGN, PRINCIPAL USE.** An attached or freestanding structure~~
835 ~~advertising a product or conveying some general information, knowledge or idea,~~
836 ~~relating to the use of or products produced by the principal user of the premises.~~

837 **SITE PLAN.** A scaled drawing and supporting text showing the
838 relationship between lot lines and the existing or proposed uses, buildings, or
839 structures on the lot. A site plan shall include site-specific details that are depicted to

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840 [show compliance with all legally required development regulations that are](#)
841 [applicable to the project and the applicable compliance or development decision](#)
842 [review.](#)

843 **SLAUGHTERING PLANT.** An establishment primarily engaged in
844 slaughtering animals or poultry/small game. For the purpose of the MR - Mixed Use
845 District, this definition includes slaughtering plants that conduct processing of
846 animals or poultry/small game, including dressing, packing, freezing, canning,
847 cooking and/or curing animals or poultry/small game or their by-products or
848 processing or manufacturing products from the animals or poultry/small game or
849 their by-products; and establishments primarily engaged in the collection and/or
850 processing of the inedible portion(s) of animals or poultry/small game or their
851 carcasses. This definition specifically excludes: slaughtering and processing activities
852 performed for personal use only; and those plants slaughtering less than 450 animals
853 per month for other than personal use and those plants slaughtering less than 500
854 poultry/small game per day for other than personal use.

855 **SOLAR ENERGY GENERATION FACILITY.** Any nonresidential solar
856 collection applications designed to facilitate the capture and conversion of solar
857 energy for the purpose of supplying electricity to utility companies. This definition
858 does not include solar panels accessory to a principal use.

859 **SOLAR PANEL HEIGHT.** The measurement of a solar panel from the
860 pivot point of the panel to the ground.

861 **SOLAR PANELS.** A solar collection application designed to facilitative
862 the capture and conversion of solar energy for the purpose of supplying power to a
863 specific site or set of equipment.

864 **SOLID WASTE.** Any hazardous or nonhazardous garbage or other
865 refuse, rubbish, litter, trash, tires and other discarded solid materials and solid or

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866 semisolid waste materials resulting from industrial, commercial and agricultural
867 operations and from community activities, but does not include solids or dissolved
868 materials in domestic sewage or other significant pollutants in water resources, such
869 as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved
870 materials in irrigation return flows or other common water pollutants. As used
871 herein, **SOLID WASTE** shall refer collectively to any or all of the aforementioned waste
872 materials, unless otherwise specified.

873 ***SOLID WASTE MANAGEMENT FACILITIES.***

874 (a) Land, personnel and equipment used in the management
875 of solid waste. Incinerators and drop-off recycling centers are specifically excluded
876 from this definition. Solid waste management facilities include the following:

- 877 1. Transfer station;
878 2. Landfill; or
879 3. Materials recovery facility.

880 (b) Specifically excluded from this definition and any
881 regulation under this chapter are those solid waste management facilities that are
882 constructed and/or operated by or on behalf of any federal, state, or local
883 governmental entity; provided, however, that this exclusion from regulation only
884 applies to those solid waste management facilities not operating as a hazardous waste
885 disposal facility or radioactive waste disposal facility (which are prohibited in all
886 zoning districts).

887 ***SPECIAL USE.*** A use that is not permitted by right, but is permitted
888 after an [evidentiary hearing](#), ~~review and~~ finding by the Town Council [for a Major](#)
889 [Special Use Permit and by the Board of Adjustment for a Minor Special Use Permit](#)
890 that the use will meet all of the required general standards (see § 154.138) and the

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891 applicable specific site standards or site conditions, and issuance of a Special Use
892 Permit by the Town.

893 **SPECIAL USE PERMIT.** A permit issued to authorize structures or uses
894 in a particular zoning district upon presentation of competent, material, and
895 substantial evidence establishing compliance with one or more general standards
896 requiring that judgment and discretion be exercised as well as compliance with
897 specific standards. The term includes permits previously referred to as conditional
898 use permits.

899 **STREET.** A dedicated public or private right-of-way, either by
900 easement or ownership, for vehicular traffic which affords the principal means of
901 access to abutting properties.

902 **STRUCTURE.** Anything constructed or erected, the use of which
903 requires permanent location on the ground or which is attached to something having
904 permanent location on the ground; however, anything constructed or erected solely
905 to provide ingress and egress to the site, ornamental enhancement of the property
906 (exclusive of buildings), site stabilization, on-site utilities and lighting or property
907 fencing shall not be considered a structure for the purposes of this chapter. Solar
908 panels and wind turbines shall be considered a structure for the purpose of this
909 zoning code.

910 **STRUCTURED ENVIRONMENT HOMES.** A residential setting within
911 which persons, progressing from relatively intensive treatment for crime,
912 delinquency, mental or emotional illness, alcoholism, drug addiction or similar
913 conditions to full participation in community life, are provided professional staff
914 services, as well as board, lodging, supervision, medication and other treatment.

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915 **SMALL WIND ENERGY SYSTEM.** A wind energy conversion system
916 consisting of a single wind turbine, a tower and associated control or conversion
917 electronics, which has a rated capacity of not more than 20 kW.

918 **TINY HOME.** A vehicular-type unit primarily designed as temporary
919 and mobile living quarters for recreational, camping or travel use, which is mounted
920 on or drawn by another vehicle. These type units are not required to meet standards
921 set forth in the NCSBC.

922 **TINY HOME PARK, PARK MODEL PARK, RECREATIONAL VEHICLE**
923 **PARK.** Any group of 2 or more units on a tract of land in single ownership, catering
924 to temporary parking of tiny homes, park model homes, or recreational vehicles. Said
925 parks may include buildings and structures ancillary to such use.

926 **TOWER.** See **COMMUNICATIONS TOWER.**

927 **TOWER BASE.** The foundation, usually concrete, on which the tower
928 and other support equipment is situated. For measurement calculations, the tower
929 base is that point on the foundation reached by dropping a perpendicular from the
930 geometric center of the tower.

931 **TOWER HEIGHT.** The vertical distance measured from the bottom of
932 the tower base at ground elevation to the highest point of the tower, including any
933 antenna, lighting or other equipment affixed thereto.

934 **TOWER, REPLACEMENT.** See **REPLACEMENT TOWER.**

935 **TOWER SITE.** The land area which contains or will contain a
936 proposed tower, support structures and other related buildings and improvements.

937 **TRANSFER STATION.** A permanent structure with mechanical
938 equipment used for the collection or compaction of solid waste prior to the
939 transportation of solid waste for final disposal.

940 **TRAVEL TRAILER.** See **RECREATIONAL VEHICLE.**

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941 **TRAVEL TRAILER PARK.** See **RECREATIONAL VEHICLE PARK.**

942 **TRAVELWAY.** The portion of a road, street, highway, driveway,
943 access road corridor, right-of-way, and the like, that is designed and maintained for
944 the purpose of accommodating vehicular passage. Specifically excluded are
945 [sidewalks, multi-use side paths,](#) road shoulders, ditches, curb and gutter systems,
946 other drainage facilities and unimproved road rights-of-way not intended to be
947 driven on by vehicles.

948 **UNIQUE NATURAL AREA.** An area that meets the criteria for
949 qualification as a natural heritage area as prescribed in Chapter 15A-12H, Section
950 .0202 of the North Carolina Administrative Code.

951 **VEHICLE GRAVEYARD.** Any parcel of land having an accessory use
952 consisting of the storage or keeping of 5 or more wrecked, scrapped, ruined,
953 dismantled or inoperable unlicensed motor vehicles, including but not limited to cars,
954 trucks, tractor trailers, boats, motorcycles or jet skis, or other motorized equipment
955 located on a land parcel or adjacent land parcels under the same ownership or
956 control, if the storage or keeping is not enclosed within a structure(s) or building(s).

957 **WATER SYSTEM, PUBLIC.** A public water supply is a system which
958 provides piped water for human consumption to 15 or more connections or at least
959 25 people for at least 60 days per year. A community public water supply is defined
960 as [one](#) which serves 15 or more year-round residences or at least 25 year-round
961 residents. A non-community public water supply is any system that fits the definition
962 of a public water supply but is not a community system. Restaurants, motels, schools,
963 parks and industries are examples of non-community supplies.

964 **WIND TURBINE HEIGHT.** The height above grade to the top of the
965 turbine blade when it reaches its highest elevation.

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966 **YARD.** A space on the same lot with a principal building, open,
967 unoccupied and unobstructed by buildings or structures from ground to sky, except
968 where encroachments and accessory buildings are expressly permitted. ~~This~~
969 ~~definition shall not apply in the MR—Mixed Use District.~~

970 **YARD, FRONT.** An open, ~~unoccupied~~ space on the same lot with a
971 principal building, extending the full width of the lot and situated between the ~~street~~
972 ~~or street-adjacent~~ property line, [or edge of pavement of travelway of adjacent street](#)
973 [where applicable](#), and the front line of the building, projected to the side lines of the
974 lot. In no case shall the front yard be less than side yard requirements. ~~This definition~~
975 ~~shall not apply in the MR—Mixed Use District.~~

976 **YARD, REAR.** An open, unoccupied space on the same lot with a
977 principal building, ~~extending the full width of the lot and~~ situated between the rear
978 line of the lot and the rear line of the building [and](#) projected to the side lines of the lot.
979 ~~This definition shall not apply in the MR—Mixed Use District.~~

980 **YARD SALES.** Includes garage sales, porch sales, carport sales and
981 estate auctions and are informal sales held by occupants of private households at
982 their dwelling premises. Items sold are household articles and clothing used and
983 accumulated over several years as part of everyday living. Minor, obsolete or worn
984 small business items may be included. **YARD SALES** may be conducted no more than
985 4 times per year but not more than a total of 12 days in ~~one~~¹ calendar year. Yard sales
986 which continue over a longer period of time shall be considered as a commercial use.
987 **YARD SALES** are an incidental use in all residential districts.

988 **YARD, SIDE.** An open, unoccupied space on the same lot with a
989 principal building situated between the building and the side lot line and extending
990 from the rear line of the front yard to the front line of the rear yard. ~~This definition~~
991 ~~shall not apply in the MR—Mixed Use District.~~

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992 **ZONING ADMINISTRATOR.** The official charged with enforcing this
993 chapter.

994 **ZONING DETERMINATION.** A written determination prepared by the
995 Zoning Administrator, the Zoning Administrator’s designee or the Mills River Town
996 Council’s designee that clarifies the intent, nature or applicability of this chapter or
997 other chapters in Title XV of the Mills River Town Code. A zoning determination is
998 made in conjunction with a permit, legislative process, quasi-judicial process and/or
999 at the request of a property owner or affected party seeking determination. Zoning
1000 determinations are delivered by personal delivery, electronic mail, or first-class mail.
1001 Zoning determinations may be appealed to the Zoning Board of Adjustment, unless
1002 otherwise provided by state law or the Mills River Town Code, within thirty days of
1003 their receipt by the affected party.

1004 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
1005 Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00067,
1006 passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-
1007 2012; Am. Ord. 00079, passed 4-25-2013; Am. Ord. 00080, passed 5-23-2013; Am.
1008 Ord. 2018-03, passed 3-8-2018)

1009 **ESTABLISHMENT OF DISTRICTS**

1010 **§ 154.025 USE DISTRICTS.**

1011 For the purpose of this chapter, the zoning districts of the Town of Mills River,
1012 as delineated on the Official Zoning Map of the Town of Mills River, North Carolina,
1013 which shall include all maps designated and adopted by the Town Council, may be
1014 divided into the following designated use districts:

- 1015 (A) MR-30 Low-Density Residential District.
- 1016 (B) MR-LI Light Industrial.

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1017 ~~(C) I-1 Light Industrial District.~~

1018 (D) MR-GB General Business.

1019 (E) MR-NC Neighborhood Commercial.

1020 (F) MR-MU Mixed Use.

1021 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1022 **§ 154.026 DISTRICTS BOUNDARIES.**

1023 The boundaries of these districts are hereby established as shown on the
1024 Official Zoning Map of the Town of Mills River, North Carolina, dated March 1, 2004,
1025 and subsequent amendments thereto.

1026 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1027 **§ 154.027 ZONING MAP.**

1028 A zoning map entitled the "Official Zoning Map of the Town of Mills River,
1029 North Carolina," dated March 1, 2004, and subsequent amendments thereto, clearly
1030 setting forth all approved use districts and their respective boundaries is hereby
1031 made a part of this chapter and shall be maintained by the Zoning Administrator of
1032 the Town of Mills River. This map shall be available for inspection by interested
1033 persons during normal business hours of the Mills River Town Hall. It shall be the
1034 duty of the Zoning Administrator of the Town of Mills River to maintain the map and
1035 post any changes thereto as they may be made.

1036 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1037 **§ 154.028 INTERPRETATION OF DISTRICT BOUNDARIES.**

1038 Where uncertainty exists with respect to the boundaries of any of the
1039 aforesaid districts as shown on the Zoning Map of the Town of Mills River, the
1040 following shall apply:

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1041 (A) Boundaries indicated as approximately following the center lines of
1042 streets, highways, alleys, streams, rivers or other bodies of water shall be construed
1043 to follow the lines.

1044 (B) Boundaries indicated as approximately following platted lot lines shall
1045 be construed as following the lot lines.

1046 (C) Where district boundaries are so indicated that they are approximately
1047 parallel or perpendicular to the center lines of streets, highways, railroads or rights-
1048 of-way of same, the district boundaries shall be construed as being parallel or
1049 perpendicular thereto and at the distance therefrom as indicated on the Zoning Map
1050 of the Town of Mills River. If no distance is given, the dimension shall be
1051 determined by the use of the scale shown on the Zoning Map of the Town of Mills
1052 River.

1053 (D) Where a district boundary line divides a lot of single ownership, the
1054 district requirements for the least restricted portion of the lot shall be deemed to
1055 apply to the whole thereof, provided that the extensions shall not include any part of
1056 the lot more than 35 feet beyond the district boundary line.

1057 (E) Where physical features existing on the ground are at variance with
1058 those shown on the Official Zoning Map of the Town of Mills River, or in other
1059 circumstances not covered by Subsections A through D, the Board of Adjustment shall
1060 interpret the district boundaries.

1061 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1062 **USE DISTRICTS**

1063 **§ 154.045 USE REQUIREMENTS.**

1064 Within the districts indicated on the Official Zoning Map of the Town of Mills
1065 River, no building or land shall be used and no building shall be erected or altered

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1066 which is intended or designed to be used in whole or in part for any use other than
1067 those listed as permitted for that district in this article. The [Zoning](#) Administrator or
1068 his or her designee shall make a determination if a use not mentioned can be
1069 reasonably interpreted to fit into a use category where similar uses are described.
1070 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1071 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2015-07, passed 12-10-2015)

1072 **§ 154.046 CORRIDOR OVERLAY DISTRICT.**

1073 (A) *Purpose.* The purpose of the Town of Mills River Corridor Overlay
1074 District is to preserve the aesthetic rural character of the community. Prior to
1075 incorporation, the Mills River community was predominately agricultural and rural
1076 in nature. These guidelines attempt to incorporate design elements that preserve that
1077 heritage even as the town continues to grow and develop.

1078 (B) *Development standards and uses.* Dimensional requirements and all
1079 other development standards shall be the same as for underlying zoning district(s)
1080 except as modified herein.

1081 (1) *Pre-existing structures.* Any structures already permitted at the
1082 time of this section adoption shall not be required to comply; however, any additions
1083 made to those buildings must meet the design criteria listed herein.

1084 (2) *Permitted uses.* The following are the permitted uses within the
1085 Corridor Overlay District.

1086 (a) *Permitted uses.* Same as for underlying zoning district(s).

1087 (b) *Conditional uses.* Same as for underlying zoning
1088 district(s).

1089 (c) *Prohibited uses.* Same as for underlying zoning district(s).

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1090 (3) *Frontage.* Facade visibility requirements will be assessed from
1091 the right-of-way of the following roads:

- 1092 (a) NC-191;
- 1093 (b) NC-280;
- 1094 (c) Ray Hill Rd.;
- 1095 (d) School House Rd.;
- 1096 (e) Banner Farm Rd.;
- 1097 (f) Butler Bridge Rd.;
- 1098 (g) Old Fanning Bridge Rd.;
- 1099 (h) North Mills River Rd.;
- 1100 (i) Jeffress Rd.;
- 1101 (j) South Mills River Rd.;
- 1102 (k) Old Turnpike Rd.; and
- 1103 (l) Turnpike Rd.

1104 (C) *Design requirements.* Only non-residential structures and multi-family
1105 dwellings shall be required to comply with these design requirements. Each
1106 applicable structure shall meet the following design criteria and show compliance on
1107 elevation drawings submitted to scale:

- 1108 (1) *Materials.*
 - 1109 (a) Walls visible from the right-of-way of any of the roads
1110 listed in § 154.270(B)(3) shall use at least 75% acceptable materials. Walls not visible
1111 from the right-of-way of any of the roads listed in § 154.270(B)(3) shall use at least
1112 40% acceptable materials.
 - 1113 (b) Acceptable materials, rock, artificial natural looking
1114 rock, timber, artificial wood grain look, brick, natural stone, artificial natural stone
1115 look, wood shingle or artificial shingle look, or other material as approved by the

1116 Zoning Administrator that has the appearance of a natural material. Unfaced concrete
1117 block is not acceptable as a natural material.

1118 (2) Elements to be included. Every 20 feet of the building shall
1119 include one of the following design elements: window, porches, awnings, cupolas,
1120 material change or door.

1121 (D) *Parking requirements.* All development within this district shall be
1122 required to comply with §§ 154.106 and 154.107 of the Zoning Ordinance.

1123 (E) *Landscaping requirements.* All development within this district shall be
1124 required to comply with the applicable landscaping requirements beginning at §
1125 154.230 of the Zoning Ordinance.

1126 (Ord. 2020-07, passed 3-13-2020)

1127 **§ 154.047 MR-30 RESIDENTIAL DISTRICT.**

1128 This district is intended to be a quiet neighborhood consisting of single-family
1129 residences.

1130 (A) MR-30 Residential District. Within the MR-30 Residential District,
1131 the following uses are permitted:

1132 (1) Single-family dwellings.

1133 (2) Churches, provided that:

1134 (a) The structures are placed not less than 50 feet from any
1135 property line.

1136 (b) They are located with access to a street, as shall be
1137 determined by the Zoning Administrator.

1138 (c) There is a planted buffer strip along the side and rear
1139 property lines, except where the lines run parallel and contiguous with streets,
1140 streambeds, lakes and railroad tracks.

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1141 (3) Church cemeteries on property contiguous to or adjacent to the
1142 principal church assembly building, provided that all plots shall be set back at least
1143 20 feet from any property line.

1144 (4) Church bulletin boards not exceeding 12 square feet in area.

1145 (5) Signs not more than 4 feet square in area advertising the sale or
1146 rental of property on which they are located.

1147 (6) Customary accessory buildings, including private garages,
1148 noncommercial greenhouses and workshops.

1149 (7) Family care homes.

1150 (8) Family Child Care Homes.

1151 (9) Child Care unregulated by the State of North Carolina.

1152 (10) Incidental Home Occupations.

1153 (11) Solar panels shall be allowed as a secondary use as defined in
1154 this chapter. They shall not be allowed in front yards except by ~~conditional~~Minor

1155 Special ~~Use~~ Permit as approved by the Board of Adjustment. Application for a

1156 ~~conditional-special~~ use permit shall include justification for why the panels must be
1157 placed in the front yard and show that there is no practical alternative. Solar panels

1158 shall be subject to the setback requirements for structures in each district. Stand-
1159 alone solar panels shall be limited to 10 feet in height. Solar panels attached to

1160 buildings shall be extend more than 5 feet above the building. Stand-alone solar
1161 panels that are secondary uses to residential uses shall not be required to buffer.

1162 Stand-alone solar panels that are secondary uses to commercial uses shall be required
1163 to plant a buffer strip along side and rear property lines as defined in the zoning

1164 definitions. Residential panels shall not produce ~~t~~ more than 150% of the power
1165 required for the site.

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1166 (12) Wind turbines shall be allowed in all districts under a Major
1167 ~~s~~Special ~~u~~Use ~~p~~Permit under § 154.138. Wind turbines shall be required to have
1168 a setback from all property lines of 2 times the fall radius of the wind turbine.

1169 (B) Uses allowed under a Major Special Use Permit~~uses~~. The following
1170 uses shall be permitted, subject to a finding by the Mills River Town Council that both
1171 the conditions in the definition of **SPECIAL USE** in § 154.007(B) and those conditions
1172 listed below will be met:

1173 (1) Planned unit developments, subject to the conditions listed
1174 under § 154.080 of this chapter.

1175 (2) Residential duplexes, subject to meeting the lot size and
1176 dimensional requirements for lot area and dwelling unit area:

1177 (a) A duplex, as defined in §154.007, is a structure consisting of
1178 two families living independently (emphasis added) of each
1179 other.

1180 (b) A dwelling unit, as defined in §154.007, is a single unit
1181 providing complete, independent (emphasis added), living
1182 facilities for one or more persons, including permanent
1183 provisions for living, sleeping, eating, cooking, and sanitation.

1184 Example: A duplex is planned for construction in a
1185 district requiring a 30,000 square foot minimum lot size
1186 and 30,000 square feet for each dwelling unit. Since a
1187 duplex consists of two dwelling units the minimum lot
1188 area applies to each unit. Therefore, a duplex consisting
1189 of two dwelling units requires a total of 60,000 square
1190 feet of lot size.

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1191 ~~of single-family dwellings, R-O Residential Open Spaces~~
1192 ~~Development, subject to the conditions listed under § 154.082 of this~~
1193 ~~chapter.~~

1194 (3) ~~R-A Residential Apartment~~ [Multi-family D](#)development, subject
1195 to the conditions listed under § 154.082 of this chapter.

1196 (4) Medical, institutional care development, subject to conditions
1197 listed under § 154.084 of this chapter.

1198 (5) Group 1 communications towers and tower activities as defined
1199 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1200 Zoning Ordinance.

1201 (6) Group 2 communications towers and tower activities as defined
1202 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1203 Zoning Ordinance.

1204 (7) Group 6 communications towers and tower activities as defined
1205 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1206 Zoning Ordinance.

1207 (8) Transformer and public stations, provided that:

1208 (a) Transformer stations:

1209 1. The structures are placed not less than 75 feet
1210 from any property line.

1211 2. The structures are enclosed by a woven-wire
1212 fence at least 8 feet high.

1213 3. No vehicle or equipment is stored on the
1214 premises.

1215 4. There is an evergreen planted buffer strip along
1216 the side and rear property lines of residential zoned property.

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1217

(b) Public utility stations:

1218

1. The structures are located on sufficient land to

1219

meet all setback requirements of this chapter.

1220

2. The stations are completely enclosed, either by a

1221

building or a wire fence at least 8 feet high.

1222

3. There is an evergreen planted buffer strip along

1223

the side and rear property lines of residential zoned property.

1224

(9) Structured Home Environments, subject to the conditions listed

1225

under § 154.085.

1226

(C) [Uses allowed under a Minor Special Use Permit.](#) ~~Conditional uses.~~

1227

The following uses shall be permitted, subject to a finding by the Board of Adjustment

1228

that both the conditions in the definition of ~~CONDITIONAL~~-[SPECIAL USE](#) in §

1229

154.007(B) and those conditions listed below will be met:

1230

(1) Parks, camps, tennis and racquet clubs and golf courses.

1231

(Miniature golf courses and practice driving tees and illuminated golf courses

1232

operated for commercial purposes are not allowed.)

1233

(2) Libraries.

1234

(3) Bed-and-breakfast inns.

1235

(4) Civic and cultural buildings, including auditoriums, theaters for

1236

the performing arts, museums, art galleries, symphony and concert halls and

1237

historical societies, provided that:

1238

(a) The structures are placed not less than 50 feet from any

1239

property line.

1240

(b) They are located with access to a street, as shall be

1241

determined by the Zoning Administrator.

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1242 (c) There is a planted buffer strip along the side and rear
1243 property lines, except where the lines run parallel and contiguous with streets,
1244 streambeds, lakes and railroad tracks.

1245 (d) The facility is operated not for profit and satisfactory
1246 proof of the tax-exempt status of the organization is exhibited to the Zoning
1247 Administrator.

1248 (e) One parking space is provided for each 2 seats in
1249 auditoriums, theaters and symphony and concert halls.

1250 (f) One parking space for each 100 feet of gross floor space
1251 directed to patron use shall be provided for museums, art galleries and historical
1252 societies.

1253 (5) Child Care Centers, public schools having multiple curricula and
1254 private schools having curricula approximately the same as ordinarily given in public
1255 schools provided that:

1256 (a) The structures are placed not less than 50 feet from any
1257 property line.

1258 (b) Play areas shall be placed not less than 20 feet from any
1259 property line.

1260 (c) There is a planted buffer strip along the side and rear
1261 property lines, except where the lines run parallel and contiguous with streets,
1262 streambeds, lakes and railroad tracks.

1263 (d) The property has at least 45 feet of frontage on a publicly
1264 owned and maintained road.

1265 (6) Adult Day Care Centers and Adult Day Health Centers provided
1266 that:

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1267 (a) The structures are placed not less than 50 feet from any
1268 property line.

1269 (b) There is a planted buffer strip along the side and rear
1270 property lines, except where the lines run parallel and contiguous with streets,
1271 streambeds, lakes and railroad tracks.

1272 (c) The property has at least 45 feet of frontage on a publicly
1273 owned and maintained road.

1274 (7) Adult Day Care Homes and Adult Day Health Homes provided
1275 that:

1276 (a) There is a limit of 10 clients per day.

1277 (D) *Dimensional requirements.* Within the MR-30 Residential District, as
1278 shown on the Zoning Map of the Town of Mills River, the following dimensional
1279 requirements shall be met:

1280 (1) Minimum lot area: 30,000 square feet¹.

1281 (2) Minimum lot area per dwelling: 30,000 square feet¹.

1282 (3) Maximum building size: N/A.

1283 (4) Maximum building height: 50 feet.

1284 (5) Minimum front yard setback from major street: 75 feet².

1285 (6) Minimum front yard setback from all other streets: 60 feet

1286 (7) Minimum rear yard setback: 30 feet.

1287 (8) Minimum side yard setback for every principal building: 30
1288 feet.

1289 NOTE:

1290 ¹This minimum lot size shall not apply to existing residential lots nor lots
1291 which have been platted and recorded [as residential lots](#) with the Henderson County

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1292 Register of Deeds as of 31 July 2004; ~~nor shall the lots be considered as~~
1293 ~~nonconforming under this designation.~~ In cases where the Watershed Protection
1294 Ordinance requires a larger lot size, the Henderson County Water Supply Watershed
1295 Ordinance shall prevail

1296 ²Where the major street is more than 2 lanes, including parking lanes, setback
1297 requirements shall be measured and begin at a point on the pavement 12 feet from
1298 the edge of the paved street abutting the subject property.

1299 (E) *Buffer/Screening Requirements.*

1300 (1) Whenever any MR30 - Residential District non-residential rear
1301 and/or side property line abuts upon a residential use with no intervening street or
1302 highway or natural buffer, any buildings or parking area used for non-residential
1303 purposes shall be screened with a buffer strip along the property line(s) as defined
1304 in § 154.007(B).

1305 (2) In all other cases, uses in the MR-30 Residential District shall
1306 comply with applicable landscaping and screening requirements in the Town of Mills
1307 River Landscape Ordinance.

1308 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1309 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1310 Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013)

1311 **§ 154.048 [RESERVED].**

1312 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1313 2005; Am. Ord. 00038, passed 11-21-2006)

1314 **§ 154.049 [RESERVED].**

1315 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1316 2005; Am. Ord. 00038, passed 11-21-2006)

1317 **§ 154.050 [RESERVED].**

1318 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1319 2005; Am. Ord. 00038, passed 11-21-2006)

1320 **§ 154.051 [RESERVED].**

1321 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1322 2005; Am. Ord. 00038, passed 11-21-2006)

1323 **§ 154.052 [RESERVED].**

1324 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1325 2005; Am. Ord. 00038, passed 11-21-2006)

1326 **§ 154.053 [RESERVED].**

1327 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1328 2005; Am. Ord. 00038, passed 11-21-2006)

1329 **§ 154.054 [RESERVED].**

1330 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1331 2005; Am. Ord. 00038, passed 11-21-2006)

1332 **§ 154.055 MR-LIGHT INDUSTRIAL DISTRICT.**

1333 The MR - Light Industrial District provides a place for the location of industrial
1334 and other uses that would be incompatible with general business areas. It is
1335 intended to permit, in this district, any use that is not inherently obnoxious to urban

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1336 and rural areas because of noise, odor, smoke, light, vibration, dust or the use or
1337 storage of dangerous chemicals and/or materials.

1338 (A) *MR-LI Light Industrial District.* Within the MR - Light Industrial
1339 District, the following uses are permitted:

1340 (1) Farm machinery assembly.

1341 (2) Automotive components and parts manufacturing.

1342 (3) Industrial equipment, sales and repairs.

1343 (4) Machine and welding shops.

1344 (5) Milk distribution facilities.

1345 (6) Pharmaceutical manufacturing.

1346 (7) Printing, publishing, reproducing establishments.

1347 (8) Warehouses.

1348 (9) Trucking terminals.

1349 (10) Child care centers.

1350 (11) Family child care homes and incidental home occupations per §
1351 154.105(G).

1352 (12) Manufacture, processing, distribution or fabrication of the
1353 following products:

1354 (a) Animal feeds;

1355 (b) Bedding, carpets and pillows;

1356 (c) Clothing, including hosiery;

1357 (d) Electrical and electronic products;

1358 (e) Fiber-optic cable;

1359 (f) Foods, food products, beverages and beverage products,
1360 including bottling of beverages and beverage products;

1361 (g) Furniture industries;

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- 1362 (h) Glass;
- 1363 (i) Household appliances;
- 1364 (j) Ice;
- 1365 (k) Leather goods, not to include processing or storage of
- 1366 raw hides;
- 1367 (l) Machine tools;
- 1368 (m) Metals and metal products;
- 1369 (n) Paints;
- 1370 (o) Paper products, not including the manufacturing or
- 1371 processing of paper;
- 1372 (p) Plastics;
- 1373 (q) Pottery, porcelain and vitreous china;
- 1374 (r) Rubber products, not to include the processing or
- 1375 manufacture of rubber;
- 1376 (s) Soap, detergent and washing compounds;
- 1377 (t) Textiles.
- 1378 (13) Group 1 communications towers and tower activities (as
- 1379 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1380 (14) Group 2 communications towers and tower activities (as
- 1381 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1382 (15) Group 3 communications towers and tower activities (as
- 1383 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1384 (16) Solar energy generation facilities subject to the list of uses
- 1385 permitted with standards to § 154.066(E)(1) including subject to § 154.089.
- 1386 (B) *Secondary uses*. For purposes of this § 154.055, a **SECONDARY USE** is
- 1387 defined as a use which is incidental, supplemental or accessory to the principal use of

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1388 the property and may include a structure or structures at any location upon the
1389 property, which structure is utilized for a secondary use. Within the MR-Light
1390 Industrial District, the following secondary uses are permitted:

1391 (1) Cafeterias, restaurants and pubs, including catering activities.

1392 (2) The promotion, sale and tasting of products manufactured or
1393 processed on site.

1394 (3) Recreation facilities (indoor and outdoor).

1395 (4) Assembly, including venues for entertainment and other special
1396 events and conferences.

1397 (5) Facilities for alternative energy sources, including but not
1398 limited to solar panels, wind turbines, and converters or processors to recycle
1399 materials into usable energy to be used on site.

1400 (6) Retail facilities (gift shop, sundry shop).

1401 (7) Sales training and meeting facilities related to the principal use,
1402 including overnight lodging.

1403 (8) Agriculture for production of goods to be used in connection
1404 with any permitted principal or secondary use.

1405 (9) Adult Day Care Centers and Adult Day Health Centers, provided
1406 that the structures comply with the District's setbacks.

1407 (10) Solar panels shall be allowed as a secondary use as defined in
1408 this chapter. They shall not be allowed in front yards except by ~~conditional~~ Minor

1409 Special Use Permit as approved by the Board of Adjustment. Application for a
1410 ~~conditional~~ special use permit shall include justification for why the panels must be

1411 placed in the front yard and show that there is no practical alternative. Solar panels
1412 shall be subject to the setback requirements for structures in each district. Stand-

1413 alone solar panels shall be limited to 10 feet in height. Solar panels attached to

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1414 buildings shall be extend more than 5 feet above the building. Stand-alone solar
1415 panels that are secondary uses to residential uses shall not be required to buffer.
1416 Stand-alone solar panels that are secondary uses to commercial uses shall be required
1417 to plant a buffer strip along side and rear property lines as defined in the zoning
1418 definitions. Residential panels shall not producte more than 150% of the power
1419 required for the site.

1420 (11) Wind turbines shall be allowed in all districts under a Major
1421 ~~s~~Special u~~Use p~~Permit under § 154.138. Wind turbines shall be required to have a
1422 setback from all property lines of 2 times the fall radius of the wind turbine.

1423 (C) ~~Conditional uses~~Uses requiring a Minor Special Use Permit.

1424 (1) Gasoline, oil or fuel products. Wholesale storage (including
1425 bottled gas and oxygen) above ground, provided permit is obtained from the fire
1426 marshal as required by the fire prevention code and all activity complies will
1427 applicable federal, state and local laws, rules and regulations.

1428 (2) Uses not otherwise named herein which come within the spirit
1429 and intent of this district; subject to a finding by the Board of Adjustment that both
1430 the conditions and the definition of ~~CONDITIONAL~~SPECIAL USE in § 154.007(B) and
1431 those listed below are met.

1432 (a) The proposed use would not involve the manufacture,
1433 use in manufacture, storage on, in, or above ground on the premises; any type of
1434 chemical, in any form, which due to its nature, is known to be hazardous to human
1435 health due to radiation or toxicity or known to be a carcinogen.

1436 (b) The proposed use must meet all dimensional signage,
1437 buffer and parking requirements of this chapter.

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1438 (D) *Dimensional requirements.* Within the MR-Light Industrial District, as
1439 shown on the Zoning Map of the Town of Mills River, the following dimensional
1440 requirements shall be met:

1441 (1) Minimum lot size is 1 acre, and building(s) footprint shall cover
1442 no more than 50% of the total lot area.

1443 (2) Minimum mean lot width: 200 feet.

1444 (3) Minimum front yard setback from major street: 75 feet¹.

1445 (4) Minimum front yard setback from all other streets: 60 feet.

1446 (5) Minimum rear yard setback: 20 feet.

1447 (6) Minimum side yard setback for every principal building: 15
1448 feet.

1449 (7) Maximum height of building: 80 feet.

1450 NOTE:

1451 1 Where the major street is more than 2 lanes, including parking lanes,
1452 setback requirements shall be measured and begin at a point on the pavement 12 feet
1453 from the edge of the paved street abutting the subject property.

1454 (E) *Accessory structures.*

1455 (1) Location of a guard house or security structure(s) may be in any
1456 front or side yard, but must be at least 20 feet from any street or highway line, and
1457 not within 10 feet of any lot line not a street or highway line. An accessory building
1458 or use shall be located in the rear yard provided it is located not less than 10 feet from
1459 the property line. In the case of a corner lot with reversed frontage, no accessory
1460 building shall extend beyond the front yard line of the lots in the rear.

1461 (2) Whenever the location of an accessory building abuts upon a
1462 residential use with no intervening street or highway or natural buffer, any buildings

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1463 or parking areas used for non-residential purposes shall be screened with a buffer
1464 strip along the property line(s) as defined in § 154.007(B).

1465 (F) *Off-street parking and loading requirement.* Off-street parking as
1466 required by this chapter may be permitted in required yards and within the required
1467 setback, but shall not be closer than 10 feet from the front property line or any
1468 dedicated street right-of-way.

1469 (G) *Buffer/screening requirements.*

1470 (1) Whenever any non-residential MR - Light Industrial District
1471 rear and/or side property line abuts upon a residential use with no intervening street
1472 or highway or natural buffer, any buildings or parking area used for non-residential
1473 purposes shall be screened with a buffer strip along the property line(s) as defined in
1474 § 154.007(B).

1475 (2) In all other cases, uses in the MR-Light Industrial District shall
1476 comply with applicable landscaping and screening requirements in the Town of Mills
1477 River Landscape Ordinance.

1478 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1479 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1480 Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 00080,
1481 passed 5-23-2013)

1482 **§ 154.056 [RESERVED].**

1483 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1484 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011)

1485 **§ 154.057 MR-GENERAL BUSINESS DISTRICT.**

1486 The MR - General Business District provides a place for offices, personal
1487 services, and the retailing of durable and convenience goods for the community.
1488 Districts are located on major thoroughfares and collector streets. Because these
1489 commercial uses are subject to public view and are important to the economy of the
1490 community, they shall have ample parking, controlled traffic movement and suitable
1491 landscaping.

1492 (A) *Uses.* Within the MR - General Business District, the following uses
1493 are permitted:

- 1494 (1) Adult Day Care Centers and Adult Day Health Centers.
- 1495 (2) Animal hospitals or kennels.
- 1496 (3) Automobile parts and suppliers, repair garages, excluding open
1497 storage of wrecked [or inoperable](#) vehicles.
- 1498 (4) Automobile sales, new and used.
- 1499 (5) Automobile washing establishments.
- 1500 (6) Bakeries and retail.
- 1501 (7) Banks, loan offices and agencies.
- 1502 (8) Barbershops and beauty shops.
- 1503 (9) Building supply and equipment sales.
- 1504 (10) Business, professional, government, religious, charitable offices
1505 or agencies.
- 1506 (11) Child Care Centers.
- 1507 (12) Churches.
- 1508 (13) Computer, sales and services.
- 1509 (14) Convenience stores with gas pumps, provided the pumps are
1510 located at least 15 feet from all property lines.

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- 1511 (15) Customary accessory uses and structures when located on the
1512 same zoning lot as the principal structure, excluding open storage.
- 1513 (16) Dairy bars and ice cream manufacturing for retail sales on the
1514 premises only.
- 1515 (17) Dry cleaning or laundry pickup stations.
- 1516 (18) Drug stores.
- 1517 (19) Electrical and electronic products, retail.
- 1518 (20) Electric repair shops.
- 1519 (21) Family Child Care Homes and Incidental Home Occupations per
1520 § 154.105(G).
- 1521 (22) Florists.
- 1522 (23) Funeral homes or mortuaries.
- 1523 (24) Furniture and household appliance stores.
- 1524 (25) Gift shops.
- 1525 (26) Greenhouses or horticultural nurseries.
- 1526 (27) Grocery, food, fruit and meat stores.
- 1527 (28) Hardware stores.
- 1528 (29) Jewelry shops.
- 1529 (30) Kindergartens and day nurseries, provided that outdoor play
1530 area is enclosed by a sturdy fence at least 5 feet in height.
- 1531 (31) Laundromats and similar automatic laundries.
- 1532 (32) Libraries, art galleries, museums, music or dancing institutions
1533 or schools.
- 1534 (33) Locksmiths and gunsmiths.
- 1535 (34) Newspaper offices.
- 1536 (35) Extended care facilities.

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- 1537 (36) Office supplies and equipment, sales and services.
- 1538 (37) Opticians.
- 1539 (38) Photographic studios and camera supply stores.
- 1540 (39) Physical fitness centers.
- 1541 (40) Plumbing supply, retail.
- 1542 (41) Printing, publishing and reproducing establishments.
- 1543 (42) Public or privately owned medical and dental clinics, and offices
- 1544 where medical or dental services are rendered.
- 1545 (43) Radio and television repair shops.
- 1546 (44) Restaurants.
- 1547 (45) Retail establishments such as a department, clothing, fabric,
- 1548 variety, floor covering, paint, antique, art goods, gift, music, toy, sporting goods, book
- 1549 and stationery, magazine, candy, tobacco, pet, hobby and craft stores, but not
- 1550 excluding similar retail outlets.
- 1551 (46) Service stations, provided that all gasoline pumps and other
- 1552 stationary equipment shall be located at least 15 feet behind the property line.
- 1553 Furthermore, all sides where the stations abut residential districts, a fence 6 feet in
- 1554 height and suitable landscaping shall be provided.
- 1555 (47) Shoe repair shops.
- 1556 (48) Sign making and painting shops.
- 1557 (49) Tailor and dressmaking shops.
- 1558 (50) Wholesale and warehouse establishments except for the storage
- 1559 of uncured hides, explosives, oil products, gasoline, harmful or dangerous chemicals
- 1560 or materials, and the like.
- 1561 (51) Group 1 communications towers and tower activities (as
- 1562 defined in and subject to the requirements in §§ 154.090 through 154.101).

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1563 (52) Group 2 communications towers and tower activities (as
1564 defined in and subject to the requirements in §§ 154.090 through 154.101).

1565 (53) Group 3 communications towers and tower activities (as
1566 defined in and subject to the requirements in §§ 154.090 through 154.101).

1567 (54) Electronic gaming operations as a secondary use by right to the
1568 primary use of indoor retail businesses in the Mills River General Business (MR-GB)
1569 District. A maximum of 2 machines shall be allowed per establishment.

1570 (55) Solar panels shall be allowed as a secondary use as defined in
1571 this chapter. They shall not be allowed in front yards except by ~~conditional~~ [a Minor](#)
1572 [Special Use Permit](#) as approved by the Board of Adjustment. Application for a
1573 ~~conditional~~ [special](#) use [permit](#) shall include justification for why the panels must be
1574 placed in the front yard and show that there is no practical alternative. Solar panels
1575 shall be subject to the setback requirements for structures in each district. Stand-
1576 alone solar panels shall be limited to 10 feet in height. Solar panels attached to
1577 buildings shall be extend more than 5 feet above the building. Stand-alone solar
1578 panels that are secondary uses to residential uses shall not be required to buffer.
1579 Stand-alone solar panels that are secondary uses to commercial uses shall be required
1580 to plant a buffer strip along side and rear property lines as defined in the zoning
1581 definitions. Residential panels shall not produce more than 150% of the power
1582 required for the site.

1583 (56) Wind turbines shall be allowed in all districts under a special
1584 use permit under § 154.138. Wind turbines shall be required to have a setback from
1585 all property lines of 2 times the fall radius of the wind turbine.

1586 (B) ~~Conditional uses~~ [Uses requiring a Minor Special Use Permit](#)

1587 (1) Commercial uses not otherwise named herein which come
1588 within the spirit and intent of this district; subject to a finding by the Board of

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1589 Adjustment that both the conditions and the definition of ~~CONDITIONAL~~-[SPECIAL](#)
1590 **USE** in § 154.007(B) are met.

1591 (2) Shopping centers.

1592 (3) Hotels, inns, and motels.

1593 (4) Bowling alleys, skating rinks, miniature golf courses,
1594 gymnasiums and other private or publicly owned and operated recreational facilities.

1595 (5) Drive-in restaurants.

1596 (6) Assembly halls, auditoriums and similar structures.

1597 (7) Mixed uses, where buildings are erected for both dwelling and
1598 business purposes, provided the buildings shall be furnished with side yards on each
1599 side of the building measuring not less than 8 feet in width. This regulation shall
1600 not apply to the street side of a corner lot.

1601 (8) Retail and wholesale sales and storage of propane, provided
1602 permit is obtained from appropriate fire marshal and the conditions and the
1603 definition of ~~CONDITIONAL~~-[SPECIAL](#) **USE** in § 154.007(B) are met.

1604 (9) Structured Home Environments, subject to the conditions listed
1605 under § 154.085.

1606 (C) *Dimensional requirements.* Within the MR- General Business
1607 District, as shown on the Zoning Map of the Town of Mills River, the following
1608 dimensional requirements shall be met:

1609 (1) There is no minimum lot size, however the building(s) footprint
1610 shall cover no more than 50% of the total lot area.

1611 (2) Minimum mean lot width: 75 feet.

1612 (3) Minimum front yard setback from major street: 50 feet¹.

1613 (4) Minimum front yard setback from all other streets: 40 feet.

1614 (5) Minimum rear yard setback: 30 feet.

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1615 (6) Minimum side yard setback for every principal building: 15
1616 feet.

1617 (7) Maximum height of building: 50 feet.

1618 NOTE:

1619 1 Where the major street is more than 2 lanes, including parking lanes,
1620 setback requirements shall be measured and begin at a point on the pavement 12 feet
1621 from the edge of the paved street abutting the subject property.

1622 (D) *Accessory structures.*

1623 (1) An accessory building or use shall be located in the rear yard
1624 provided it is located not less than 10 feet from the property line. In the case of a
1625 corner lot with reversed frontage, no accessory building shall extend beyond the front
1626 yard line of the lots in the rear.

1627 (2) Whenever the location of an accessory building abuts upon a
1628 residential use with no intervening street or highway or natural buffer, any buildings
1629 or parking area used for non-residential purposes shall be screened with a buffer
1630 strip along the property line(s) as defined in § 154.007(B).

1631 (E) *Off-street parking and loading requirement.* Off-street parking as
1632 required by this [chapter section](#) may be permitted in required yards, but shall not be
1633 closer than 10 feet from the front property line or any dedicated street right-of-way.

1634 (F) *Buffer/screening requirements.*

1635 (1) Whenever any non-residential MR-General Business rear
1636 and/or side property line abuts upon a residential use with no intervening street or
1637 highway or natural buffer, any buildings or parking area used for non-residential
1638 purposes shall be screened with a buffer strip along the property line(s) as defined in
1639 § 154.007(B).

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1640 (2) In all other cases, uses in the MR-General Business District
1641 shall comply with applicable Landscaping and screening requirements in the Town of
1642 Mills River Landscape Ordinances.

1643 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1644 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1645 Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080,
1646 5-23-2013)

1647 **§ 154.058 MR-NEIGHBORHOOD COMMERCIAL.**

1648 The purpose of this district is to provide for compatible residential and
1649 commercial uses, which protect and enhance the rural characteristic of Mills River.

1650 (A) *Uses.* Within the MR Neighborhood Commercial district, the
1651 following uses are permitted:

1652 (1) Retail business or service conducted within an enclosed
1653 building.

1654 (2) Retail business making products sold primarily at retail on the
1655 premises.

1656 (3) Other public utilities, public facilities and public buildings.

1657 (4) Offices: business, professional, medical and public.

1658 (5) Single-family dwellings.

1659 (6) Family care homes.

1660 (7) Adult Day Health Homes, Adult Day Health Centers, Adult Day
1661 Care Homes and Adult Day Care Centers.

1662 (8) Child Care Centers.

1663 (9) Family Child Care Homes and Incidental Home Occupations per
1664 § 154.105(G).

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1665 (10) Customary accessory buildings.

1666 (11) Group 1 communications towers and tower activities as defined
1667 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1668 Zoning Ordinance.

1669 (12) Group 2 communications towers and tower activities as defined
1670 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1671 Zoning Ordinance.

1672 (13) Solar panels shall be allowed as a secondary use as defined in
1673 this chapter. They shall not be allowed in front yards except by ~~conditional~~ a Minor
1674 Special Use Permit as approved by the Board of Adjustment. Application for a
1675 ~~conditional~~ special use shall include justification for why the panels must be placed in
1676 the front yard and show that there is no practical alternative. Solar panels shall be
1677 subject to the setback requirements for structures in each district. Stand-alone
1678 solar panels shall be limited to 10 feet in height. Solar panels attached to buildings
1679 shall extend more than 5 feet above the building. Stand-alone solar panels that are
1680 secondary uses to residential uses shall not be required to buffer. Stand-alone solar
1681 panels that are secondary uses to commercial uses shall be required to plant a buffer
1682 strip along side and rear property lines as defined in the zoning definitions.
1683 Residential panels shall not produce more than 150% of the power required for the
1684 site.

1685 (14) Wind turbines shall be allowed in all districts under a Major
1686 Special Use Permit under § 154.138. Wind turbines shall be required to have a
1687 setback from all property lines of 2 times the fall radius of the wind turbine.

1688 (B) Uses allowed under a Minor Special Use Permit ~~Conditional uses~~. The
1689 following uses shall be permitted, subject to a finding by the Board of Adjustment that

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1690 both the conditions in the definition of ~~CONDITIONAL~~ SPECIAL USES in § 154.007(B)
1691 and those conditions listed below will be met:

1692 (1) Hospitals, clinics, veterinary clinics, libraries, schools and
1693 churches, excluding cemeteries.

1694 (2) Restaurants, bed-and-breakfast establishments.

1695 (3) Home occupations.

1696 (4) Civic and cultural buildings, including auditoriums, theaters for
1697 the performing arts, museums, art galleries, symphony and concert halls and
1698 historical societies. The uses must meet the same site requirements stated in §
1699 154.047(A)(9).

1700 (5) Structured Home Environments, subject to the conditions listed
1701 under § 154.085.

1702 (C) *Dimensional requirements-Residential.* Within the MR-
1703 Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills
1704 River, the following dimensional requirements shall be met:

1705 (1) Minimum lot area: 30,000 square feet.¹

1706 (2) Minimum lot area per dwelling: 30,000 square feet¹.

1707 (3) Maximum building size: N/A.

1708 (4) Maximum building height: 50 feet.

1709 (5) Minimum front yard setback from major street: 75 feet².

1710 (6) Minimum front yard setback from all other streets: 60 feet.

1711 (7) Minimum rear yard setback: 30 feet.

1712 (8) Minimum side yard setback for every principal building: 30
1713 feet.

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1714 (D) *Dimensional requirements–non-residential.* Within the MR–
1715 Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills
1716 River, the following dimensional requirements shall be met:

- 1717 (1) Minimum lot area: 30,000 square feet.¹
- 1718 (2) Maximum building size: 10,000 square feet.
- 1719 (3) Maximum building height: 30 feet.
- 1720 (4) Minimum front yard setback from major street: 75 feet².
- 1721 (5) Minimum front yard setback from all other streets: 60 feet.
- 1722 (6) Minimum rear yard setback: 30 feet.
- 1723 (7) Minimum side yard setback for every principal building: 30
1724 feet.

1725 NOTE:

1726 1 This minimum lot size shall not apply to existing residential lots nor
1727 lots which have been platted and recorded with the Henderson County Register of
1728 Deeds as of 31 July 2004; ~~nor shall the lots be considered as nonconforming under~~
1729 ~~this designation.~~ In cases where the Watershed Protection Ordinance requires a
1730 larger lot size, the Henderson County Water Supply Watershed Ordinance shall
1731 prevail.

1732 2 Where the major street is more than 2 lanes, including parking lanes,
1733 setback requirements shall be measured and begin at a point on the pavement 12 feet
1734 from the edge of the paved street abutting the subject property.

1735 (E) *Maximum permissible lot coverage.* The total ground area covered by
1736 the building in this district shall not exceed 50% of the total lot area.

1737 (F) *Buffer/Screening Requirements.*

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1738 (1) Whenever any non-residential MR-Neighborhood Commercial
1739 District rear and/or side property line abuts upon a residential use with no
1740 intervening street or highway or natural buffer, any buildings or parking area used
1741 for non-residential purposes shall be screened with a buffer strip along the property
1742 line(s) as defined in § 154.007(B).

1743 (2) In all other cases, uses in the MR-Neighborhood Commercial
1744 District shall comply with applicable landscaping and screening requirements in the
1745 Town of Mills River Landscape Ordinance.

1746 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1747 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1748 Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080,
1749 passed 5-23-2013)

1750 **§ 154.059 [RESERVED].**

1751 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1752 2005; Am. Ord. 00038, passed 11-21-2006)

1753 **§ 154.060 [RESERVED].**

1754 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1755 2005; Am. Ord. 00038, passed 11-21-2006)

1756 **§ 154.061 [RESERVED].**

1757 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1758 2005; Am. Ord. 00038, passed 11-21-2006)

1759 **§ 154.062 [RESERVED].**

1760 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1761 2005; Am. Ord. 00038, passed 11-21-2006)

1762 **§ 154.063 [RESERVED].**

1763 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1764 2005; Am. Ord. 00038, passed 11-21-2006)

1765 **§ 154.064 [RESERVED].**

1766 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1767 2005; Am. Ord. 00038, passed 11-21-2006)

1768 **§ 154.065 [RESERVED].**

1769 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1770 2005; Am. Ord. 00038, passed 11-21-2006)

1771 **§ 154.066 MR-MIXED USE DISTRICT.**

1772 The MR-Mixed Use District is established to allow all uses (excluding
1773 hazardous waste disposal facilities and radioactive waste disposal facilities and adult
1774 establishments) but to regulate certain uses so as to ensure that neighborhood impact
1775 is mitigated. The neighborhood impact from the uses listed below will be mitigated
1776 through the use of minimum specific site standards combined with general standards
1777 which provide the flexibility to impose a higher level of specific site standards
1778 dependent upon the degree of neighborhood impact.

1779 (A) *Minimum residential lot size.* In keeping with the intent to enhance
1780 and protect the rural character of Mills River, residential lot sizes shall be no less than
1781 30,000 square feet per single-family dwelling. This minimum lot size shall not

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1782 apply to existing residential lots nor [residential](#) lots which have been platted and
1783 recorded with the Henderson County Register of Deeds as of 31 July 2004; ~~nor shall~~
1784 ~~the lots be considered as nonconforming under this designation.~~ In cases where the
1785 Watershed Protection Ordinance requires a larger lot size, the Henderson County
1786 Water Supply Watershed Ordinance shall prevail.

1787 (B) *Definitions.* The following definitions are applicable in this § 154.066
1788 and in other sections of this chapter only as specifically stated in the other sections:

1789 **ACCESS ROAD CORRIDOR.** A private passageway containing a road,
1790 street, driveway, and the like, that provides the principal means of direct vehicular
1791 entry and/or exit between a regulated use and a paved, public road, street or highway.
1792 An access road corridor shall be located entirely on the subject property or on an
1793 easement appurtenant. An access road corridor shall contain a clear and
1794 unobstructed travelway, except for any necessary security gates, and shall have a
1795 minimum vertical clearance of a least 13 feet, 6 inches.

1796 **BUFFER.** A continuous strip of land, measured from the property
1797 lines or from any street bordering or traversing the property (whichever is closer to
1798 the principal use or building), in which no development or principal use may occur,
1799 but which may contain screening, fencing, interior service roads not intended for
1800 patron use, principal use signs, business signs and gate or security houses. Access
1801 road corridors may cross the buffer at entrance and exit points only.

1802 **EXTREMELY HAZARDOUS FACILITY.** Any industrial facility that
1803 stores, handles, processes or manufactures any material, substance or product that is
1804 considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by
1805 inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive
1806 substance or material, all as classified by the United States Department of
1807 Transportation Hazard Classification System.

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1808 **EXTREMELY HAZARDOUS SUBSTANCE.** Any material, substance or
1809 product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases
1810 toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7
1811 radioactive substance or material, all as classified by the United States Department of
1812 Transportation Hazard Classification System.

1813 **HEAVY INDUSTRY.** Any industrial use establishment that is an
1814 extremely hazardous facility as defined in § 154.066(A) of this chapter, or is a large
1815 quantity generator of hazardous waste as that term is defined by the North Carolina
1816 Department of Environment and Natural Resources. Specifically excluded from this
1817 definition are those establishments that are not extremely hazardous facilities that
1818 operate in an enclosed building(s) or structure(s) having a total gross floor area of
1819 less than 30,000 square feet; and those uses listed in § 154.066(G)(1)(a) through (k).

1820 **SETBACK.** A continuous strip of land, measured from the property
1821 lines or from any street bordering or traversing the property (whichever is closer to
1822 the principal use or building) in which no principal ~~structure~~use is permitted. Limited
1823 development, including buffers and related development, parking lots and accessory
1824 structures and buildings, access road corridors, and interior service roads, may occur
1825 within the setback.

1826 (C) *Uses allowed by right.* All uses are allowed by right in the MR-Mixed Use
1827 District unless otherwise regulated by this section or other parts of the Mills River
1828 Town Code. ~~Unless otherwise stated herein below:~~

1829 ~~—————(1)———— All uses are allowed by right in the MR-Mixed Use District unless~~
1830 ~~stated below;~~

1831 (21) Accessory structures and buildings of all uses allowed by right
1832 in the MR-Mixed Use District are exempted from those regulations contained in §
1833 154.1132.

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1834 (D) *Uses governed by other ordinances.* Within the MR-Mixed Use District
1835 the following uses will be allowed but will be entirely governed by the specified
1836 ordinances adopted by the Mills River Town Council:

1837 (1) Manufactured home parks: subject to compliance with Chapter
1838 151 of the Mills River Town Code, as may be amended.

1839 (2) Communication towers: subject to compliance with Chapter 152
1840 of the Mills River Town Code, as may be amended.

1841 (E) *Uses permitted with standards.*

1842 (1) The following uses shall be permitted with standards:

1843 (a) Vehicle graveyards (See § 154.087).

1844 (b) Mobile/manufactured home graveyards (See § 154.087).

1845 (2) Uses permitted with standards shall require a zoning permit
1846 from the Zoning Administrator.

1847 (3) Solar panels shall be allowed as a secondary use as defined in
1848 this chapter. They shall not be allowed in front yards except by ~~conditional~~ Minor

1849 Special Use ~~Permit~~ as approved by the Board of Adjustment. Application for a
1850 ~~conditional~~ special use permit shall include justification for why the panels must be

1851 placed in the front yard and show that there is no practical alternative. Solar panels
1852 shall be subject to the setback requirements for structures in each district. Stand-

1853 alone solar panels shall be limited to 10 feet in height. Solar panels attached to
1854 buildings shall be extend more than 5 feet above the building. Stand-alone solar

1855 panels that are secondary uses to residential uses shall not be required to buffer.
1856 Stand-alone solar panels that are secondary uses to commercial uses shall be required

1857 to plant a buffer strip along side and rear property lines as defined in the zoning
1858 definitions. Residential panels shall not produce more than 150% of the power

1859 required for the site.

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1860 (4) Wind turbines shall be allowed in all districts under a [Major](#)
1861 ~~s~~Special ~~u~~Use ~~p~~Permit under § 154.138. Wind turbines shall be required to have a
1862 setback from all property lines of 2 times the fall radius of the wind turbine.

1863 (F) *(Reserved)*

1864 (G) Special uses.

1865 (1) The following special uses shall be permitted in the MR-Mixed
1866 Use District [under a Major Special Use Permit](#), subject to the Mills River Town Council
1867 finding that both the general site standards stated in § 154.138 and those specific site
1868 standards listed in § 154.087, if any, will be met:

1869 (a) Incinerators.

1870 (b) Solid waste management facilities.

1871 (c) Mining and extraction operations.

1872 (d) Concrete plants.

1873 (e) Asphalt plants.

1874 (f) Junkyards.

1875 (g) Motor sports facilities.

1876 (h) Slaughtering plants.

1877 (i) Amusement parks.

1878 (j) Chip mills.

1879 (k) Heavy industry.

1880 (l) Tiny home parks, park model parks, recreational vehicle
1881 parks.

1882 (2) It is expressly acknowledged that the above-referenced uses
1883 will not adversely affect the health or safety of persons residing or working in the
1884 neighborhood of the proposed use and will not be detrimental to the public welfare
1885 or injurious to property or public improvements in the neighborhood as long as the

1886 site standards as specified in § 154.087 and the general site standards as specified in
1887 § 154.138(D) are met.

1888 (H) *Prohibited uses.* The following uses shall be prohibited in the MR-
1889 Mixed Use District:

1890 (1) Hazardous waste disposal facilities, unless preempted pursuant
1891 to G.S. § 130A-293.

1892 (2) Radioactive Waste Disposal Facilities, unless preempted
1893 pursuant to G.S. § 104E-6.2.

1894 (3) Adult establishments.

1895 (I) *Expansion and alteration of certain uses in the MR-Mixed Use District.*

1896 (1) *Uses having a special use permit.* The following requirements
1897 apply to those uses listed in § 154.066(G) which receive a special use permit after the
1898 effective date of a Zoning Map of the Town of Mills River amendment applying the
1899 MR-Mixed Use District in the applicable area:

1900 (a) *Alteration of a use (without physical expansion).*

1901 Alterations of the operations of a use shall be allowed as long as the alterations do not
1902 violate any specific standards of this chapter (see § 154.087), general standards of
1903 this chapter (see § 154.138) or conditions of the special use permit. If an alteration
1904 would result in the violation of any specific standards of this chapter (see § 154.087),
1905 general standards of this chapter (see § 154.138) or conditions of the special use
1906 permit, an amendment to the special use permit shall be required, otherwise the
1907 alteration will be deemed a violation of this chapter. This subsection shall not be
1908 deemed to allow a use to change to another use listed in § 154.066(G) without
1909 applying for a new special use permit. Alterations of operations shall include, but not
1910 be limited to, increases in productivity arising from the addition of equipment, the
1911 addition of employee shifts or the change of means and methods.

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1912 (b) *Physical expansion of a use.* A use may expand its facilities
1913 without any additional restrictions and without securing an amendment to the
1914 special use permit if the specific standards of this chapter (see § 154.087), general
1915 standards of this chapter (see § 154.138), or the conditions of the permit, if any, will
1916 not be violated and if the total size of the structures or areas devoted to the principal
1917 uses after the proposed expansion would not be increased by more than 10%.
1918 Notwithstanding the foregoing, no use may expand in accordance with the terms of
1919 this exception on more than 2 occasions without securing an amendment to the
1920 special use permit. All other expansions will require an amendment to the special use
1921 permit. If any condition of the special use permit will be violated by a proposed
1922 expansion to facilities, or the proposed expansion will result in more than 2
1923 expansions to facilities pursuant to the exception contained herein above, or the
1924 expansion results in the total size of the structures or areas devoted to the principal
1925 use being expanded by more than 10%, then the expansion will be deemed a violation
1926 of this chapter.

1927 (2) *Uses for which a special use permit was not required when*
1928 *established.* For those uses of the same type as those listed in § 154.066(G)
1929 constructed or established after the effective date of a Zoning Map of the Town of
1930 Mills River amendment applying the MR-Mixed Use District in the applicable area,
1931 which did not require a special use permit when the use was constructed or
1932 established, any expansion or alteration to the operations, or any expansion or
1933 alteration to the structures or areas devoted to the principal use, which bring the use
1934 within the definition for those uses listed in § 154.066(G) shall require a special use
1935 permit. The entire use, including but not limited to the expansion or alteration, shall
1936 be required to comply with all applicable standards in the MR-Mixed Use District.

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1937 (3) *Preexisting uses.* For those uses of the same type as those listed
1938 in § 154.066(G) constructed or established before the effective date of a Zoning Map
1939 of the Town of Mills River amendment applying the MR-Mixed Use District in the
1940 applicable area the following requirements shall apply:

1941 (a) *Alteration of a use (without physical expansion).*
1942 Alterations of the operations of a use of the type listed in § 154.066(G) shall be
1943 allowed without a special use permit if the use did not meet the definition of 1 of the
1944 uses listed in § 154.066(G) when constructed or established, and the alteration does
1945 not bring the use within the definition for 1 of the uses listed in § 154.066(G). If,
1946 however, the alteration will bring the use within the definition of 1 of the uses listed
1947 in § 154.066(G), then a special use permit shall be required. Once a special use permit
1948 is obtained for a preexisting use, however, further alterations shall be governed by §
1949 154.066(I)(1)(a) above.

1950 (b) *Physical expansion of a use.* Expansions of the facilities for
1951 uses of the type listed in § 154.066(G) shall be allowed without a special use permit
1952 if the use would not have met the definition of ~~1 of one of~~ the uses listed in §
1953 154.066(G) when constructed or established, and the expansion does not bring the
1954 use within the definition for ~~one~~ of the uses listed in § 154.066(G). If, however, the
1955 expansion will bring the use within the definition of ~~one~~ of the uses listed in §
1956 154.066(G) or the use would have met the definition of ~~one~~ of the uses listed in §
1957 154.066(G) when constructed or established, then a special use permit shall be
1958 required. Once a special use is obtained for a preexisting use, however, further
1959 expansions shall be governed by § 154.066(I)(1)(b) above.

1960 (c) *Applicable standards.* Notwithstanding any provisions of
1961 this chapter, alterations or expansions to uses required to obtain a special use permit
1962 pursuant to this § 154.066(I)(3) [whether or not they are later governed by §

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1963 154.066(I)(1)(a) or § 154.066(I)(1)(b) above] shall be required to meet the specific
1964 site standards listed in § 154.087 to the extent possible for the expanded or altered
1965 portion of the facility or operation only. Any the alteration or expansion shall be
1966 required to meet the general standards listed in § 154.138 with or without conditions
1967 imposed by the Mills River Town Council as allowed by this chapter. The conditions
1968 may include, but not be limited to, imposition of specific site standards of the types
1969 listed in § 154.087. Notwithstanding anything herein to the contrary, development
1970 occurring around a preexisting use will not affect the ability of the use to alter or
1971 expand its facilities or operations.

1972 (J) *Subsequent events.* Events occurring subsequent to the date of an
1973 application for a special use permit for those uses in the MR-Mixed Use District
1974 requiring the permit, including but not limited to the location of a health-care facility
1975 or school within the stated separation or a change in the residential density, shall not
1976 operate to invalidate the permit or affect the ability of the use to alter or expand its
1977 facilities or operations. In addition, development occurring around a preexisting use
1978 or a use for which a special use permit was not required when established will not
1979 affect the ability of the use to alter or expand its facilities or operations.

1980 (K) *Dimensional requirements - nonresidential.* Within the MR-Mixed Use
1981 District, as shown on the Zoning Map of the Town of Mills River, the following
1982 dimensional requirements shall be met:

- 1983 (1) Maximum building size: 15,000 square feet. Public Schools as
1984 defined in § 154.007(B) are exempt from this provision for building ~~size~~ maximum.
1985 (2) Maximum building height: 40 feet.
1986 (3) Minimum front yard setback from major street: 75 feet.²
1987 (4) Minimum front yard setback from all other streets: 60 feet.
1988 (5) Minimum rear and side yard setback: 30 feet.

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- 1989 (L) Buffer/screening *requirements*.
- 1990 (1) Whenever any non-residential MR-Mixed Use rear and/or side
- 1991 property line abuts upon a residential use with no intervening street or highway or
- 1992 natural buffer, any buildings or parking area used for non-residential shall be
- 1993 screened with a buffer strip along the property line(s) as defined in § 154.007(B).
- 1994 (2) In all other cases, uses in the MR-Mixed Use District shall comply
- 1995 with applicable landscaping and screening requirements in the Town of Mills River
- 1996 Landscape Ordinance.
- 1997 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
- 1998 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011; Am.
- 1999 Ord. 00080, passed 5-23- 2013; Am. Ord. 2018-03, passed 3-8-2018; Am. Ord. 2018-
- 2000 10, passed 11-8-2017)

2001 **SPECIAL PROVISIONS**

2002 **§ 154.080 SINGLE-FAMILY RESIDENTIAL CLUSTER**

2003 **DEVELOPMENT.**

2004 A single-family residential cluster development (SFRCD) may be located in the

2005 MR-30, MR-MU, and MR-NC districts as a special use [under a Major Special Use](#)

2006 [Permit](#), subject to a finding by the Mills River Town Council on the advice and

2007 recommendation of the Town of Mills River Planning Board that certain conditions

2008 [be](#) met. The purpose of this section is to afford substantial advantages for greater

2009 flexibility and improved marketability through the benefits of efficiency which permit

2010 flexibility in building lot size. Densities are calculated on a project basis, thus allowing

2011 the clustering of single-family residential homes in order to create [efficient use of land](#)

2012 [resulting in land conservation](#).

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2013 (A) Land development standards. The following land development
2014 standards shall apply for a single-family residential cluster development. Single-
2015 family residential cluster developments may be located in the MR-30 , MR-MU, and
2016 MR-NC districts as a special use, subject to a finding by the Mills River Town Council
2017 on the advice and recommendation of the Planning Board that certain conditions shall
2018 be met.

2019 (1) Ownership control. The land in a single-family residential
2020 cluster development shall be under single ownership or management by the applicant
2021 before final approval and/or construction, or proper assurances (legal title or
2022 execution of a binding sales agreement) shall be provided that the development can
2023 be successfully completed by the applicant.

2024 (2) Density requirements. The overall density (dwelling units per
2025 acre) of any proposed SFRCD ~~development~~ shall be ~~1~~one (1) dwelling unit per 40,000
2026 square feet. _

2027 (a) The minimum lot size requirement for a detached single-
2028 family dwelling shall be no less than 20,000 square feet.

2029 (b) Streets, street right-of-way, utility station sites, lakes,
2030 ponds and other impervious structures, such as club houses, swimming pools and
2031 tennis courts may not be included when calculating the total acreage available for a
2032 SFRCD.

2033 (c) Open space within an SFRCD must be identified on the
2034 plat with the following language: "Natural Area – Not Subject to Development".
2035 The plat shall be recorded in the office of the Register of Deed of Henderson County.
2036 Open space within a SFRCD shall remain in a vegetated or natural site.

2037 (3) Frontage requirements. Single-family residential cluster
2038 developments shall have the main entrance on a paved, public, state-maintained road

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2039 or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth
2040 of 200 feet.

2041 (4) Minimum size. The minimum area for a SFRCDD development
2042 shall be 1-1/2 contiguous acres.

2043 (5) Residential uses. Only single-family detached homes shall be
2044 allowed in a SFRCDD.

2045 (6) Minimum requirements.

2046 (a) The normal 30,000 square feet lot size, setbacks and
2047 frontage requirements are hereby waived for the SFRCDD ~~development~~, provided that
2048 the spirit and intent of this section are complied with in the total development plan
2049 as determined by the Town Council. The Town Council shall exercise ultimate
2050 discretion as to whether the total development plan does comply with the spirit and
2051 intent of this section.

2052 1. Height limitations. No building or structure shall
2053 exceed 35 feet in height as measured from the highest ground elevation of the
2054 building or structure to the highest point of the roof or facade whichever is greater.

2055 2. Required distance between buildings. The
2056 minimum distance between buildings in a planned unit development shall be as
2057 follows:

2058 a. All buildings located or situated end to end
2059 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2060 of 20 feet between buildings. When ~~one~~ or both buildings exceed 20 feet in height,
2061 the building separation shall be increased an additional ~~one~~ (1) foot for every foot of
2062 increased height to a maximum of 30 feet.

2063 b. All buildings located or situated side to
2064 side or end to end (longest sides) and are less than 20 feet in height shall have a

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2065 minimum separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent
2066 buildings exceed 20 feet in height, the building separation shall be increased an
2067 additional [one \(1\)](#) foot for every foot of increased height to a maximum of 40 feet
2068 separation.

2069 (b) Publicly-owned and maintained water and sewer shall
2070 be required for a SFRC~~D-development~~.

2071 (c) Streets within a SFRC~~D-development~~ shall be built to
2072 meeting NCDOT standards.

2073 (d) Every dwelling unit shall have direct access to an interior
2074 road and there shall be provision for adequate vehicular circulation to all
2075 development properties in order to insure acceptable levels of access for emergency
2076 vehicles.

2077 (e) The location of structures, shown on the development
2078 plan, shall be so arranged as not to be detrimental to existing or other proposed
2079 structures or to the development of the neighborhood.

2080 (7) Privacy. Each development shall provide reasonable visual
2081 and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and
2082 landscaping shall be used as appropriate for the protection and aesthetic
2083 enhancement of property and the privacy of its occupants, screening of objectionable
2084 views or uses, and reduction of noise.

2085 (8) Perimeter requirements. If topographical or other barriers
2086 within 200 feet of the perimeter of the development do not provide reasonable
2087 privacy for existing uses adjacent to the development, the Town Council may impose
2088 any of the following requirements:

2089 (a) Structures located on the perimeter of the development
2090 must be set back from property lines and rights-of-way of abutting streets in

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2091 accordance with the provision of this chapter controlling the district within which the
2092 property is situated.

2093 (b) The location of the structures on the perimeter of the
2094 development, as shown on the development plan, shall be so arranged as not to be
2095 detrimental to existing structures or to the adjacent neighborhood.

2096 (9) SFRCD ~~development~~ in more than one~~1~~ district. If the SFRCD
2097 ~~development~~ lies in more than ~~1~~one (1) zoning district, the ~~number of~~ allowable
2098 dwelling unit ~~density s must~~1 shall be one (1) dwelling unit per 40,000 square feet.

2099 (10) Plans and documentation. Plans and accompanying
2100 documentation to ensure that the water and sewer systems proposed for the SFRCD
2101 ~~development~~ have been designed by a professional engineer, and have been approved
2102 by the appropriate local and state agencies, shall be submitted as a part of the
2103 application.

2104 (11) Paths and walkways. Any pedestrian and bicycle path
2105 circulation system and its related walkways shall be insulated as reasonably as
2106 possible in order to provide separation of pedestrian and motorized vehicular traffic.

2107 (12) Areas. Layout of parking areas, service areas, entrance, exits,
2108 yards, courts and landscaping and control of signs, lighting, noise or other potentially
2109 adverse influences shall be such as to protect the residential character within the
2110 SFRCD and the desirable character in any adjoining property.

2111 (B) Timing. If no development has occurred pursuant to the issuance of
2112 a special use permit 1 year after the date of the special use permit for the SFRCD or
2113 upon the expiration of one 90 day extension of time for starting development granted
2114 by the Town Council, the special use permit shall become null and void and the
2115 procedures for application and review as outlined in this section shall be required for
2116 any development on the subject property.

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2117 (C) Staged development (phasing). After general construction
2118 commences, the Zoning Administrator shall review at least once every 6 months all
2119 permits issued and compare them to the overall development phasing program. If he
2120 or she determines that the rate of construction of residential units substantially
2121 differs from the approved phasing program, he or she shall so notify the developer,
2122 and the Town Council may issue the appropriate orders to the developer as it sees fit
2123 and, upon continued violation of this division, may order the Zoning Administrator to
2124 refuse any further permits until the project is in general accordance with the
2125 approved phasing program.

2126 (D) Conveyance of open space, recreational areas and communally owned
2127 facilities.

2128 (1) Common open space, recreational areas and communally
2129 owned facilities shall be guaranteed by a restrictive covenant describing the areas
2130 and facilities and their maintenance and improvement, running with the land for the
2131 benefit of residents of the SFRC development or adjoining property owners or both.

2132 (2) The applicant must submit to the Town Council the legal
2133 documents which will produce the aforesaid guaranties and, in particular, will
2134 provide for restricting the use of common areas and facilities for the designated
2135 purposes.

2136 (E) Maintenance. SFRC~~s~~ ~~developments~~ shall be approved subject to the
2137 submission of an instrument or instruments setting forth a plan for permanent care
2138 and maintenance of permanent open spaces, recreational areas, easements, rights-of-
2139 way and communally owned facilities which would be legally enforceable. The
2140 developer shall create a homeowners' association and submit bylaws and rules and
2141 regulations governing the association. The developer shall be required to include in
2142 every deed he or she makes that membership be mandatory for each home buyer.

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2143 (1) The provisions shall include, but not be limited to, the following:

2144 (a) The homeowners' association must be set up before the
2145 homes are sold.

2146 (b) The open space restrictions must be permanent not just
2147 for a period of years.

2148 (c) The association must be responsible for liability
2149 insurance, local taxes and the maintenance of recreational and other designated
2150 facilities.

2151 (d) Homeowners must pay their pro rata share of the cost;
2152 the assessment levied by the association can become a lien on the property.

2153 (e) The association must be able to adjust the assessment to
2154 meet changed needs.

2155 (2) No instrument shall be acceptable until approved by the Town
2156 Attorney as to legal form and effect and the Town Council as to suitability for the
2157 proposed uses.

2158 (F) Procedures for application and review. An applicant desiring to
2159 develop a SFRC development shall adhere to the following procedures:

2160 (1) Pre-application conference. Prior to submission of an
2161 application for a special use permit to the Town Council, the applicant shall arrange a
2162 pre- application conference with the Planning Board and its staff.

2163 (a) The applicant shall submit to the Planning Board a sketch
2164 development plan and a brief description of the proposed development strategy. The
2165 sketch plan and development strategy shall show and describe the layout of the
2166 SFRC ~~development~~, depicting proposed areas and types of residential development,
2167 open spaces and recreation areas and streets.

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2168 (b) The pre-application conference is designed to inform the
2169 developer of the local government's regulations and policies concerning development
2170 alternatives and to inform the local government of the developer's intentions, enough
2171 to be able to give him or her some informal, non-binding feedback on the acceptability
2172 of his or her ideas. The greater the level of common understanding between the
2173 developer and the local government that can be achieved at the pre-application
2174 conference stage, the smoother the remaining steps of the review process will be.

2175 (2) Special use permit. Upon completion of the pre-application
2176 conference with the Planning Board, the applicant shall submit to the Town Council a
2177 written application for a special use permit in accordance with § 154.180.

2178 (3) Development plan. After the pre- application conference and
2179 upon submission of a written application for a special use permit, the applicant shall
2180 submit a development plan to the Town Council. A second copy of the development
2181 plan shall be submitted to the Planning Board for review and recommendations. The
2182 Town Council shall not issue a special use permit until it has received
2183 recommendations from the Planning Board. If no action is taken by the Planning
2184 Board within 45 days of the meeting at which the Planning Board first considers the
2185 development plan, it shall be deemed to have recommended approval of the
2186 development plan, and the Town Council may proceed to act upon the application.

2187 (4) The Planning Board shall review the development plan for
2188 conformance with the land development standards of this section, the sketch plan and
2189 development strategy presented in the pre- application conference and the
2190 requirements of the development plan which shall include the following information
2191 and supporting documentation:

2192 (a) Written documents.

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- 2193 1. A legal description of the total site proposed for
2194 development, including a statement of present and proposed ownership.
- 2195 2. The zoning district or districts in which the
2196 project is located.
- 2197 3. A general statement of objectives to be achieved
2198 by the SFRC development through the particular approach proposed by the applicant.
- 2199 4. A development schedule indicating approximate
2200 beginning and completion dates of the development, including any proposed stages.
- 2201 5. A statement of the applicant's intentions with
2202 regard to the future selling and/or leasing of all or portions of the SFRCD
2203 development.
- 2204 6. Quantitative data for the following: proposed
2205 total number of residential dwelling units, parcel sizes, gross residential densities and
2206 total amount of open space.
- 2207 7. Plan for maintenance of common areas,
2208 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.
- 2209 (b) Site plan and supporting maps. A map or maps drawn to
2210 an appropriate scale, with the date of preparation and North point, shall include the
2211 following information:
- 2212 1. Existing site conditions, including contours,
2213 watercourses, identified flood hazard areas and any unique natural or man-made
2214 features.
- 2215 2. Boundary lines of the proposed development,
2216 proposed lot lines and plot designs.
- 2217 3. Proposed location and use of all existing and
2218 proposed structures.

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2219 4. Location and size of all areas to be conveyed,
2220 dedicated or reserved as common open space, parks, recreational areas, school sites
2221 and similar public and semipublic uses.

2222 5. The existing and proposed street and/or
2223 vehicular circulation facilities, including off-street parking areas, service areas,
2224 loading areas and major points of access to public rights-of-way, notations of
2225 proposed ownership of street and/or vehicular circulation facilities (public or
2226 private); documentation from Henderson County Emergency Medical Services and
2227 the Mills River Fire Chief of the adequacy of the development's facilities for
2228 emergency medical and fire services.

2229 6. Approximate location of proposed utility systems,
2230 including documentation approving the proposed water and sewer systems from the
2231 appropriate local and state agencies. Water and sewer documentation must reflect
2232 the current development name and densities, be issued within the past 6 months and
2233 state that the public entity intends to accept both flow and maintenance.
2234 Documentation of an approved sedimentation and erosion control plan shall also be
2235 submitted.

2236 7. Location and/or notation of existing and
2237 proposed easements and rights-of-way.

2238 8. The proposed treatment of the perimeter of the
2239 development, including materials and/or techniques, such as screens, fences and
2240 walls.

2241 9. Information on adjacent land areas, including
2242 land use, zoning classifications, public facilities and any unique natural features.

2243 (c) Additional information. Any additional information
2244 required by the Mills River Town Council in order to evaluate the impact of the

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2245 proposed SFRCD~~—development~~. The Town Council may waive a particular
2246 requirement if, in its opinion, the inclusion is not essential to a proper decision on the
2247 project. The advice and recommendation of the Planning Board is 1 of an advisory
2248 capacity, and the Town Council has final authority on granting or denying a special
2249 use permit.

2250 (5) The Town Council shall submit a copy of its decision on a
2251 specific SFRC development to the Planning Board.

2252 (6) Amendments to the development plan. Minor changes in the
2253 location, siting or character of buildings and structures may be authorized by the
2254 Zoning Administrator, if required by engineering or other circumstances not foreseen
2255 at the time the final development program was approved; provided, however, that no
2256 change authorized by the Zoning Administrator under this section may increase the
2257 size of any building or structure by more than 10%, nor change the location of any
2258 building or structure by more than 10 feet in any direction, nor make any changes
2259 beyond the minimum or maximum requirements set forth in this chapter. All other
2260 changes in the SFRCD~~—development~~, including changes listed below, shall not be made
2261 without re-submission of the SFRCD~~—development~~ according to the procedures, in this
2262 section:

- 2263 (a) A change in the use or character of the development.
- 2264 (b) An increase in overall density.
- 2265 (c) An increase in intensity of use.
- 2266 (d) Alteration of the traffic circulation system.
- 2267 (e) A reduction in approved open space.
- 2268 (f) A reduction of off-street parking and loading space.

2269 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2270 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2271 **§ 154.081 PLANNED RESIDENTIAL DEVELOPMENT.**

2272 A planned residential development (PRD) may be located in the MR-30, MR-
2273 MU, and MR-NC district as a special use [under a Major Special Use Permit](#), subject to
2274 a finding by the Mills River Town Council on the advice and recommendation of the
2275 Town of Mills River Planning Board that certain conditions ~~be~~[are](#) met. The purpose
2276 of this section is to afford substantial advantages for greater flexibility and improved
2277 marketability through the benefits of efficiency which permit flexibility in building lot
2278 siting, mixtures of housing types and land use. Densities are calculated on a project
2279 basis, thus allowing the clustering of residential uses in order to create useful open
2280 spaces and to preserve natural site features.

2281 (A) Land development standards. The following land development
2282 standards shall apply for all planned residential developments. ~~Planned residential~~
2283 ~~developments may be located in the MR-30, MR-MU, and MR-NC districts as a special~~
2284 ~~use, subject to a finding by the Mills River Town Council on the advice and~~
2285 ~~recommendation of the Planning Board that certain conditions shall be met.~~

2286 (1) Ownership control. The land in a planned residential
2287 development shall be under single ownership or management by the applicant before
2288 final approval and/or construction, or proper assurances (legal title or execution of a
2289 binding sales agreement) shall be provided that the development can be successfully
2290 completed by the applicant.

2291 (2) Density requirements. The overall density (dwelling units per
2292 acre) of any proposed planned residential development shall be [one \(1\)](#) dwelling unit
2293 per 40,000 square feet.

2294 (a) The minimum lot size requirement for a detached single-
2295 family dwelling shall be no less than 20,000 square feet.

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2296 (b) Streets, street right-of-way, utility station sites, lakes,
2297 ponds and other impervious structures, may not be included when determining the
2298 total number of units available within a PRD.

2299 (c) Planned residential development in more than ~~1~~[one \(1\)](#)
2300 [zoning](#) district. If the planned residential development lies in more than [one \(1\)](#)
2301 district, the ~~number of allowable dwelling units must be 1~~[allowable density shall be](#)
2302 [one \(1\)](#) dwelling unit per 40,000 square feet.

2303 (3) Frontage requirements. Planned residential developments shall
2304 have the main entrance on a paved, public, state-maintained road or highway with a
2305 minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.
2306 Minimum size. The minimum area for a PRD development shall be 1½ contiguous
2307 acres.

2308 (4) Residential uses. The land uses normally permitted in the
2309 district within which a planned residential development is located shall be permitted
2310 in the planned residential development with the following modifications:
2311 Permitted types of dwelling units shall include townhouses and garden apartments.

2312 (5) Minimum requirements. The normal 30,000 square foot lot
2313 size, setbacks and frontage requirements are hereby waived for the planned
2314 residential development, provided that the spirit and intent of this section are
2315 complied with in the total development plan as determined by the Town Council. The
2316 Town Council shall exercise ultimate discretion as to whether the total development
2317 plan does comply with the spirit and intent of this section.

2318 (a) Height limitations. No building or structure shall exceed
2319 35 feet in height as measured from the highest ground elevation of the building or
2320 structure to the highest point of the roof or facade whichever is greater.

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2321 (b) Required distance between buildings. The minimum
2322 distance between buildings in a planned residential development shall be as follows:

2323 1. All buildings located or situated end to end
2324 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2325 of 20 feet between buildings. When ~~1 or~~[one or](#) both buildings exceed 20 feet in height,
2326 the building separation shall be increased an additional [one \(1\)](#) foot for every foot of
2327 increased height to a maximum of 30 feet separation.

2328 2. All buildings located or situated side to side or
2329 end to end (longest sides) and are less than 20 feet in height shall have a minimum
2330 separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent buildings
2331 exceed 20 feet in height, the building separation shall be increased an additional [one](#)
2332 [\(1\)](#) foot for every foot of increased height to a maximum of 40 feet separation.

2333 (c) Landscaping. The proposed development shall be
2334 designed as a single architectural scheme with appropriate common landscaping.

2335 (d) Publicly-owned and maintained water and sewer shall
2336 be required for a PRD.

2337 (e) Streets within a planned residential development shall
2338 be built to meet NCDOT Standards.

2339 (7) Privacy. Each development shall provide reasonable visual and
2340 acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and
2341 landscaping shall be used as appropriate for the protection and aesthetic
2342 enhancement of property and the privacy of its occupants, screening of objectionable
2343 views or uses, and reduction of noise. Multi-family buildings shall be located within a
2344 planned residential development in a way as to dissipate any adverse impact on
2345 adjoining low-rise buildings and shall not invade the privacy of the occupants of such
2346 low-rise buildings.

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2347 (8) Perimeter requirements. A 10-foot evergreen planted buffer
2348 strip shall be provided where ever the development adjoins the boundary or property
2349 line of a residential use.

2350 (a) If topographical or other barriers within 200 feet of the
2351 perimeter of the development do not provide reasonable privacy for existing uses
2352 adjacent to the development, the Town Council may impose any of the following
2353 requirements:

2354 (b) Structures located on the perimeter of the development
2355 must be set back from property lines and rights-of-way of abutting streets in
2356 accordance with the provision of this chapter controlling the district within which the
2357 property is situated.

2358 1. Structures other than single-family detached
2359 units located on the perimeter of the development may require screening in a manner
2360 which is approved by the Town Council.

2361 2. The location of the structures on the perimeter of
2362 the development, as shown on the development plan, shall be so arranged as not to
2363 be detrimental to existing structures or to the adjacent neighborhood.

2364 (9) Plans and accompanying documentation to ensure that the
2365 water and sewer systems proposed for the planned residential development have
2366 been designed by a professional engineer, and have been approved by the
2367 appropriate local and state agencies, shall be submitted as a part of the application.

2368 (10) Preliminary plans shall include parking provisions for all
2369 proposed uses within the planned residential development in accordance with §
2370 154.105.

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2371 (11) Any pedestrian and bicycle path circulation system and its
2372 related walkways shall be insulated as reasonably as possible in order to provide
2373 separation of pedestrian and motorized vehicular traffic.

2374 (12) Layout of parking areas, service areas, entrance, exits, yards,
2375 courts and landscaping and control of signs, lighting, noise or other potentially
2376 adverse influences shall be such as to protect the residential character within the PRD
2377 and the desirable character in any adjoining property.

2378 (B) Timing. If no development has occurred pursuant to the issuance of a
2379 special use permit [one \(1\)](#) year after the date of the special use permit for the PRD or
2380 upon the expiration of one 90-day extension of time for starting development granted
2381 by the Town Council, the special use permit shall become null and void and the
2382 procedures for application and review as outlined in this section shall be required for
2383 any development on the subject property.

2384 (C) Staged development (phasing). After general construction commences,
2385 the Zoning Administrator shall review at least once every 6 months all permits issued
2386 and compare them to the overall development phasing program. If he or she
2387 determines that the rate of construction of residential units substantially differs from
2388 the approved phasing program, he or she shall so notify the developer, and the Town
2389 Council may issue such appropriate orders to the developer as it sees fit and, upon
2390 continued violation of this division, may order the Zoning Administrator to refuse any
2391 further permits until the project is in general accordance with the approved phasing
2392 program.

2393 (D) Conveyance of open space, recreational areas and communally owned
2394 facilities.

2395 (1) Common open space, recreational areas and communally
2396 owned facilities shall be guaranteed by a restrictive covenant describing the areas

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2397 and facilities and their maintenance and improvement, running with the land for the
2398 benefit of residents of the planned residential development or adjoining property
2399 owners or both.

2400 (2) The applicant must submit to the Town Council the legal
2401 documents which will produce the aforesaid guaranties and, in particular, will
2402 provide for restricting the use of common areas and facilities for the designated
2403 purposes.

2404 (E) Maintenance. Planned residential developments shall be approved
2405 subject to the submission of an instrument or instruments setting forth a plan for
2406 permanent care and maintenance of permanent open spaces, recreational areas,
2407 easements, rights-of-way and communally owned facilities which would be legally
2408 enforceable. The developer shall create a homeowners' association and submit
2409 bylaws and rules and regulations governing the association. The developer shall be
2410 required to include in every deed he or she makes that membership be mandatory for
2411 each home buyer.

2412 (1) The provisions shall include, but not be limited to, the following:

2413 (a) The homeowners' association must be set up before the
2414 homes are sold.

2415 (b) The open space restrictions must be permanent not just
2416 for a period of years.

2417 (c) The association must be responsible for liability
2418 insurance, local taxes and the maintenance of recreational and other designated
2419 facilities.

2420 (d) Homeowners must pay their pro rata share of the cost;
2421 the assessment levied by the association can become a lien on the property.

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2422 (e) The association must be able to adjust the assessment to
2423 meet changed needs.

2424 (2) No such instrument shall be acceptable until approved by the
2425 Town Attorney as to legal form and effect and the Town Council as to suitability for
2426 the proposed uses.

2427 (F) Procedures for application and review. An applicant desiring to
2428 develop a planned residential development shall adhere to the following procedures:

2429 (1) Preapplication conference. Prior to submission of an application
2430 for a special use permit to the Town Council, the applicant shall arrange a
2431 preapplication conference with the Planning Board and its staff.

2432 (a) The applicant shall submit to the Planning Board a sketch
2433 development plan and a brief description of the proposed development strategy. The
2434 sketch plan and development strategy shall show and describe the layout of the
2435 planned residential development, depicting proposed areas and types of residential
2436 development, open spaces and recreation areas and streets.

2437 (b) The preapplication conference is designed to inform the
2438 developer of the local government's regulations and policies concerning development
2439 alternatives and to inform the local government of the developer's intentions, enough
2440 to be able to give him or her some informal, nonbinding feedback on the acceptability
2441 of his or her ideas. The greater the level of common understanding between the
2442 developer and the local government that can be achieved at the preapplication
2443 conference stage, the smoother the remaining steps of the review process will be.

2444 (2) [Major](#) ~~Use~~ [Special Use](#) Permit. Upon completion of the
2445 preapplication conference with the Planning Board, the applicant shall submit to the
2446 Town Council a written application for a special use permit in accordance with §
2447 154.180.

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2448 (3) Development plan. After the preapplication conference and
2449 upon submission of a written application for a special use permit, the applicant shall
2450 submit a development plan to the Town Council. A second copy of the development
2451 plan shall be submitted to the Planning Board for review and recommendations. The
2452 Town Council shall not issue a special use permit until it has received
2453 recommendations from the Planning Board. If no action is taken by the Planning
2454 Board within 45 days of the meeting at which the Planning Board first considers the
2455 development plan, it shall be deemed to have recommended approval of the
2456 development plan, and the Town Council may proceed to act upon the application.

2457 (4) The Planning Board shall review the development plan for
2458 conformance with the land development standards of this section, the sketch plan and
2459 development strategy presented in the preapplication conference and the
2460 requirements of the development plan which shall include the following information
2461 and supporting documentation:

2462 (a) Written documents.

2463 1. A legal description of the total site proposed for
2464 development, including a statement of present and proposed ownership.

2465 2. The zoning district or districts in which the
2466 project is located.

2467 3. A general statement of objectives to be achieved
2468 by the planned residential development through the particular approach proposed
2469 by the applicant.

2470 4. A development schedule indicating approximate
2471 beginning and completion dates of the development, including any proposed stages.

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2472 5. A statement of the applicant's intentions with
2473 regard to the future selling and/or leasing of all or portions of the planned residential
2474 development.

2475 6. Quantitative data for the following: proposed
2476 total number of residential dwelling units, parcel sizes, gross residential densities and
2477 total amount of open space.

2478 7. Plan for maintenance of common areas,
2479 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

2480 (b) Site plan and supporting maps. A map or maps drawn to
2481 an appropriate scale, with the date of preparation and North point, shall include the
2482 following information:

2483 1. Existing site conditions, including contours at 5-
2484 foot vertical intervals, watercourses, identified flood hazard areas and any unique
2485 natural or man-made features.

2486 2. Boundary lines of the proposed development,
2487 proposed lot lines and plot designs.

2488 3. The locations, dimensions and arrangements of
2489 all open spaces and areas devoted to planting, lawns, trees or similar purposes, with
2490 a description including the height and density of all trees or planting to be used for
2491 screening.

2492 4. Proposed location and use of all existing
2493 structures.

2494 5. The location, use, plan and dimension of each
2495 building or structure to be constructed.

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2496 6. Location and size of all areas to be conveyed,
2497 dedicated or reserved as common open space, parks, recreational areas, school sites
2498 and similar public and semipublic uses.

2499 7. The existing and proposed street and/or
2500 vehicular circulation facilities, including off-street parking areas, service areas,
2501 loading areas and major points of access to public rights-of-way, notations of
2502 proposed ownership of street and/or vehicular circulation facilities (public or
2503 private) and sidewalks; documentation from Henderson County Emergency Medical
2504 Services and the Mills River Fire Chief of the adequacy of the development's facilities
2505 for emergency medical and fire services.

2506 8. Approximate location of proposed utility systems,
2507 including documentation approving the proposed water and sewer systems from the
2508 appropriate local and state agencies. Water and sewer documentation must reflect
2509 the current development name and densities, be issued within the past 6 months and
2510 state that the public entity intends to accept both flow and maintenance.
2511 Documentation of an approved sedimentation and erosion control plan shall also be
2512 submitted.

2513 9. Location and/or notation of existing and
2514 proposed easements and rights-of-way.

2515 10. Information on adjacent land areas, including
2516 land use, zoning classifications, public facilities and any unique natural features.

2517 (c) Additional information. Any additional information
2518 required by the Mills River Town Council in order to evaluate the impact of the
2519 proposed PRD development. The Town Council may waive a particular requirement
2520 if, in its opinion, the inclusion is not essential to a proper decision on the project. The

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2521 advice and recommendation of the Planning Board is one of an advisory capacity, and
2522 the Town Council has final authority on granting or denying a special use permit.

2523 (5) The Town Council shall submit a copy of its decision on a
2524 specific planned residential development to the Planning Board.

2525 (6) Amendments to the development plan. Minor changes in the
2526 location, siting or character of buildings and structures may be authorized by the
2527 Zoning Administrator, if required by engineering or other circumstances not foreseen
2528 at the time the final development program was approved; provided, however, that no
2529 change authorized by the Zoning Administrator under this section may increase the
2530 size of any building or structure by more than 10%, nor change the location of any
2531 building or structure by more than 10 feet in any direction, nor make any changes
2532 beyond the minimum or maximum requirements set forth in this chapter. All other
2533 changes in the planned residential development, including changes listed below, shall
2534 not be made without resubmission of the planned residential development according
2535 to the procedures, in this section:

2536 (a) A change in the use or character of the development.

2537 (b) An increase in overall density.

2538 (c) An increase in intensity of use.

2539 (d) Alteration of the traffic circulation system.

2540 (e) A reduction in approved open space.

2541 (f) A reduction of off-street parking and loading space.

2542 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2543 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2544 **§ 154.082 MULTI-FAMILY DEVELOPMENT.**

2545 A multi-family development may be located in the MR-30, MR-MU, and MR-NC
2546 district as a special use [under a Major Special Use Permit](#), subject to a finding by the
2547 Mills River Town Council on the advice and recommendation of the Town of Mills
2548 River Planning Board that certain conditions be met. The purpose of this section is to
2549 provide reasonable design standards for multi-family developments for greater
2550 design flexibility and accommodate housing for current and future residents of the
2551 town. The Town Council shall exercise ultimate discretion as to whether the total
2552 development plan does comply with the spirit and intent of this section.

2553 (A) Land development standards. The following land development
2554 standards shall apply for all multi-family developments. Single-family dwelling
2555 detached homes and duplexes on individual lots are exempt from this section.

2556 (1) Ownership control. The land in a multi-family development
2557 shall be under single ownership or management by the applicant before final
2558 approval and/or construction, or proper assurances (legal title or execution of a
2559 binding sales agreement) shall be provided that the development can be successfully
2560 completed by the applicant.

2561 (2) Density requirements. The maximum density for multi-family
2562 developments (dwelling units per acre) shall be 4 units per acre.

2563 (3) Streets, street right-of-way, utility station sites, lakes, ponds and
2564 other impervious structures, may not be included when determining the total number
2565 of units available within a multi-family development.

2566 (4) Frontage requirements. Multi-family developments shall have
2567 the main entrance on a paved, public, state-maintained road or highway with a
2568 minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.

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2569 (5) Minimum size. The minimum area for a multi-family
2570 development shall be 1½ contiguous acres.

2571 (6) Minimum requirements.

2572 (a) The normal 30,000 square feet lot size, setbacks and
2573 frontage requirements are hereby waived for multi-family developments.

2574 (b) Height limitations. No building or structure shall exceed
2575 35 feet in height as measured from the highest ground elevation of the building or
2576 structure to the highest point of the roof or facade whichever is greater.

2577 (c) Required distance between buildings. The minimum
2578 distance between buildings shall be as follows:

2579 1. All buildings located or situated end to end
2580 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2581 of 20 feet between buildings. When [one \(1\)](#) or both buildings exceed 20 feet in height,
2582 the building separation shall be increased an additional [one \(1\)](#) foot for every foot of
2583 increased height to a maximum of 30 feet separation.

2584 2. All buildings located or situated side to side or
2585 end to end (longest sides) and are less than 20 feet in height shall have a minimum
2586 separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent buildings
2587 exceed 20 feet in height, the building separation shall be increased an additional [one](#)
2588 [\(1\)](#) foot for every foot of increased height to a maximum of 40 feet separation.

2589 (d) Each building shall be no more than 150 feet in length.

2590 (e) Landscaping. The proposed development shall be
2591 designed as a single architectural scheme with appropriate common landscaping.
2592 Landscaping shall meet the requirements of §§ 154.230 through 154.237.

2593 (f) Publicly-owned and maintained water and sewer shall
2594 be required for a multi-family development.

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2595 (g) A minimum of 15% of the parcel must be common open
2596 space. Of the required open space, a minimum of 20% and a maximum of 50% is
2597 required to be active use open space.

2598 (7) Multi-family developments considered in accordance with an
2599 overall plan shall include provisions for:

2600 (a) Parking. Parking spaces shall be provided within the
2601 development at a ratio of 1½ spaces for each unit. No parking space shall be closer
2602 than 10 feet to any residential building wall.

2603 (b) Area regulations. No building shall be erected at a
2604 distance of less than 60 feet from the center line of any minor street on which the
2605 development abuts, nor less than the required side or rear lot line setback of the
2606 adjacent district; however, in no instance shall the minimum side and rear lot line
2607 setback be less than 10 feet.

2608 (c) Every dwelling unit shall have direct access to an interior
2609 road and there shall be provision for adequate vehicular circulation to all
2610 development properties in order to insure acceptable levels of access for emergency
2611 vehicles.

2612 (d) The location of structures, shown on the development
2613 plan, shall be so arranged as not to be detrimental to existing or other proposed
2614 structures or to the development of the neighborhood.

2615 (e) All utilities shall conform to the following requirements:

2616 1. Water systems. Water system. Adequate water
2617 volume and pressure for domestic use and fire protection shall be available to the
2618 proposed project. The water system shall be designed by a registered engineer and
2619 approved by the appropriate state and local agencies.

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2646 enhancement of property and the privacy of its occupants, screening of objectionable
2647 views or uses, and reduction of noise. Multi-family buildings shall be located in a way
2648 as to dissipate any adverse impact on adjoining low-rise buildings and shall not
2649 invade the privacy of the occupants of such low-rise buildings.

2650 (a) Perimeter requirements. A 10-foot evergreen planted
2651 buffer strip shall be provided where ever the development adjoins the boundary or
2652 property line of a residential use meeting the requirements of § 154.007.

2653 (b) If topographical or other barriers within 200 feet of the
2654 perimeter of the development do not provide reasonable privacy for existing uses
2655 adjacent to the development, the Town Council may impose any of the following
2656 requirements:

2657 1. Structures located on the perimeter of the
2658 development must be set back from property lines and rights-of-way of abutting
2659 streets in accordance with the provision of this chapter controlling the district within
2660 which the property is situated.

2661 2. Structures other than single-family detached
2662 units located on the perimeter of the development may require screening in a manner
2663 which is approved by the Town Council.

2664 3. The location of the structures on the perimeter of
2665 the development, as shown on the development plan, shall be so arranged as not to
2666 be detrimental to existing structures or to the adjacent neighborhood.

2667 (9) Plans and accompanying documentation to ensure that the
2668 water and sewer systems proposed for the multi-family development have been
2669 designed by a professional engineer, and have been approved by the appropriate local
2670 and state agencies, shall be submitted as a part of the application.

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2671 (10) Preliminary plans shall ~~be~~ include parking provisions for all
2672 proposed uses within the multi-family development in accordance with § 154.105.

2673 (11) Any pedestrian and bicycle path circulation system and its
2674 related walkways shall be insulated as reasonably as possible in order to provide
2675 separation of pedestrian and motorized vehicular traffic.

2676 (12) Layout of parking areas, service areas, entrance, exits, yards,
2677 courts and landscaping and control of signs, lighting, noise or other potentially
2678 adverse influences shall be such as to protect the residential character within the
2679 development and the desirable character in any adjoining property.

2680 (B) Timing. If no development has occurred pursuant to the issuance of a
2681 special use permit one (1) year after the date of the special use permit for the
2682 development or upon the expiration of one 90-day extension of time for starting
2683 development granted by the Town Council, the special use permit shall become null
2684 and void and the procedures for application and review as outlined in this section
2685 shall be required for any development on the subject property.

2686 (C) Staged development (phasing). After general construction commences,
2687 the Zoning Administrator shall review at least once every 6 months all permits issued
2688 and compare them to the overall development phasing program. If he or she
2689 determines that the rate of construction of residential units substantially differs from
2690 the approved phasing program, he or she shall so notify the developer, and the Town
2691 Council may issue such appropriate orders to the developer as it sees fit and, upon
2692 continued violation of this division, may order the Zoning Administrator to refuse any
2693 further permits until the project is in general accordance with the approved phasing
2694 program.

2695 (D) Conveyance of open space, recreational areas and communally owned
2696 facilities.

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2697 (1) Common open space, recreational areas and communally
2698 owned facilities shall be guaranteed by a restrictive covenant describing the areas
2699 and facilities and their maintenance and improvement, running with the land for the
2700 benefit of residents of the planned residential development or adjoining property
2701 owners or both.

2702 (2) The applicant must submit to the Town Council the legal
2703 documents which will produce the aforesaid guaranties and, in particular, will
2704 provide for restricting the use of common areas and facilities for the designated
2705 purposes.

2706 (E) Maintenance. Multi-family developments shall be approved subject to
2707 the submission of an instrument or instruments setting forth a plan for permanent
2708 care and maintenance of permanent open spaces, recreational areas, easements,
2709 rights-of-way and communally owned facilities which would be legally enforceable.
2710 The developer shall create a homeowners' association and submit bylaws and rules
2711 and regulations governing the association. The developer shall be required to include
2712 in every deed he or she makes that membership be mandatory for each home buyer.

2713 (1) The provisions shall include, but not be limited to, the following:

2714 (a) The homeowners' association must be set up before the
2715 homes are sold.

2716 (b) The open space restrictions must be permanent not just
2717 for a period of years.

2718 (c) The association must be responsible for liability
2719 insurance, local taxes and the maintenance of recreational and other designated
2720 facilities.

2721 (d) Homeowners must pay their pro rata share of the cost;
2722 the assessment levied by the association can become a lien on the property.

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2723 (e) The association must be able to adjust the assessment to
2724 meet changed needs.

2725 (2) No such instrument shall be acceptable until approved by the
2726 Town Attorney as to legal form and effect and the Town Council as to suitability for
2727 the proposed uses.

2728 (F) Procedures for application and review. An applicant desiring to
2729 develop a mulit-family development shall adhere to the following procedures:

2730 (1) Preapplication conference. Prior to submission of an application
2731 for a special use permit to the Town Council, the applicant shall arrange a
2732 preapplication conference with the Planning Board and its staff.

2733 (a) The applicant shall submit to the Planning Board a sketch
2734 development plan and a brief description of the proposed development strategy. The
2735 sketch plan and development strategy shall show and describe the layout of the
2736 development, depicting proposed areas and types of residential development, open
2737 spaces and recreation areas and streets.

2738 (b) The preapplication conference is designed to inform the
2739 developer of the local government's regulations and policies concerning development
2740 alternatives and to inform the local government of the developer's intentions, enough
2741 to be able to give him or her some informal, nonbinding feedback on the acceptability
2742 of his or her ideas. The greater the level of common understanding between the
2743 developer and the local government that can be achieved at the preapplication
2744 conference stage, the smoother the remaining steps of the review process will be.

2745 (2) Special use permit. Upon completion of the preapplication
2746 conference with the Planning Board, the applicant shall submit to the Town Council a
2747 written application for a Major sSpecial uUse pPermit in accordance with § 154.180.

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2748 (3) Development plan. After the preapplication conference and
2749 upon submission of a written application for a special use permit, the applicant shall
2750 submit a development plan to the Town Council. A second copy of the development
2751 plan shall be submitted to the Planning Board for review and recommendations. The
2752 Town Council shall not issue a special use permit until it has received
2753 recommendations from the Planning Board. If no action is taken by the Planning
2754 Board within 45 days of the meeting at which the Planning Board first considers the
2755 development plan, it shall be deemed to have recommended approval of the
2756 development plan, and the Town Council may proceed to act upon the application.

2757 (4) The Planning Board shall review the development plan for
2758 conformance with the land development standards of this section, the sketch plan and
2759 development strategy presented in the preapplication conference and the
2760 requirements of the development plan which shall include the following information
2761 and supporting documentation:

2762 (a) Written documents.

2763 1. A legal description of the total site proposed for
2764 development, including a statement of present and proposed ownership.

2765 2. The zoning district or districts in which the
2766 project is located.

2767 3. A general statement of objectives to be achieved
2768 by the planned residential development through the particular approach proposed
2769 by the applicant.

2770 4. A development schedule indicating approximate
2771 beginning and completion dates of the development, including any proposed stages.

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2772 5. A statement of the applicant's intentions with
2773 regard to the future selling and/or leasing of all or portions of the planned residential
2774 development.

2775 6. Quantitative data for the following: proposed
2776 total number of residential dwelling units, parcel sizes, gross residential densities and
2777 total amount of open space.

2778 7. Plan for maintenance of common areas,
2779 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

2780 (b) Site plan and supporting maps. A map or maps drawn to
2781 an appropriate scale, with the date of preparation and north point, shall include the
2782 following information:

2783 1. Existing site conditions, including contours at 5-
2784 foot vertical intervals, watercourses, identified flood hazard areas and any unique
2785 natural or man-made features.

2786 2. Boundary lines of the proposed development,
2787 proposed lot lines and plot designs.

2788 3. The locations, dimensions and arrangements of
2789 all open spaces and areas devoted to planting, lawns, trees or similar purposes, with
2790 a description including the height and density of all trees or planting to be used for
2791 screening.

2792 4. Proposed location and use of all existing
2793 structures.

2794 5. The location, use, plan and dimension of each
2795 building or structure to be constructed.

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2796 6. Location and size of all areas to be conveyed,
2797 dedicated or reserved as common open space, parks, recreational areas, school sites
2798 and similar public and semipublic uses.

2799 7. The existing and proposed street and/or
2800 vehicular circulation facilities, including off-street parking areas, service areas,
2801 loading areas and major points of access to public rights-of-way, notations of
2802 proposed ownership of street and/or vehicular circulation facilities (public or
2803 private) and sidewalks; documentation from Henderson County Emergency Medical
2804 Services and the Mills River Fire Chief of the adequacy of the development's facilities
2805 for emergency medical and fire services.

2806 8. Approximate location of proposed utility systems,
2807 including documentation approving the proposed water and sewer systems from the
2808 appropriate local and state agencies. Water and sewer documentation must reflect
2809 the current development name and densities, be issued within the past 6 months and
2810 state that the public entity intends to accept both flow and maintenance.
2811 Documentation of an approved sedimentation and erosion control plan shall also be
2812 submitted.

2813 9. Location and/or notation of existing and
2814 proposed easements and rights-of-way.

2815 10. Information on adjacent land areas, including
2816 land use, zoning classifications, public facilities and any unique natural features.

2817 (c) Additional information. Any additional information
2818 required by the Mills River Town Council in order to evaluate the impact of the
2819 proposed multi-family development. The Town Council may waive a particular
2820 requirement if, in its opinion, the inclusion is not essential to a proper decision on the
2821 project. The advice and recommendation of the Planning Board is one of an advisory

2822 capacity, and the Town Council has final authority on granting or denying a special
2823 use permit.

2824 (5) The Town Council shall submit a copy of its decision on a multi-
2825 family development to the Planning Board.

2826 (6) Amendments to the development plan. Minor changes in the
2827 location, siting or character of buildings and structures may be authorized by the
2828 Zoning Administrator, if required by engineering or other circumstances not foreseen
2829 at the time the final development program was approved; provided, however, that no
2830 change authorized by the Zoning Administrator under this section may increase the
2831 size of any building or structure by more than 10%, nor change the location of any
2832 building or structure by more than 10 feet in any direction, nor make any changes
2833 beyond the minimum or maximum requirements set forth in this chapter. All other
2834 changes in the planned residential development, including changes listed below, shall
2835 not be made without resubmission of the planned residential development according
2836 to the procedures, in this section:

2837 (a) A change in the use or character of the development.

2838 (b) An increase in overall density.

2839 (c) An increase in intensity of use.

2840 (d) Alteration of the traffic circulation system.

2841 (e) A reduction in approved open space.

2842 (f) A reduction of off-street parking and loading space.

2843 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2844 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00083,
2845 passed 10-10-2013)

2846 **§ 154.083 [RESERVED]**

2847 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2848 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2849 **§ 154.084 MEDICAL, INSTITUTIONAL CARE DEVELOPMENT.**

2850 A Medical, Institutional Care Development (MICD) may be located in the MR-
2851 30, MR-MU, and MR-NC Districts as a special use, subject to a finding by the Mills River
2852 Town Council, on the advice and recommendation of the Town of Mills River Planning
2853 Board, that certain conditions be met. The purpose of this section is to permit the
2854 establishment of certain medical and institutional care facilities within individual
2855 residential districts and to minimize any detrimental effects of the facilities on
2856 existing or future land uses.

2857 (A) Land development standards. The following land development
2858 standards shall apply for all medical, institutional care developments:

2859 (1) Ownership control. The land in an MICD shall be under single
2860 ownership or management by the applicant before final approval and/or
2861 construction, or proper assurances (legal title or execution of a binding sales
2862 agreement) shall be provided that the development can be legally completed by the
2863 applicant.

2864 (2) Density requirements. The proposed density of the MICD
2865 shall be calculated using a combination of a persons per acre basis and a habitable
2866 structure per acre basis and shall conform to that permitted in the district in which
2867 the development is located as follows:

2868 (a) The number of persons served by any proposed MICD
2869 shall be calculated using the following criteria:

2870 1. One person per health care bed.

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2871

2. One person per studio or efficiency unit.

2872

3. One and a quarter persons per 1 bedroom unit.

2873

4. One and a half persons per 2 bedroom unit.

2874

5. Two persons per 3 bedroom unit.

2875

(b) The maximum density (persons per acre) for an MICD

2876 shall be 12.

2877

(c) The number of habitable structures per acre shall be

2878 1.45.

2879

(3) Frontage requirements. MICD shall be prohibited except on

2880 parcels of land having a minimum frontage of 200 feet on a paved, public, state-

2881 maintained road or highway.

2882

(4) Minimum size. The minimum lot area for an MICD shall be 10

2883 contiguous acres. The required 10 acres shall not be divided by, nor include, any

2884 portion of an existing public street or road right-of-way. Furthermore, no existing

2885 bodies of water shall qualify as a portion of the required minimum lot area.

2886

(5) Types of usage allowed. The following types of licensed

2887 medical and institutional care facilities are allowed within an MICD:

2888

(a) Hospitals.

2889

(b) Domiciliary homes for the aged and disabled.

2890

(c) Continuing care facilities.

2891

(d) Nursing homes.

2892

(e) Combination homes as defined by G.S. § 131E-101(1).

2893

(f) Customary accessory buildings, including garages,

2894 storage buildings and service utility structures.

2895

(g) Recreational facilities intended exclusively for use by the

2896 residents and guests of the facility and which are an integral part of the development.

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2897 (h) Administrative offices and non- dwelling support
2898 services for the facility and accessory commercial uses, subject to the following
2899 conditions:

2900 1. All sales shall be for the use and convenience of
2901 the residents or guests of the facility.

2902 2. All accessory uses shall not occupy more than
2903 15% of the total floor area of the facility, except that in no case shall the accessory
2904 uses exceed 12,000 square feet. No individual accessory use permitted in this
2905 subsection shall occupy more than 5% of the total floor area of the facility, except that
2906 in no case shall any individual accessory use exceed a minimum of 4,000 square feet.

2907 3. No external advertising or signs shall be allowed
2908 for any commercial activity permitted within or on any portion of the MICD.

2909 (6) Design requirements.

2910 (a) The normal minimum lot size, lot setbacks and lot
2911 frontage requirements of the respective district within which the MICD is located are
2912 hereby waived, provided that the spirit and intent of this section are complied with
2913 in the total development plan as determined by the Town Council. The Town Council
2914 shall exercise ultimate discretion as to whether the total development plan does
2915 comply with the spirit and intent of this section.

2916 1. Setbacks. The developer shall establish
2917 minimum lot setbacks as applicable. Non- dwelling accessory buildings, structures or
2918 facilities, such as, but not limited to, covered informational areas and private security
2919 booths, may be allowed within an adequate proximity to any adjacent street or road
2920 right-of-way within the MICD but shall be located no closer than 25 feet to any
2921 exterior property line of the MICD.

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2948 of buildings or structures containing dwelling units or bed facilities. All walkways
2949 shall be hard surface, all-weather materials. Any pedestrian and wheelchair
2950 circulation system shall be insulated as reasonably as possible to provide separation
2951 of pedestrian and motorized vehicular traffic.

2952 (c) Handicap accessibility. All portions of the development
2953 shall conform to the minimum applicable federal, state or local laws and regulations
2954 pertaining to handicap accessibility unless otherwise required in this section.

2955 (d) The location of structures shown on the development
2956 plan shall be so arranged as not to be detrimental to existing or other proposed
2957 structures or to the character of the surrounding neighborhood.

2958 (7) Privacy. Each development shall provide reasonable visual
2959 and acoustical privacy for all units. Fences, insulation, walls, barriers and landscaping
2960 shall be used as appropriate for the protection and aesthetic enhancement of
2961 property and the privacy of its occupants, screening of objectionable views or uses
2962 and reduction of noise. Multilevel buildings shall be located within a medical,
2963 institutional care development (MICD) in a way as to dissipate any adverse impact on
2964 adjoining low-rise buildings and shall not invade the privacy of the occupants of the
2965 low-rise buildings.

2966 (8) Perimeter requirements. If topographical or other barriers
2967 within 200 feet of the perimeter of the development do not provide reasonable
2968 privacy for existing uses adjacent to the development, the Town Council may impose
2969 any of the following requirements:

2970 (a) Structures located on the perimeter of the development
2971 must be set back from property lines and rights-of-way of abutting streets in
2972 accordance with the provision of this chapter controlling the district within which the
2973 property is situated.

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2974 (b) Structures other than single-level units, located on the
2975 perimeter of the development, shall require screening in a manner which is approved
2976 by the Town Council.

2977 (c) The location of the structures on the perimeter of the
2978 development, as shown on the development plan, shall be so arranged as not to be
2979 detrimental to existing structures or to the adjacent neighborhood.

2980 (d) Fencing compatible with the character of the
2981 development may be required to protect residents from dangerous conditions
2982 existing on or off site or to provide increased security for the residents of the facility.

2983 (9) Building coverage. The total building coverage area, including
2984 non-dwelling accessory buildings, structures or facilities, but excluding roads,
2985 parking or service areas and recreational facilities, shall not exceed 25% of the net lot
2986 area.

2987 (10) Parking. All parking must meet the requirements of §§
2988 154.105 through 154.114.

2989 (11) Utilities. All utilities shall conform to the following
2990 requirements:

2991 (a) Water system. Adequate water volume and pressure
2992 for domestic use and fire protection shall be available to the proposed project. The
2993 water system shall be designed by a registered engineer and approved by the
2994 appropriate state and local agencies.

2995 (b) Sewer system. The project shall have an approved
2996 waste disposal system designed by a registered engineer, if applicable, and approved
2997 by the appropriate state and local agencies.

2998 (c) Stormwater drainage. Stormwater runoff shall be
2999 collected, channeled or piped to discharge into natural drainageways in a manner

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3000 which will not cause erosion or adverse effects to adjacent property. The system shall
3001 be designed by a registered engineer or other competent professional. The design
3002 shall be for a 25-year storm and shall incorporate requirements of the erosion and
3003 sedimentation control plan, both temporary and permanent facilities.

3004 (12) Street design and access. All streets within the MICD shall
3005 conform to the North Carolina Department of Transportation standards for
3006 subdivision streets. The MICD shall have at least [one \(1\)](#) primary entrance/exit onto
3007 a public roadway and [one \(1\)](#) emergency entrance/exit. A turning or deceleration
3008 lane shall be provided.

3009 (13) Exterior lighting. An MICD shall provide an exterior lighting
3010 system for adequate resident safety along access drives, service areas, pedestrian
3011 walks and recreation areas. The lighting system shall be designed in keeping with the
3012 scale and architectural harmony of the project. Fixtures shall be oriented, to the
3013 degree possible, to reduce glare within the project and onto adjacent properties.

3014 (14) Building identification. All structures shall be identified in a
3015 manner that will provide immediate recognition when viewed from the street or
3016 access drive.

3017 (15) Landscaping and buffering. Within an MICD, a landscaping
3018 plan shall be considered a required element of the project. The landscaping must
3019 minimally meet the provisions of §§ 154.230 through 154.237.

3020 (a) The landscaping plan shall require that all exposed soils
3021 shall be covered with a permanent cover. Landscaping or natural vegetation shall
3022 cover at least 20% of the net project area.

3023 (b) Provisions for the permanent maintenance of all
3024 landscaping and screen planting areas and materials shall be provided.

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3025 (c) Where the Town Council deems necessary, a screen
3026 planting or other architectural features shall be provided to form a visual separation
3027 between the MICD and adjacent residential uses.

3028 (16) Design. The development shall be designed in such a manner
3029 that the layout of parking areas, service areas, entrances, exits, yards, courts,
3030 landscaping, signage, lighting, noise or other potentially adverse influences shall be
3031 such as to protect the medical residential character within the development and
3032 desirable character in any adjoining properties.

3033 (B) Timing. If no development has occurred pursuant to the issuance of
3034 a special use permit 2 years after the date of the special use permit for the MICD, or
3035 upon the expiration of one 90 day extension of time for starting development granted
3036 by the Town Council, the special use permit shall become null and void and the
3037 procedures for application and review as outlined in this section shall be required for
3038 any development on the subject property.

3039 (C) Staged development (phasing). After general construction
3040 commences, the Zoning Administrator shall review at least once every 6 months all
3041 permits issued and compare them to the overall development phasing program. If he
3042 or she determines that the rate of construction of residential units or nonresidential
3043 structures substantially differs from the approved phasing program, he or she shall
3044 so notify the developer, and the Town Council may issue the appropriate orders to
3045 the developer as it sees fit and, upon continued violation of this subsection, may order
3046 the Zoning Administrator to refuse any further permits until the project is in general
3047 accordance with the approved phasing program.

3048 (D) Open space required. A minimum of 20% of the total land area of the
3049 development shall be set aside as permanent commonly owned open space. The open
3050 space shall be exclusive of any required parking, street rights-of-way and roads or

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3051 service areas required for operation and maintenance of the MICD and shall be
3052 guaranteed as permanent in the site plan or other documents as may be required to
3053 be recorded.

3054 (E) Maintenance. MICD shall be approved subject to the submission of
3055 an instrument or instruments setting forth a plan for permanent care and
3056 maintenance of permanent open spaces, recreational areas, easements and rights-of-
3057 way which would be legally enforceable. No such instrument shall be acceptable until
3058 approved by the Town Attorney as to legal form and effect and the Town Council as
3059 to suitability for the proposed uses.

3060 (F) Procedures for application and review. An applicant desiring to
3061 develop an MICD shall adhere to the following procedures:

3062 (1) Pre-application conference. Prior to submission of an
3063 application for a special use permit to the Town Council, the applicant shall arrange a
3064 pre- application conference with the Planning Board and its staff.

3065 (a) The applicant shall submit to the Planning Board a sketch
3066 development plan and a brief description of the proposed development strategy. The
3067 sketch plan and development strategy shall show and describe the layout of the MICD,
3068 depicting proposed areas and types of development, open spaces and streets.

3069 (b) The pre-application conference is designed to inform the
3070 developer of the local government's regulations and policies concerning development
3071 alternatives and to inform the local government of the developer's intentions, enough
3072 to be able to give him or her some informal, non-binding feedback on the acceptability
3073 of his or her ideas. The greater the level of common understanding between the
3074 developer and the local government that can be achieved at the pre-application
3075 conference stage, the smoother the remaining steps of the review process will be.

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3076 (2) Application for a special use permit. Upon completion of the pre-
3077 application conference, the applicant shall submit to the Town Council a written
3078 application for a ~~Major s~~Special ~~u~~Use ~~p~~Permit in accordance with § 154.180. The
3079 applicant shall submit 11 copies of a preliminary development plan or final site plan
3080 and required documentation to the Zoning Administrator at least 30 days prior to the
3081 Planning Board's first scheduled consideration of the project.

3082 (3) Planning Board review. The Planning Board shall review the
3083 preliminary development plan and final site plan for conformance with the provisions
3084 of this chapter and forward its recommendations to the Town Council. If no action is
3085 taken by the Planning Board within 45 days of the meeting at which the Planning
3086 Board first considers the development plan, it shall be deemed to have recommended
3087 approval of the development plan, and the Town Council may proceed to act upon the
3088 application.

3089 (4) Town Council review. The Town Council shall not issue a
3090 special use permit until it has received recommendations from the Planning Board.
3091 The Town Council shall submit a copy of their decision on a specific MICD to the
3092 Planning Board and the applicant. The decision of the Town Council shall be to
3093 approve, disapprove or approve with conditions.

3094 (5) Issuance of permits. The Zoning Administrator for the Town
3095 of Mills River or the Henderson County Building Inspector shall not issue a certificate
3096 of zoning compliance or any building permit for any portion of the proposed project
3097 until the applicant is in compliance with the decision of the Town Council.

3098 (6) Waiver of preliminary development plan. An applicant may
3099 choose to omit the preliminary development plan, provided that the project is to be
3100 completed in a single phase and all required documentation is provided and
3101 submitted in accordance with this section.

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3102 (G) Preliminary development plan requirements. Upon application for
3103 an MICD and following the pre- application conference, an applicant shall submit a
3104 preliminary development plan for the entire MICD project, except where a waiver is
3105 permitted in accordance with division (F)(6) above. The preliminary development
3106 plan shall provide the following information on the plan and include accompanying
3107 documentation:

3108 (1) The proposed name of the development and the names of the
3109 developer, land owner, engineer, architect and landscape architect or other
3110 professionals.

3111 (2) A site plan to a scale of not less than [one \(1\)](#) inch equals 50 feet,
3112 a North arrow, a vicinity map and date; topographic mapping with contour intervals
3113 of not more than 5 feet.

3114 (3) A legal boundary description of the entire tract proposed for
3115 development, including a statement that the area shown on the preliminary site plan
3116 includes all the area and development currently under ownership, option or other
3117 consideration by the land owner or developer shown on this plan. The description
3118 shall include the location of all existing rights-of-way, easements, streams or
3119 waterways, adjacent property uses, the names of adjacent property owners and
3120 identified flood hazard areas.

3121 (4) Project layout including the location of all existing structures
3122 and the proposed general location and allocation of dwelling units, road locations,
3123 accessory structures and uses, setbacks, buffers and landscaping areas, natural areas,
3124 recreational facilities and areas and project phasing lines.

3125 (5) Preliminary utility layouts with preliminary approval from the
3126 appropriate local or state agencies; the location of all other utilities within or adjacent
3127 to the development site.

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3128 (6) Proposed typical site details for lighting; signage; walkways;
3129 fencing and walls; landscaping; parking layout; cross section for roads, access roads
3130 and traffic volume; and any other pertinent site details. The site details shall be
3131 accompanied by a written description of how services and improvements are to be
3132 provided.

3133 (7) Preliminary information on the proposed plans with regard to
3134 the ownership and maintenance of common areas and facilities, open space,
3135 landscaping and screening, roads and utilities.

3136 (8) Documentation from the Henderson County Emergency Medical
3137 Service and the Mills River Fire Chief of the adequacy of the project's facilities for
3138 emergency medical and fire services.

3139 (9) Documentation of submission of a preliminary or overall
3140 erosion control plan to the appropriate agency.

3141 (10) A designation and description of the proposed phasing plan for
3142 the project, including the approximate timing schedule and the type of guaranty of
3143 performance to be requested.

3144 (11) Summary of project data, including:

3145 (a) Total project area.

3146 (b) Approximate net project area.

3147 (c) Total density permitted, density requested and method
3148 of calculating density (persons per acre).

3149 (d) Approximate percent of building coverage.

3150 (e) Approximate percent of open space.

3151 (f) Approximate length of roads and designation as public or
3152 private.

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3153 (g) Type of units and conceptual plans and elevations for
3154 residential structures.

3155 (12) Written documents. In addition to those indicated above:

3156 (a) The zoning district or districts in which the project is
3157 located.

3158 (b) A general statement of objectives to be achieved by the
3159 MICD through the particular approach proposed by the applicant.

3160 (c) A statement of the applicant's intentions with regard to
3161 the future selling and/or leasing of all or portions of the MICD.

3162 (13) Additional information. Any additional information required by
3163 the Town Council in order to evaluate the impact of the proposed MICD. The Town
3164 Council may waive a particular requirement if, in its opinion, the inclusion is not
3165 essential to a proper decision on the project. The advice and recommendations of the
3166 Planning Board is 1 of advisory capacity, and the Town Council has final authority on
3167 granting or denying a special use permit.

3168 (H) Final site plan. Upon approval of the preliminary development plan
3169 by the Town Council, except as waived under division (F)(6), the developer shall
3170 submit a final site plan that shall contain the following information:

3171 (1) The proposed name of the development and the names of the
3172 developer, land owner, engineer, architect, designer, landscape architect or other
3173 professional.

3174 (2) The site plan to a scale not less than [one \(1\)](#) inch equals 30 feet,
3175 a North arrow, a vicinity map and date; topographic mapping with contour intervals
3176 of not more than 2 feet indicating existing and proposed contours.

3177 (3) A legal boundary description of the entire tract proposed for
3178 development, the location of all existing rights-of-way, easements, streams or

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3179 waterways, adjacent property uses and the names of adjacent property owners. If the
3180 final plans are for a phase of the MICD, the specific phase of the project shall be shown.

3181 (4) Project layout, including the location of all existing structures
3182 and, for each proposed principal and accessory structure and use, setbacks, roads, off-
3183 street parking and loading layout. A typical cross section and public or private
3184 designation for all roads shall be submitted if not approved with a preliminary site
3185 plan.

3186 (5) Basic floor plans, rendered elevations or perspectives.

3187 (6) The landscaping and screening plans and the location of all
3188 walkways, recreational areas, fences and walls, lighting and signage. If the proposed
3189 typical site details for these items were not approved with a preliminary site plan, the
3190 details shall be submitted with the final site plan.

3191 (7) The location, easement, size and gradient of all sanitary and
3192 storm sewers and water mains. The location of all other utilities within or adjacent to
3193 the development site.

3194 (8) Method of buffering or concealing service areas, garbage
3195 retention and collection areas and mechanical equipment from public and residential
3196 areas.

3197 (9) Method of collecting, channeling or piping to discharge
3198 stormwater into natural drainageways that will assure no damage to neighboring
3199 properties.

3200 (10) Approval of water and sewage systems; plans from the
3201 appropriate agency if applicable.

3202 (11) Approval of the soil erosion and sedimentation control plan by
3203 the appropriate agency.

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3204 (12) Submission of the proposed documents for the ownership and
3205 maintenance of all common areas and facilities, open space, landscaping and
3206 screening, roads and utilities.

3207 (13) Submission of the proposed guaranty of performance
3208 provisions, including a list of all improvements to be covered by the guaranty
3209 agreement.

3210 (14) Summary of project data, including:

3211 (a) Total project area: area in proposed phase.

3212 (b) Net project area in proposed phase.

3213 (c) Total density proposed: density in proposed phase,
3214 including number of persons per acre.

3215 (d) Percentage of building coverage in proposed phase in
3216 relation to project total building coverage.

3217 (e) Percentage of building coverage in proposed phase in
3218 relation to project total open space.

3219 (f) Length of roads and public or private designation in the
3220 proposed phase.

3221 (15) Additional information. Any additional information required by
3222 the Town Council in order to evaluate the impact of the proposed MICD. The Town
3223 Council may waive a particular requirement if in its opinion the inclusion is not
3224 essential to a proper decision on the project. The advice and recommendations of the
3225 Planning Board is [one](#) of advisory capacity, and the Town Council has final authority
3226 on granting or denying a special use permit.

3227 (I) Initiation of construction. No construction ground-disturbing
3228 activities shall be initiated until the preliminary or final site plans have been approved
3229 by the Town Council, a guaranty of performance has been approved and until all local

3230 utility approvals and an approved soil erosion and sedimentation control plan have
3231 been received.

3232 (J) Guaranty of performance.

3233 (1) In order to insure that the public improvements are completed
3234 properly within a period of time specified, the developer shall enter into a guaranty
3235 for completion with the Town Council. A performance guaranty shall be negotiated
3236 between the developer and the Town Council prior to the issuance of the special use
3237 permit by the Zoning Administrator.

3238 (2) The guaranty of performance shall require that the developer
3239 complete the public improvements, including, but not limited to, roads, parking areas
3240 and rights-of-way; water and sewer facilities; drainage, erosion and sedimentation
3241 control facilities; and lighting and landscaping. The specific improvements to be
3242 guaranteed are to be designated with submission of the final site plan. The guaranty
3243 shall be provided by a performance bond, letter of credit, certified check, cash escrow,
3244 cash payment or property bond as approved by the Town Council. No certificate of
3245 occupancy may be issued until either the improvements are completed or adequate
3246 guaranties are approved.

3247 (3) The guaranty of performance shall be in an amount equal to
3248 125% of the cost of the improvements included in the final site plan. If the project is
3249 to be completed in phases, the guaranty of performance may be applied to each phase.
3250 The release of a guaranty of performance by the Town Council, in total or in part,
3251 based on the percentage of improvements completed, shall be made upon a
3252 certification from the Zoning Administrator that the improvements have been
3253 completed in accordance with the approved final site plan for a phase of the overall
3254 project or the entire project.

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3255 (K) Default. Upon default (meaning failure on the part of the developer
3256 to complete the required improvements as specified and within the time period
3257 specified in the guaranty) the developer shall, if requested by the Town Council, pay
3258 all or any portion as may be required of the guaranty to the Town of Mills River for
3259 the purpose of completing the specified improvements. Upon payment, the Town
3260 Council, at its discretion, may expend the portion of the funds as it deems necessary
3261 to have completed all or any portion of the required improvements. The town shall
3262 return to the institution any funds not spent in completing the improvements.

3263 (L) Construction codes. The developer must comply with all applicable
3264 state and local construction codes and requirements.

3265 (M) Amendments to the development plan. Minor changes in the
3266 location, siting or character of buildings and structures may be authorized by the
3267 Zoning Administrator, if required by engineering or other circumstances not foreseen
3268 at the time the final development program was approved; provided, however, that no
3269 change authorized by the Zoning Administrator under this section may increase the
3270 size of any building or structure by more than 10%, nor change the location of any
3271 building or structure by more than 10 feet in any direction, nor make any changes
3272 beyond the minimum or maximum requirements set forth in this chapter. All other
3273 changes in the MICD, including changes listed below, shall not be made without re-
3274 submission of the MICD according to the procedures in this section:

- 3275 (1) A change in the use or character of the development.
- 3276 (2) An increase in overall density.
- 3277 (3) An increase in intensity of use.
- 3278 (4) Alteration of the traffic circulation system.
- 3279 (5) A reduction in approved open space.
- 3280 (6) A reduction of off-street parking and loading space.

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3281 (7) Any change in ownership or control of all or a portion of the
3282 development.

3283 (N) Failure to comply. Construction and/or use of the MICD shall be set
3284 forth in the plans, application and supporting documents approved by the Town
3285 Council. Construction and/or use differing from the approved plans and application,
3286 except as herein provided, shall be deemed a violation of this chapter and subject to
3287 penalties as provided in Administration and Enforcement.

3288 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
3289 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

3290 **§ 154.085 STRUCTURED ENVIRONMENT HOMES.**

3291 The following development standards shall apply to Structured Home
3292 Environment Uses:

3293 (A) *Land development standards.* The following land development
3294 standards shall apply for a Structured Home Environment. Structured Home
3295 Environment Uses may be located in the MR-NC, MR-MU, and MR-GB and MR-LI
3296 districts as a special use, subject to a finding by the Mills River Town Council on the
3297 advice and recommendation of the Planning Board that certain conditions shall be
3298 met.

3299 (1) *Distance from a School.* The site for a Structured Home
3300 Environment must be at least one mile in linear distance from a school.

3301 (2) *Maximum Density.* A Structured Home Environment has a
3302 maximum density of five residents.

3303 (3) *Minimum requirements.*

3304 (a) The lot size and dimensional requirements of the district in
3305 which the development is proposed shall apply.

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3306 (b) Publicly-owned and maintained water and sewer shall
3307 be required for a Structured Home Environment.

3308 (c) The Structured Home Environment shall comply with
3309 parking, buffer and landscape requirements as listed in the code for commercial uses.

3310 (B) *Application Process.* Prior to submission of an application for a [Major](#)
3311 ~~s~~Special ~~u~~Use ~~p~~Permit to the Town_Council, the applicant shall arrange a pre-
3312 application conference with the Planning Board and its staff.

3313 (1) The applicant shall submit to the Planning Board a sketch
3314 development plan for the proposed site. The sketch plan and development strategy
3315 shall show and describe the layout of the Structured Environment Home along with
3316 adequate parking and landscaping.

3317 (2) The pre-application conference is designed to inform the
3318 developer of the local government's regulations and policies concerning development
3319 alternatives and to inform the local government of the developer's intentions, enough
3320 to be able to give him or her some informal, non-binding feedback on the acceptability
3321 of his or her ideas. The greater the level of common understanding between the
3322 developer and the local government that can be achieved at the pre-application
3323 conference stage, the smoother the remaining steps of the review process will be.

3324 (3) Special use permit. Upon completion of the pre-application
3325 conference with the Planning Board, the applicant shall submit to the Town Council a
3326 written application for a [Major](#) ~~s~~Special ~~u~~Use ~~p~~Permit in accordance with § 154.180.
3327 The special use permit shall expire two years from the date of issuance without
3328 substantial progress towards development of the site.

3329 (4) *Development plan.* After the pre-application conference and
3330 upon submission of a written application for a special use permit, the applicant shall
3331 submit a development plan to the Town_Council. A second copy of the development

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3332 plan shall be submitted to the Planning Board for review and recommendations.
3333 The Town Council shall not issue a special use permit until it has received
3334 recommendations from the Planning Board. If no action is taken by the Planning
3335 Board within 45 days of the meeting at which the Planning Board first considers the
3336 development plan, it shall be deemed to have recommended approval of the
3337 development plan, and the Town Council may proceed to act upon the application.

3338 (5) The Planning Board shall review the development plan for
3339 conformance with the land development standards of this section, the sketch plan and
3340 development strategy presented in the pre-application conference and the
3341 requirements of the development plan which shall include the following information
3342 and supporting documentation.

3343 (6) Written *documents*.

3344 (a) A legal description of the total site proposed for
3345 development, including a statement of present and proposed ownership.

3346 (b) The zoning district or districts in which the project is
3347 located.

3348 (c) A general statement of the way the Structured Home
3349 Environment shall be operated.

3350 (d) Documentation showing that the development meets the
3351 requirements as outlined for Structured Home Environments.

3352 (e) *Site plan and supporting maps*. A map or maps drawn to
3353 an appropriate scale, with the date of preparation and North point, shall include the
3354 following information:

3355 (f) Existing site conditions, including contours,
3356 watercourses, identified flood hazard areas and any unique natural or man-made
3357 features.

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3358 (g) Boundary lines of the proposed development, proposed
3359 lot lines and plot designs.

3360 (h) Proposed location and use of all existing and proposed
3361 structures.

3362 (i) Approximate location of proposed utility systems,
3363 including documentation approving the proposed water and sewer systems from the
3364 appropriate local and state agencies. Water and sewer documentation must reflect
3365 the current development name and densities, be issued within the past 6 months and
3366 state that the public entity intends to accept both flow and maintenance.
3367 Documentation of an approved sedimentation and erosion control plan shall also be
3368 submitted.

3369 1. Location and/or notation of existing and
3370 proposed easements and rights-of-way.

3371 2. The proposed treatment of the perimeter of the
3372 development, including materials and/or techniques, such as screens, fences and
3373 walls.

3374 3. Information on adjacent land areas, including
3375 land use, zoning classifications, public facilities and any unique natural features.

3376 (j) *Additional information.* Any additional information
3377 required by the Mills River Town Council in order to evaluate the impact of the
3378 proposed Structured Home Environment. The Town Council may waive a
3379 particular requirement if, in its opinion, the inclusion is not essential to a proper
3380 decision on the project. The advice and recommendation of the Planning Board is
3381 1 of an advisory capacity, and the Town Council has final authority on granting or
3382 denying a special use permit.

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3383 (7) The Town Council shall submit a copy of its decision on a
3384 specific Structured Home Environment to the Planning Board.
3385 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
3386 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00055,
3387 passed 4-23-2009)

3388 **§ 154.086 SITE STANDARDS FOR CERTAIN USES IN MR-MU**
3389 **DISTRICT: TINY HOME PARKS, PARK MODEL PARKS, AND**
3390 **RECREATIONAL VEHICLE PARKS.**

3391 A tiny home park, park model park, and recreational vehicle park development
3392 may be located in the MR-MU district as a special use [under a Major Special Use](#)
3393 [Permit](#), subject to a finding by the Town Council on the advice and recommendation
3394 of the Planning Board that certain conditions be met. The purpose of this section is to
3395 provide reasonable design standards for said developments for greater design
3396 flexibility. The Town Council shall exercise ultimate discretion as to whether the
3397 development plan does comply with the spirit and intent of this section.

3398 (A) *Land development standards.* The following land development
3399 standards shall apply for all tiny home park, park model park, and recreational
3400 vehicle park developments.

3401 (1) *Ownership control.* The land in a tiny home park, park model
3402 park, and recreational vehicle park development shall be under single ownership or
3403 management by the applicant before final approval and/or construction, or proper
3404 assurances (legal title or execution of a binding sales agreement) shall be provided
3405 that the development can be successfully completed by the applicant.

3406 (2) *Density requirements.* The maximum density for tiny home park,
3407 park model park, and recreational vehicle park developments (dwelling units per
3408 acre) shall be 4 units per acre.

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3409 (3) *Minimum size.* The minimum parcel size for a tiny home park,
3410 park model park, and recreational vehicle park development shall be 5 contiguous
3411 acres.

3412 (4) *Setback requirements.* tiny home park, park model park, and
3413 recreational vehicle park developments shall adhere to the following setbacks:

3414 (a) Front setback: 75 feet from major thoroughfare, 60 feet
3415 from all other streets.

3416 (b) Side and rear setback: 30 feet from parcel line.

3417 (c) All tiny homes, park model homes, recreational vehicles,
3418 and any slip for a tiny home, park model home, or recreational vehicle, and buildings
3419 that support the development as a whole (such as a leasing office, recreational
3420 facilities, etc.) shall adhere to the setback requirements. Development infrastructure
3421 (such as roads, etc.) is allowed within the setback area.

3422 (5) *Leasing office.* A leasing office is required in all tiny home, park
3423 model, and recreational vehicle park developments. The office should have regular
3424 business hours but also have 24 hour availability for emergencies.

3425 (6) *Lease time limits.* Each tiny home, park model, or recreational
3426 vehicle shall be limited to a maximum stay of 3 months per calendar year within an
3427 approved development. The leasing office shall keep a record of each tiny home, park
3428 model, and recreational vehicle that leases space in the development and provide the
3429 Zoning Administrator with a record on a semi-annual basis. The leasing office shall
3430 only lease the space/slip for location of a tiny home, park model home, or recreational
3431 vehicle. Direct leasing of tiny homes, park model homes, and recreational vehicles is
3432 not allowed.

3433 (7) *Parking.* A minimum of 2 parking spaces is required for each
3434 individual tiny home, park model, or recreational vehicle lot.

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3435 (8) *Landscape plan.* Landscaping shall be designed as a single
3436 architectural scheme with appropriate common landscaping. In addition, a buffer
3437 strip of no less than 20 feet is required around the entire perimeter of the property.
3438 Landscaping shall meet the requirements of §§ 154.230 through 154.237.

3439 (9) *Commercial dumpsters.* Dumpsters are required for every 20
3440 lots/slips within the development and must be wildlife secure. Dumpsters shall be
3441 screened according requirements in § 154.115.

3442 (10) *Road standards.* The minimum travelway for a one (1) way road
3443 shall be 12 feet. The minimum travelway for a ~~2two-~~way street shall be 18 feet. Any
3444 cul-de-sacs or other turn arounds shall be sufficient to accommodate emergency
3445 vehicles.

3446 (B) Prior to issuance of a special use permit, approval or receipt of review
3447 from other review agencies is required. Stormwater/erosion control, watershed,
3448 environmental health, water, sewer, NCDOT, and fire are common components of site
3449 plan review for a special use permit. Location of a proposed development will dictate
3450 which agencies require review of a tiny home park, park model park, and recreational
3451 vehicle park development.

3452 (C) All tiny homes, park model homes, and recreational vehicles within a
3453 park development shall meet NCDOT safety and road standards.

3454 (Ord. 2018-03, passed 3-8-2018)

3455 **§ 154.087 SITE STANDARDS FOR CERTAIN USES IN MR-MU**
3456 **DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY REQUIRED.**

3457 (A) *Introduction and purpose.* The purpose of this section is to specify the
3458 minimum specific site standards and the general site standards stated in § 154.138
3459 which will provide the flexibility to impose a higher level of specific site standards if

3460 necessary to mitigate the neighborhood impact of certain uses which are permitted
3461 in the MR-MU District. These certain uses are subject to the Town Council finding that
3462 both the general site standards and the specific site standards listed in this section
3463 will be met. These site standards may apply to other use districts if specifically
3464 required therein.

3465 (B) *General site standards.* The general site standards stated in § 154.138
3466 must be met for all uses requiring a special use permit in the MR-MU District.

3467 (C) *Specific site standards.* The specific site standards for each use
3468 requiring a special use permit in the MR-MU District are contained in § 154.138 and
3469 must be met.

3470 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
3471 Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

3472 **§ 154.088 APPLICATION REQUIREMENTS FOR CERTAIN USES IN**
3473 **MR-MU DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY**
3474 **REQUIRED.**

3475 (A) The following uses shall be required to comply with the Application
3476 requirements provided for in § 154.088(B) below:

3477 (1) MR-MU District: those uses listed in § 154.088(E), Uses
3478 permitted with standards, vehicle graveyards mobile/manufactured home
3479 graveyards.

3480 (2) MR-MU District: those uses listed in § 154.088(G), special uses,
3481 incinerators solid waste management facilities mining and extraction operations
3482 concrete plants; asphalt plants; junkyards; motor sports facilities; slaughtering
3483 plants; amusement parks, chip mills and heavy industry.

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3484 (B) All applicants for those uses listed in § 154.088(A), above, shall provide
3485 the following information by completing an application form (to be provided by the
3486 Zoning Administrator) and providing supporting documentation as required:

3487 (1) Name and address of applicant [all uses].

3488 (2) Permit fee as set forth by the Mills River Town Council on a fee
3489 schedule (all uses).

3490 (3) Site plan prepared by an active North Carolina registered land
3491 surveyor, registered professional engineer or registered landscape architect and
3492 containing the following information (All uses, except vehicle graveyards in the MR-
3493 MU District, and mobile/manufactured home graveyards in the MR-MU District):

3494 (a) Names, addresses and telephone numbers of the
3495 applicant and the property owner.

3496 (b) Plan scale, a North arrow and a vicinity map.

3497 (c) Tax parcel identification number for any parcel of land
3498 containing the proposed use.

3499 (d) Name, address, signature and seal of the person who
3500 prepared the site plan.

3501 (e) Surveyed boundary lines of any parcel, or portion
3502 thereof, that will contain the proposed use, and surveyed point of highest elevation
3503 (finished grade) to the nearest foot. (The boundary lines shall be surveyed by an
3504 active North Carolina registered land surveyor).

3505 (f) Proposed location, use and dimensions of all structures,
3506 and areas not within structures, devoted to principal uses. All the structures and areas
3507 shall be appropriately labeled, including a description of each sufficient to give the
3508 Town Council a reasonable understanding of each.

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3509 (g) Proposed location, use and dimensions of all structures,
3510 and areas not within structures, devoted to accessory uses. All the structures and
3511 areas shall be appropriately labeled, including a description of each sufficient to give
3512 the Town Council a reasonable understanding of each.

3513 (h) Proposed location(s), use and dimensions of the stated
3514 minimum buffer and the stated minimum setback.

3515 (i) Existing site conditions, including watercourses, flood
3516 hazard areas, existing utilities and streets and rights-of-way.

3517 (j) Proposed locations, dimensions and arrangement of all
3518 off-street parking and loading areas.

3519 (k) Proposed locations (including line and grade) of access
3520 road corridor(s), travelway(s) and service road(s).

3521 (l) Proposed location and description of facilities to be used
3522 for sewage disposal, water supply, stormwater drainage and any other utilities.

3523 (4) Site plan containing the following information (vehicle
3524 graveyard and manufactured/mobile home graveyard):

3525 (a) Names, addresses and telephone numbers of the
3526 applicant and the property owner.

3527 (b) Plan scale (if any used), a North arrow and a vicinity map.

3528 (c) Tax parcel identification number for any parcel of land
3529 containing the proposed use.

3530 (d) Name, address, signature of the person who prepared the
3531 site plan.

3532 (e) Approximate boundary lines of the parcel or any portion
3533 thereof that will contain the proposed use, according to county tax records, and the
3534 acreage.

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- 3535 (f) Stated minimum buffer and setback.
- 3536 (g) Approximate location of the access road corridor,
3537 including approximate line and grade.
- 3538 (h) Approximate location of any existing buildings or
3539 structures.
- 3540 (i) Approximate location of existing site conditions
3541 including existing watercourses.
- 3542 (5) Map from the Henderson County Assessor's Office showing that
3543 the residential density requirements and separation requirements for the proposed
3544 use, if any, will be met (all uses).
- 3545 (6) Certification of the applicant stating that the residential density
3546 requirements and the separation requirements, if any, have been met (all uses).
- 3547 (7) Names, mailing addresses and tax parcel identification numbers
3548 for all property owners adjacent to the proposed use (all uses except vehicle
3549 graveyards and mobile/manufactured home graveyards in the MR-MU District).
- 3550 (8) Schedule of proposed hours of operation which shall be subject
3551 to approval by the Town Council (all uses except vehicle graveyards and
3552 mobile/manufactured home graveyards in the MR-MU District).
- 3553 (9) Estimated peak noise emission measured at the property
3554 boundaries during hours of operation (all uses except vehicle graveyards and
3555 mobile/manufactured home graveyards in the MR-MU District).
- 3556 (10) Noise mitigation plan, which shall be subject to approval by the
3557 Town Council (all uses except vehicle graveyards and mobile/manufactured home
3558 graveyards in the MR-MU District).
- 3559 (11) Lighting plan (all uses except vehicle graveyards and
3560 mobile/manufactured home graveyards in the MR-MU District).

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3561 (12) A detailed plan describing or showing the proposed method(s)
3562 of screening (Junkyards in the MR-MU District).

3563 (13) A detailed plan describing or showing the proposed method(s)
3564 of fencing.

3565 (14) Written narrative which provides a description and details
3566 regarding the proposed use including, but not limited to:

3567 (a) A description of the operations associated with the
3568 proposed use.

3569 (b) Number of employees, if any.

3570 (c) Maximum patron capacity for which application is being
3571 made. If approved, this shall be the maximum permitted patron capacity for the use.

3572 (d) Types of material and equipment to be used on site.

3573 (e) Whether operations will be indoors and/or outdoors,
3574 with specificity as to which operations will be located indoors and/or outdoors.

3575 (f) A listing of the federal and state permits which must be
3576 acquired for the proposed use.

3577 (g) Type(s) and maximum quantity(ies) of units to be
3578 produced, extracted, disposed of, processed and/or stored as applicable for the
3579 proposed use. If approved, the type(s) and quantity(ies) requested shall be the
3580 maximum permitted type(s) and quantity(ies).

3581 (h) Any other information necessary to fully convey the
3582 intended scope, intensity, capacity and/or size of the proposed use

3583 (15) Identification of any and all extremely hazardous substances to
3584 be used, stored, handled, processed or manufactured and their proposed location(s)
3585 on the required site plan (All uses except vehicle graveyards and
3586 mobile/manufactured home graveyards in the MR-MU District).

3587 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
3588 Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00066,
3589 passed 4-28-2011)

3590 **§ 154.089 SOLAR ENERGY GENERATION FACILITY SITE**
3591 **STANDARDS.**

3592 (A) Area devoted to solar energy generation facilities may not exceed 15
3593 acres per facility on any lot.

3594 (B) Solar energy generation facilities shall be completely enclosed within:

3595 (1) A woven wire fence; or

3596 (2) A masonry wall; or

3597 (3) A wooden fence that contains spacing no greater than 6 inches.

3598 (4) The fences shall be at least 6 feet in height. Wire woven fences
3599 shall be vinyl-coated or painted with a dark green, brown or black color. Vinyl-
3600 coating or painting of razor-wire or barbed-wire portions of the fence is not required.

3601 (C) A buffer strip as defined in § 154.007(B) shall be planted to screen the
3602 site from all other properties. This may be along the lot line or surrounding the area
3603 designated for the solar energy generation facility.

3604 (D) All new power transmission lines shall be underground and any
3605 electrical disconnection switches should be clearly marked and unobstructed.

3606 (E) Wind and snow load must be certified upon application. All
3607 equipment and structures shall comply with the North Carolina State Building Code
3608 requirements for survival wind speeds and ground snow loads for buildings.
3609 Although the North Carolina State Building Code may require load designs for only
3610 buildings, all structures and equipment associated with this use shall meet those
3611 same wind and snow load requirements. Note that the requirements vary based on

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3612 the elevation and location of the site. The Zoning Administrator shall require a
3613 certification from a structural engineer, licensed in North Carolina as a professional
3614 engineer, stating the designed wind and snow load standards for equipment and
3615 structures have been constructed according to the State Building Code and will meet
3616 the following:

3617 (1) Structures and buildings will meet a minimum wind survival
3618 speed of 90 m.p.h.; and

3619 (2) Structures and buildings will meet a minimum snow load of 15
3620 lbs. per square foot.

3621 (F) Should the facility stop being used or become unable to generate
3622 power, the property owner shall decommission the facility by removing the
3623 structures from the property within 180 days. After that time period, the town shall
3624 reserve the right to contract to have the equipment removed and lien against the
3625 property until payment for the contract is received in full.

3626 (Ord. 00080, passed 5-23-2013)

3627

COMMUNICATION TOWERS

3628

§ 154.090 STATUTORY AUTHORITY; PURPOSE.

3629

3630

3631

(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 ~~160A~~, [Article 19160D, Article 9, Part 3](#).

3632

3633

(B) The purpose of this subchapter is to protect the health, safety and welfare of citizens of Town of Mills River.

3634

3635

3636

(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.

3637

(Ord. 00079, passed 4-25-2013)

3638

§ 154.091 JURISDICTION.

3639

3640

3641

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)

3642

§ 154.092 TOWER GROUPS.

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3644

Tower groups. For the purposes of this subchapter, communications towers and tower activities shall be grouped as follows:

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(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

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3651 higher than the alternative structure, the construction is exempt from the terms of
3652 this subchapter. If collocation of an antenna on an existing tower results in the tower
3653 height not increasing by more than 30 feet, the construction is exempt from the terms
3654 of this subchapter. Exemption herein does not constitute exemption from any other
3655 applicable federal, state or local law or regulation.

3656 (B) *Group 2: collocation or replacement.* The Town of Mills River requires
3657 collocation of antennas on existing communications towers where collocation
3658 opportunities are available. Upon enactment of this subchapter, any person,
3659 corporation, partnership or other entity which intends to collocate on an existing
3660 communications tower within the jurisdiction of this subchapter, where the
3661 collocation results in the tower height increasing by more than 20 feet, shall first
3662 obtain a permit from the ~~Ordinance~~-Zoning Administrator in accordance with the
3663 terms of this subchapter. Replacement towers shall be placed so as not to increase the
3664 degree of any existing non-conformities.

3665 (C) *Group 3: towers for residential, amateur radio.* Upon enactment of this
3666 subchapter, any person, corporation, partnership or other entity which intends to
3667 construct a communications tower, within the jurisdiction of this subchapter, which
3668 is 80 feet or more in height and which is intended for residential or amateur radio
3669 shall first obtain a permit from the ~~Ordinance~~-Zoning Administrator in accordance
3670 with the terms of this subchapter.

3671 (D) *Group 4: new communications towers less than 50 feet.* Upon enactment
3672 of this subchapter, any person, corporation, partnership or other entity which intends
3673 to construct a new communications tower up to 50 feet in height within the
3674 jurisdiction of this subchapter shall first obtain a permit from the ~~Ordinance~~-Zoning
3675 Administrator in accordance with the terms of this subchapter. Allowed in districts
3676 MR-GB, MR-NC, MR-LI and MR-MU.

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3677 (E) *Group 5: new communications towers 50 feet through 250 feet.* Upon
3678 enactment of this subchapter, any person, corporation, partnership or other entity
3679 which intends to construct a new communications tower up to 250 feet in height
3680 within the jurisdiction of this subchapter shall first obtain a permit from the
3681 ~~Ordinance~~-[Zoning](#) Administrator in accordance with the terms of this subchapter.
3682 Allowed in districts MR-GB, MR-NC, MR-LI and MR-MU.

3683 (F) *Group 6: special use new communications towers.* Upon enactment of
3684 this subchapter, any person, corporation, partnership or other entity which intends
3685 to construct a new communications tower greater than 250 feet in height within MR-
3686 GB, MR-NC, MR-LI and MR-MU districts and under the jurisdiction of this subchapter
3687 shall first obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance
3688 with the terms of this subchapter. Any person, corporation, partnership or other
3689 entity which intends to construct a new communications tower less than 100 feet in
3690 height within MR-30 district and under the jurisdiction of this subchapter shall first
3691 obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance with the
3692 terms of this subchapter.

3693 (G) *Group 7: location of antennas on alternative structures.* Upon
3694 enactment of this subchapter, any person, corporation, partnership or other entity
3695 which intends to mount an antenna on an alternative structure that would add more
3696 than 20 feet to the height of the alternative structure within the jurisdiction of this
3697 subchapter shall first obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in
3698 accordance with the terms of this subchapter.

3699 (H) *Group 8: public safety and governmental Use.* Upon enactment of this
3700 subchapter, any government agency which intends to construct a new
3701 communications tower shall first obtain a permit from the ~~Ordinance~~-[Zoning](#)
3702 Administrator in accordance with the terms of this subchapter.

3703 (Ord. 00079, passed 4-25-2013)

3704 **§ 154.093 TOWER STANDARDS BY GROUP.**

3705 *Standards for communications towers.* Tower owners should exercise best
3706 efforts in the placement of communications towers so that they have minimal impact
3707 on adjacent residents and land owners. Conformance with the following standards
3708 shall be conclusive proof of best efforts on the part of tower owners. The following
3709 standards shall apply to communications towers:

3710 (A) *Standards for Group 1.* The structures shall be located on sufficient land
3711 to meet the setback requirements of the zoning district, if applicable.

3712 (B) *Standards for Group 2.*

3713 (1) The replacement tower shall be placed as close to the existing
3714 tower as is reasonable feasible and on the same parcel as the original tower.

3715 (2) The replacement tower shall meet the setback requirements of
3716 the zoning district, if applicable. However, if the existing tower is non-conforming for
3717 setbacks, the replacement tower shall not increase the degree of non-conformity.

3718 (3) The existing tower being replaced shall be removed within 90
3719 days of completion of the replacement tower.

3720 (C) *Standards for Group 3.* The structures shall be located on sufficient land
3721 to meet the setback requirements of the zoning district, if applicable.

3722 (D) *Standards for Groups 5, 6 and 7.*

3723 (1) *District setback requirements.* The structures shall be located on
3724 sufficient land to meet the setback requirements of the zoning district, if applicable.

3725 (2) *Separation from existing communications towers.* New
3726 monopole towers shall be located at least half (1/2) mile from any existing or
3727 permitted tower of any type (monopole, lattice or guyed) which is greater than 150

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3728 feet in height. New lattice or guyed towers shall be located at least [one \(1\)](#) mile from
3729 any existing or permitted tower of any type which is greater than 150 feet in height.

Separation <i>from Existing or Permitted</i>	
New Tower Type	Towers Greater than 150 feet in Height
Monopole	1/2 mile
Guyed or lattice	1 mile

3730

3731 (3) Separation *from* occupied buildings.

3732 (a) Separation *distance*. New monopole towers shall be
3733 separated from occupied buildings and other structures by a distance equal to 75%
3734 of the height of the proposed tower. New lattice or guyed towers shall be separated
3735 from occupied buildings and other structures by a distance equal to the height of the
3736 proposed tower.

Separation <i>from</i> Occupied Buildings	
Tower Type	(Percentage of tower height)
Monopole	75%
Guyed or lattice	100%

3737

3738 (b) *Exception*. The required separation area for all types of
3739 new towers may include occupied buildings if the applicant obtains affidavits of
3740 understanding or similar documents from the owners of property containing the
3741 buildings. The affidavits or other documents shall state that the property owners do
3742 not object to the construction of the tower as proposed in the application and agree

3743 to hold the Town of Mills River harmless from any and all liability for the location and
3744 construction of the tower as proposed in the application. The affidavits should also
3745 cite the specific plan or drawing reviewed by the property owner.

3746 (4) *Lighting.* No permanent or strobe lights shall be allowed on the
3747 tower unless required by federal, state or local law or regulation. Ground level
3748 security lighting may be permitted if designed to minimize impacts on adjacent
3749 properties.

3750 (5) *Color.* Towers shall be light gray or any other color that blends
3751 into the environment in which the tower is located, except when otherwise required
3752 by applicable federal and state law or regulations.

3753 (6) *Signs.* A sign which includes the name of the tower operator and
3754 a telephone number for emergencies shall be displayed in a visible location near the
3755 tower. No sign may be placed on the tower for commercial advertisement purposes.
3756 "Warning" and "no trespassing" signs are permitted and encouraged.

3757 (7) *Fencing.* The base of any tower shall be surrounded by a secured
3758 fence or an enclosed wall of at least 8 feet in height.

3759 (8) *Compliance with federal and state regulations.* The applicant
3760 shall be required to provide documentation satisfactory to the Zoning Administrator
3761 of compliance with all applicable federal and state laws and regulations.

3762 (9) *Siting towers on protected mountain ridges.* The height of any
3763 new monopole tower proposed for a protected mountain ridge, as defined, shall not
3764 be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to
3765 the tower site. The height of new lattice or guyed towers proposed for a protected
3766 mountain ridge shall not be greater than 20 feet above the existing vegetative canopy
3767 adjacent to the tower site. For purposes of this subchapter, the vegetative canopy

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3768 shall be the average tree line height within 500 feet of the tower site or, if no such
3769 adjacent vegetation exists, then the canopy shall be set at 40 feet.

3770 (10) *Design to accommodate additional user.* All new
3771 communications towers shall be designed to accommodate at least [one \(1\)](#) additional
3772 user.

3773 (11) *Option to town on collocation opportunity.* For all new towers,
3774 the applicant shall give the Town of Mills River the option of collocating, for
3775 governmental use, an antenna space on the new tower at fair market value, if
3776 technically feasible and if requested by the Town of Mills River in writing within 30
3777 days of the submission of a permit approval.

3778 (12) *Landscaped buffer.* A landscaped buffer shall be provided
3779 around the outside of the fence enclosing the base of the tower, except where access
3780 to the base of the tower is provided. The purpose of the buffer is to screen the base of
3781 the tower and fencing from surrounding land uses. The buffer shall be installed and
3782 approved by the Zoning Administrator prior to issuance of a certificate of occupancy
3783 for the tower by the Henderson County Inspections Department.

3784 (a) *Material.* The buffer shall consist of at least 1 row of
3785 evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in
3786 height. The plants shall be at least 3 gallon container plants or 24 inches tall at the
3787 time of planting. Individual plants shall be spaced not more than 8 feet apart.

3788 (b) *Installation.* The required buffer shall be installed
3789 according to established planting procedures using good quality plant materials.
3790 Plant materials used for installation shall conform to the standards established by the
3791 American Association of Nurserymen in the American Standard for Nursery Stock.

3792 (c) *Maintenance.* The tower owner shall be responsible for
3793 providing, protecting and maintaining all buffer plant materials in a healthy and

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3794 growing condition. Unhealthy or dead plant materials shall be replaced in a timely
3795 manner. Replacement materials shall conform to the materials specified in the
3796 landscaped buffer planting plan submitted with the application for the proposed
3797 tower (see § 154.094(B)(2)(a)12.) and shall, at a minimum, be of the same size and
3798 quality of the original plantings.

3799 (d) *Waiver of requirements.* Mills River Town Council may
3800 waive the buffer requirements, in whole or in part, if:

3801 1. The applicant cannot feasibly meet the
3802 requirements because of physical constraints or characteristics of the site. In the
3803 cases Mills River Town Council may require that plant material be placed in another
3804 feasible location on the site which would serve to meet the intent of the buffer
3805 requirements.

3806 2. The existing vegetation, topography or other
3807 natural means provide screening of the tower base which satisfies the intent of the
3808 buffer requirements.

3809 3. The proposed tower is in a district where
3810 residential dwellings are not allowed.

3811 (E) *Standards for Group 8.*

3812 (1) *District setback requirements.* The structures shall be located on
3813 sufficient land to meet the setback requirements of the zoning district, if applicable.

3814 (2) *Lighting.* No permanent or strobe lights shall be allowed on the
3815 tower unless required by federal, state or local law or regulation. Ground level
3816 security lighting may be permitted if designed to minimize impacts on adjacent
3817 properties.

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3818 (3) *Color.* Towers shall be light gray or any other color that blends
3819 into the environment in which the tower is located, except when otherwise required
3820 by applicable federal and state law or regulations.

3821 (4) *Fencing.* The base of any tower shall be surrounded by a secured
3822 fence or an enclosed wall of at least 8 feet in height.

3823 (5) *Compliance with federal and state regulations.* The applicant
3824 shall be required to provide documentation satisfactory to the Zoning Administrator
3825 of compliance with all applicable federal and state laws and regulations.

3826 (6) *Siting towers on protected mountain ridges.* The height of any
3827 new monopole tower proposed for a protected mountain ridge, as defined, shall not
3828 be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to
3829 the tower site. The height of new lattice or guyed towers proposed for a protected
3830 mountain ridge shall not be greater than 20 feet above the existing vegetative canopy
3831 adjacent to the tower site. For purposes of this subchapter, the vegetative canopy
3832 shall be the average tree line height within 500 feet of the tower site or, if no such
3833 adjacent vegetation exists, then the canopy shall be set at 40 feet.

3834 (7) *Option to town on collocation opportunity.* For all new towers,
3835 the applicant shall give the Town of Mills River the option of collocating, for
3836 governmental use, an antenna on the new tower at fair market value, if technically
3837 feasible and if requested by the Town of Mills River in writing within 30 days of the
3838 submission of a permit application.

3839 (8) *Landscaped buffer.* A landscaped buffer shall be provided
3840 around the outside of the fence enclosing the base of the tower, except where access
3841 to the base of the tower is provided. The purpose of the buffer is to screen the base of
3842 the tower and fencing from surrounding land uses. The buffer shall be installed and

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3843 approved by the Zoning Administrator prior to issuance of a certificate of occupancy
3844 for the tower by the Henderson County Inspections Department.

3845 (a) *Material.* The buffer shall consist of at least ~~1~~[one \(1\)](#) row
3846 of evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in
3847 height. The plants shall be at least 3 gallon container plants or 24 inches tall at the
3848 time of planting. Individual plants shall be spaced not more than 8 feet apart.

3849 (b) *Installation.* The required buffer shall be installed
3850 according to established planting procedures using good quality plant materials.
3851 Plant materials used for installation shall conform to the standards established by the
3852 American Association of Nurserymen in the American Standard for Nursery Stock.

3853 (c) *Maintenance.* The tower owner shall be responsible for
3854 providing, protecting and maintaining all buffer plant materials in a healthy and
3855 growing condition. Unhealthy or dead plant materials shall be replaced in a timely
3856 manner. Replacement materials shall conform to the materials specified in the
3857 landscaped buffer planting plan submitted with the application for the proposed
3858 tower (see § 154.094(B)(2)(a)12.) and shall, at a minimum, be of the same size and
3859 quality of the original plantings.

3860 (d) *Waiver of requirements.* Mills River Town Council may
3861 waive the buffer requirements, in whole or in part, if:

3862 1. The applicant cannot feasibly meet the
3863 requirements because of physical constraints or characteristics of the site. In the
3864 cases Mills River Town Council may require that plant material be placed in another
3865 feasible location on the site which would serve to meet the intent of the buffer
3866 requirements.

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3890 3. A sketch plan in sufficient detail to show the
3891 location of the tower, the foundation, accessory structures and antennas within the
3892 tower site.

3893 4. A structural engineering certification signed and
3894 sealed by an active, registered, North Carolina professional engineer, certifying the
3895 structural integrity of the tower and the tower base. The Zoning Administrator may
3896 accept, in lieu of the above, other documentation evidencing the structural integrity
3897 of the tower and the tower base. Applicants for towers for residential, amateur radio
3898 or governmental use or those in Group 4 do not have to submit the structural
3899 engineering certification or similar documentation.

3900 5. A copy of the valid Federal Communications
3901 Commission license must be provided to the Town before the communication tower
3902 shall be operational.

3903 (b) *Review procedure.* If an application for a Group 2, 3, 4 or
3904 7 permit meets the requirements of this subchapter, the Zoning Administrator shall
3905 issue a permit for the tower. The Zoning Administrator shall have 10 business days
3906 from the date a complete application is filed to issue or deny the permit. If the Zoning
3907 Administrator has reason to deny a permit, the Zoning Administrator shall notify the
3908 applicant of the nonconformity which could cause a denial and give the applicant 10
3909 business days to cure the nonconformity. If the applicant fails to cure the
3910 nonconformity within 10 business days, the Zoning Administrator may deny the
3911 permit, but the denial shall be made in writing and shall be accompanied by the
3912 reasons stating why the permit was denied.

3913 (2) *Requirements for Group 5 or 8.* In order to obtain a permit for
3914 towers or tower activities in Group 5 or 8, the applicant shall submit the following
3915 items to the Zoning Administrator:

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3916

(a) *Application.*

3917

1. An application form (to be provided by the Zoning

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Administrator).

3919

2. A permit fee (to be set by the Town Council in a

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fee schedule).

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3. A tower profile, with dimensions, which shows

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the proposed tower, the foundation, accessory structures and antennas.

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4. A structural engineering certification signed and

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sealed by an active, registered, North Carolina professional engineer, certifying the

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structural integrity of the tower and the tower base.

3926

5. A site plan, prepared by an active North Carolina

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registered land surveyor, registered professional engineer or registered landscape

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architect, which contains the following information:

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a. The names, addresses and telephone

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numbers of the applicant and the property owner.

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b. The plan scale, a North arrow and a

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vicinity map.

3933

c. Tax parcel identification number for any

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parcel of land containing the tower site and the tower's latitude and longitude

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coordinates.

3936

d. The name, address, signature and seal of

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the person who prepared the site plan.

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e. The boundary lines of any parcel or

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portion thereof that will contain the proposed tower. The boundary lines shall be

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surveyed by an active North Carolina registered land surveyor.

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3941 f. The general location of boundary lines of
3942 any parcel or portion thereof within a radius from the tower base equal to the
3943 proposed tower height.

3944 g. The names and tax parcel identification
3945 numbers of all owners of property immediately adjacent to any parcel containing the
3946 tower site.

3947 h. All identifiable buildings and other
3948 structures (including existing towers), roads and perennial streams located on the
3949 parcel containing the tower site and within a radius from the tower base equal to the
3950 tower height.

3951 i. The tower base and the foundations for all
3952 guyed line anchors and support structures, all proposed buildings, accessory
3953 structures and any other proposed improvements, including roads and utilities
3954 serving the proposed site.

3955 j. The ground elevation of the base of the
3956 proposed tower to the nearest foot.

3957 6. Statement regarding accommodation of
3958 additional user. The applicant shall submit a document signed and sealed by an active,
3959 registered, North Carolina professional engineer which indicates that the proposed
3960 tower will accommodate at least [one \(1\)](#) additional user.

3961 7. Statement regarding collocation. The applicant
3962 shall submit a written statement which indicates that he or she is willing to allow
3963 future collocations and will make space available at fair market value. This statement
3964 may include a caveat for rejecting a collocation based on concern regarding frequency
3965 disruption as certified by a state certified radio frequency engineer.

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3966 8. Evidence of mailing of notices of intent. The
3967 applicant must submit documentation which shows that the applicant has sent
3968 required notices of intent to file an application for a communications tower permit to
3969 all owners of property immediately adjacent to the parcel containing the tower site
3970 as well as to all owners of property within a radius measured from the tower base
3971 equal to a half (1/2) mile. The notice of intent shall include the following: a vicinity
3972 map showing the proposed tower location; a sketch of the tower with dimensions
3973 which indicates the proposed tower type and height; and a general statement from
3974 the Zoning Administrator outlining the procedure by which the proposed tower may
3975 be permitted. (See sample on file with the Zoning Administrator.) The notices of
3976 intent shall be mailed no fewer than 10 days and no more than 30 days prior to the
3977 date on which an application for a tower permit is filed. A list of all current adjacent
3978 property owners as listed with Henderson tower Land Records shall be included.

3979 9. Evidence of lack of alternative antenna sites shall
3980 be presented when a tower falls within the required distance listed in § 154.093,
3981 separation from existing communication towers. The applicant for a Group 5 must
3982 provide written documentation which shows that a reasonable effort has been made
3983 to collocate a proposed antenna for a communications tower on an existing tower or
3984 alternative structure and that there are no feasible alternatives to constructing the
3985 proposed tower because the owner of an existing tower or alternative structure
3986 which could be used for an antenna is unwilling or unable to allow the collocation or
3987 because no tower or structure exists which: could provide coverage to the proposed
3988 service area; or is structurally capable of supporting the intended equipment; or is
3989 the proper height; or would not cause frequency interference. Group 8 is exempt from
3990 this application requirement.

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3991 10. Easement acquisition documents. Where any
3992 adjacent property to the tower site falls within the distance of the tower height
3993 measured from the tower base, the applicant shall submit, with the application, a
3994 statement of intent to grant an easement to the applicant. If the application is
3995 subsequently approved, no certificate of occupancy for tower operation may be
3996 issued by the Town of Mills River until easement documents are recorded in the
3997 Henderson County Register of Deeds office and copies of such are submitted to the
3998 Town of Mills River.

3999 11. Evidence of compliance with federal and state
4000 regulations. The applicant shall be required to provide documentation satisfactory to
4001 the Zoning Administrator of compliance with all applicable federal and state
4002 regulations.

4003 12. Landscaped buffer planting plan. The applicant
4004 shall submit a sketch which shows the general type(s) of plant materials to be used
4005 for the buffer and where the materials will be planted on the tower site.

4006 13. A copy of the valid Federal Communications
4007 Commission license must be provided to the Town before the communication tower
4008 shall be operational.

4009 (b) *Review procedure.* If an application for Group 5 or 8
4010 permit meets the requirements of this subchapter, the Zoning Administrator shall
4011 issue a permit for the tower. The Zoning Administrator shall have 15 business days
4012 from the date a complete application is filed to issue or deny the permit. If the Zoning
4013 Administrator has reason to deny a permit, the Zoning Administrator shall notify the
4014 applicant of the nonconformity that would cause a denial and give the applicant 10
4015 business days to cure the nonconformity. If the applicant fails to cure the
4016 nonconformity within 10 business days, the Zoning Administrator may deny the

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4017 permit, but the denial shall be made in writing and shall be accompanied by the
4018 reasons stating why the permit was denied.

4019 (3) *Requirements for Groups 6.* In order to obtain a permit for towers
4020 or tower activities in Groups 6, the applicant shall submit the following items to the
4021 Zoning Administrator:

4022 (a) *Application.* All of the items stated in division (B)(2)(a)1.
4023 through 13., requirements for Group 5 and 8, above, except that the permit fee shall
4024 be set by the Town Council in a fee schedule reflected as a special use permit fee.

4025 (b) *Review procedure.* Review and approval for Group 6
4026 permits shall be by the Mills River Town Council in accordance with § 154.138. special
4027 uses, and § 154.180, powers and duties of the Town Council, of this subchapter. In
4028 addition, the Town Council may consider the economic impacts of a proposed
4029 communications tower on surrounding properties in determining whether to grant a
4030 special use permit.

4031 (Ord. 00079, passed 4-25-2013)

4032 **§ 154.095 DISCONTINUED USE.**

4033 Written notice shall be provided to the Zoning Administrator by the
4034 tower/operator and the tower site owner when the use of a communications tower
4035 is discontinued. If the use of a communications tower has been discontinued for a
4036 continuous period of 90 days, then the tower owner/operator or the tower site owner
4037 shall remove the tower within 90 days. The tower owner/operator and the tower site
4038 owner shall be jointly and severally responsible for the removal.

4039 (Ord. 00079, passed 4-25-2013)

4040 **§ 154.096 CONTINUED COMPLIANCE REQUIRED.**

4041 All permits for the construction of communications towers shall be issued
4042 upon a presumption that the application and documents submitted do not contain
4043 any misrepresentations or inaccuracies and that the tower will strictly conform to the
4044 plans which are submitted as the basis for the permit. Any misrepresentation or
4045 inaccuracy in the application or documents submitted or failure to strictly conform
4046 the tower to the plans submitted shall constitute a violation of this subchapter.
4047 Further, once constructed, the tower must continue to be at all times maintained in
4048 strict compliance with the provisions of this subchapter; failure to do so shall also
4049 constitute a violation of this subchapter. Any violation shall subject the tower
4050 owner/operator and the tower site owner to revocation pursuant to § 154.098 and
4051 penalties pursuant to § 154.101.

4052 (Ord. 00079, passed 4-25-2013)

4053 **§ 154.097 VARIANCES.**

4054 (A) Where, because of severe topographical or other conditions peculiar to
4055 the site, strict adherence to the provisions of this subchapter would cause an
4056 unnecessary hardship, the Town Council may authorize a variance, if the variance can
4057 be made without compromising the intent of this subchapter. Notwithstanding the
4058 foregoing, no variance may be issued allowing the modification of any height
4059 restriction or limitation contained in this subchapter. Anyone desiring a variance
4060 from the terms of this subchapter shall make application, in writing, justifying the
4061 request. The Zoning Administrator shall prepare an item requesting that the Town
4062 Council set a quasi-judicial public hearing on the application for variance and shall
4063 forward the item to the Town Manager or other appropriate personnel designated by
4064 Town Council by the agenda deadline for the first regularly scheduled meeting of the

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4065 Town Council after the application has been submitted. The Town Council shall
4066 schedule the public hearing for a regular evening meeting on a date which allows
4067 sufficient time for notice of the hearing to be mailed to owners of adjacent property
4068 and to be published in the newspaper, as outlined in § 154.199 Notice of a quasi-
4069 judicial public hearing on an application for a proposed tower shall comply with the
4070 provisions of G.S. §§ [160D-601](#)~~160A-364 and 160A-384~~, as amended. (see § 154.199).

4071 The Town Council shall consider the public health, safety and welfare when ruling on
4072 applications for variance. Any grant of a variance pursuant to this section must be
4073 based upon specific findings of the fact made by the Board that support the following
4074 conclusions:

4075 (1) There are practical difficulties or unnecessary hardships in the
4076 way of carrying out the strict letter of this subchapter.

4077 (2) The variance applied for is in harmony with the general purpose
4078 and intent of this subchapter and preserves its spirit.

4079 (3) In the granting of the variance, the public safety and welfare
4080 have been assured and substantial justice has been done.

4081 (B) Any variance authorized by the Town Council is required to be entered
4082 in the minutes of the meeting of the Town Council and the reasoning on which the
4083 departure was justified set forth. In addition, the grant of the variance shall be made
4084 in writing and delivered to the applicant.

4085 (Ord. 00079, passed 4-25-2013)

4086 **§ 154.098 REVOCATION OF PERMIT.**

4087 (A) *Revocation by Zoning Administrator.* The Zoning Administrator shall
4088 revoke any permit issued by the Zoning Administrator pursuant to this subchapter
4089 for any violation of this subchapter upon the Zoning Administrator having knowledge

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4090 of the violation; provided, however, that the Zoning Administrator shall notify the
4091 tower owner/operator and tower site owner of the violation that may cause the
4092 permit to be revoked and give the tower owner/operator and tower site owner at
4093 least 10 business days to cure the violation. If the tower owner/operator and/or the
4094 tower site owner fails to cure the violation within the time prescribed, the Zoning
4095 Administrator shall revoke the permit. The revocation of the permit must be made in
4096 writing and must be accompanied by the reasons for which the permit was revoked.

4097 (B) *Revocation by Town Council.* The Town Council may revoke any permit
4098 issued pursuant to this subchapter for any violation of this subchapter; provided,
4099 however, that prior to the Town Council consideration of the revocation of the permit,
4100 the Zoning Administrator shall notify the tower owner/operator and tower site
4101 owner of the violation that may cause the permit to be revoked and give the tower
4102 owner/operator and tower site owner at least 10 business days to cure the violation.
4103 If the tower owner/operator and/or the tower site owner fails to cure the violation
4104 within the time prescribed, the Zoning Administrator may prepare an item requesting
4105 that the Town Council set a quasi-judicial public hearing on the revocation of the
4106 permit and shall forward the item to the appropriate personnel by the agenda
4107 deadline for the first regularly scheduled meeting of the Town Council after the
4108 revocation request has been submitted. The Town Council shall schedule the public
4109 hearing for a regular evening meeting on a date which allows sufficient time for notice
4110 of the hearing to be mailed to owners of adjacent property and to be published in the
4111 newspaper, as outlined in § 154.199. Notice of a quasi-judicial public hearing on an
4112 application for a proposed tower shall comply with the provisions of G.S. §§ 160D-
4113 601~~160A-364 and 160A-384~~, as amended. (See § 154.199). The revocation of the
4114 permit must be made in writing and must be accompanied by the reasons for which
4115 the permit was revoked. The request for revocation of the permit submitted to the

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4116 Town Council may be accompanied by an application for variance related to the
4117 violation and the same may be considered by the Town Council as outlined in §
4118 154.097.
4119 (Ord. 00079, passed 4-25-2013)

4120 **§ 154.099 APPEALS.**

4121 (A) *Decision of the Zoning Administrator.* The denial or the revocation of a
4122 permit by the Zoning Administrator or the imposition of any conditions to the permit
4123 by the Zoning Administrator may be appealed to the Mills River Town Council by
4124 giving written notice within 15 days of notification to the applicant of the Zoning
4125 Administrator's decision. Further appeal shall be made pursuant to division (B) as
4126 below set forth.

4127 (B) *Decision of the Town Council.* The denial or the revocation of a permit
4128 by the Town Council or the imposition of any conditions to the permit by the Town
4129 Council may be appealed to the Superior Court of Henderson County in the nature of
4130 certiorari. A petition for writ of certiorari in the Superior Court must be filed with the
4131 Clerk of Superior Court within 30 days after the decision of the Mills River Town
4132 Council is served upon the applicant. Unless otherwise ordered by a court of
4133 competent jurisdiction, this subchapter may be enforced pursuant to § 154.101
4134 during the pendency of any appeal under this division.
4135 (Ord. 00079, passed 4-25-2013)

4136 **§ 154.100 PERMIT FEES AND EXPENSES.**

4137 The Town Council may set fees for any and all permits granted under the terms
4138 of this subchapter and for processing applications for variances. All reasonable and
4139 necessary expenses associated with the processing, issuance or denial of any

4140 application or variance, including, but not limited to, advertising fees, postage, travel,
4141 engineering studies and technical consultations, may be recovered from the
4142 applicant.

4143 (Ord. 00079, passed 4-25-2013)

4144 **§ 154.101 PENALTY.**

4145 The construction of a communications tower, collocation of an antenna on an
4146 existing tower, location of an antenna on an alternative structure or the replacement
4147 of an existing tower in violation of this subchapter, or failure to comply with any of
4148 the requirements of this subchapter or with any permit issued pursuant to this
4149 subchapter subject the applicant, the tower owner/operator and/or the owner of the
4150 tower site to revocation of the permit (§ 154.098) and the penalties and enforcement
4151 provisions pursuant to G.S. § 160A-175, including, but not limited to, the following:

4152 (A) *Equitable remedies.* This subchapter may be enforced by equitable
4153 remedies, and any unlawful condition existing in violation of this subchapter may be
4154 enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

4155 (1) *Injunction.* Where necessary to effectuate compliance with this
4156 subchapter, the Zoning Administrator or the other official charged with the
4157 responsibility of enforcing the Town of Mills River Ordinances may institute an action
4158 in a court of competent jurisdiction seeking an injunction against the further violation
4159 of this subchapter. The action may be joined with a civil action instituted to collect
4160 accrued civil penalties in accordance with the provisions herein.

4161 (2) *Order of abatement.* Where necessary to abate a condition
4162 existing upon land in violation of this subchapter or a use made of land in violation of
4163 this subchapter, the Zoning Administrator or the other official charged with the
4164 responsibility of enforcing the Town of Mills River Ordinances may institute an action

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4165 in a court of competent jurisdiction seeking an order of abatement of the use or
4166 condition of land in violation of this subchapter. The action may be joined to an action
4167 for an injunction and/or an action to recover civil penalties accrued against an
4168 individual for the use or condition of land in violation of this subchapter.

4169 (3) *Other equitable remedies.* This subchapter may be enforced by
4170 any other equitable remedy which a court of competent jurisdiction deems just and
4171 proper.

4172 (B) *Civil penalties.* Any individual who is found in violation of this
4173 subchapter may be subject to a civil penalty of \$50. Each day's violation shall be
4174 treated as a separate offense.

4175 (1) *Compliance order.*

4176 (a) Upon making a determination that a person is in
4177 violation of this subchapter, the Zoning Administrator or the other official charged
4178 with the responsibility of enforcing the Town of Mills River Ordinances shall issue a
4179 compliance order to the owner of the property and/or owner/lessor of the tower in
4180 violation of this subchapter. The compliance order shall notify the violator of the
4181 violation in writing. The order shall identify the circumstances giving rise to the
4182 violation, including the times, dates and places of the violation. The notification shall
4183 further identify the action which is necessary to comply with this subchapter. The
4184 notification shall state that if the violator does not comply within a reasonable time,
4185 not to exceed 15 days, the individual will be subjected to a civil penalty. If
4186 circumstances exist that the violator cannot come into compliance within 15 days, the
4187 Zoning Administrator or the other official charged with the responsibility of enforcing
4188 the Town of Mills River Ordinances may grant an extension of time commensurate
4189 with the magnitude of the violation. The compliance order shall further state that

4190 failure to comply with the terms of the compliance order will subject the violator to a
4191 civil penalty and shall further state the amount of the civil penalty.

4192 (b) Failure to comply with the terms of a compliance order
4193 issued by the Zoning Administrator or the other official charged with the
4194 responsibility of enforcing the Town of Mills River Ordinances within the time stated
4195 in the order shall subject the violator to a civil penalty of \$50. Each day that the
4196 violation continues shall be considered a separate offense, and the violator may be
4197 subject to an additional civil penalty for each separate offense.

4198 (2) *Civil action.* When necessary to collect any civil penalty or
4199 accrued civil penalties, a civil action may be instituted against an individual for the
4200 collection of all accrued penalties by the Zoning Administrator or the other official
4201 charged with the responsibility of enforcing the Town of Mills River Ordinances.

4202 (C) *Criminal penalties.* Unless otherwise provided by this subchapter or
4203 other applicable law, violation of this subchapter shall constitute a Class 3
4204 misdemeanor punishable by a fine not to exceed \$500. Each day's violation shall be
4205 treated as a separate offense.

4206 (1) *Warning ticket.* Upon the initial violation of a particular
4207 provision of this subchapter, an individual may be issued a warning ticket. The
4208 warning ticket shall identify the particular practice which is in violation of this
4209 subchapter and shall state the time, date and place of the violation. The warning ticket
4210 shall further state that if the individual commits further similar violations within the
4211 6 months following the date of the warning ticket, the Zoning Administrator or the
4212 other official charged with the responsibility of enforcing the Town of Mills River
4213 Ordinances may cause a warrant to be issued for the individual's arrest.

4214 (2) *Warrant.* If an individual violates this subchapter within the 6
4215 months following the issuance of a warning ticket in a manner that is similar to the

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4216 violation specified in the warning ticket, the Zoning Administrator or the other official
4217 charged with the responsibility of enforcing the Town of Mills River Ordinances may
4218 cause a warrant to be issued for the arrest of the individual.

4219 (3) *Enforcement.* Notwithstanding any other provisions of this
4220 subchapter, the Zoning Administrator or the other official charged with the
4221 responsibility of enforcing the Town of Mills River Ordinances may cause a warrant
4222 to be issued without having first issued a warning ticket where he or she deems it
4223 necessary to effectively enforce the terms of this subchapter.

4224 (Ord. 00079, passed 4-25-2013)

4225

GENERAL REGULATIONS

4226 § 154.105 NONCONFORMING USES.

4227 Any parcel of land, use of land, building or structure lawfully existing at the
4228 time of the adoption of this chapter, or any amendment thereto, that does not conform
4229 to the use, [lot size](#) or [dimensional](#) requirements of the district in which it is located
4230 may be continued and maintained subject to the following provisions:

4231 (A) *Nonconforming vacant lots.* This category of nonconformance
4232 consists of vacant lots for which plats or descriptions have been recorded in the
4233 Register of Deeds office of Henderson County, which at the time of the adoption of
4234 this chapter or any amendment thereto fail to comply with the minimum area
4235 requirements of the districts in which they are located. Any such nonconforming lot
4236 may be used for any of the uses permitted in the district in which it is located,
4237 provided that the lot conforms with § 154.131 of this chapter.

4238 (B) *Nonconforming occupied lots.* This category of nonconformance
4239 consists of lots, occupied by buildings or structures at the time of adoption of this
4240 chapter or any amendment thereto, that fail to comply with the minimum
4241 requirements for [lot](#) area, yard and setbacks for the districts in which they are
4242 located, but were in compliance with the Henderson County Zoning Ordinance
4243 immediately prior to the adoption of this chapter.

4244 (C) *Nonconforming open uses of land.* This category of nonconformance
4245 consists of lots used for storage yards, used car lots, auto wrecking, junkyards and
4246 similar open spaces where the only buildings on the lot are incidental and accessory
4247 to the open use of the lot and where the use of the land is not permitted to be
4248 established hereafter under this chapter, or any amendment thereto, in the district in

4249 which it is located. A legally established nonconforming open use of the land may be
4250 continued except as follows:

4251 (1) When a nonconforming open use of land has been changed to a
4252 conforming use, it shall not thereafter revert to any nonconforming use.

4253 (2) Nonconforming open use of land shall not be changed to any but
4254 conforming use.

4255 (3) A nonconforming open use of land shall not be enlarged to cover
4256 more land than was occupied by that use when it became nonconforming.

4257 (4) When any nonconforming open use of land is discontinued for a
4258 period in excess of 180 days, any future use of the land shall be limited to those uses
4259 permitted in the district in which the land is located. Vacancy and/or non-use of the
4260 land, regardless of the intent of the owner or tenant, shall constitute discontinuance
4261 under this provision.

4262 (5) When any nonconforming use was not in compliance with
4263 the Henderson County Zoning Ordinance immediately prior to the adoption of this
4264 chapter.

4265 (D) Nonconforming uses *or* structures. This category of nonconformance
4266 consists of buildings or structures used at the time of enactment of this chapter or any
4267 amendment thereto for purposes of use not permitted in the district in which they
4268 are located. The uses may be continued as follows:

4269 (1) An existing nonconforming use may be changed to another
4270 nonconforming use of the same or higher classification, provided that the other
4271 conditions in this section are complied with. For the purpose of this chapter, the rank
4272 order of uses from higher to lower shall be:

4273 (a) Residential;

4274 (b) Public;

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4275 (c) Commercial; and

4276 (d) Industrial.

4277 (2) When a nonconforming use has been changed to a conforming
4278 use, it shall not thereafter be used for any nonconforming use.

4279 (3) A nonconforming use may not be extended or enlarged nor shall
4280 a nonconforming structure be altered except as follows:

4281 (a) Structural alterations as required by law or ordinance or
4282 as ordered by the Zoning Administrator to secure the safety of the structure are
4283 permissible.

4284 (b) Maintenance and repair necessary to keep a
4285 nonconforming structure in sound condition is permissible.

4286 (c) Existing single-family residential structures in business
4287 or industrial districts may be enlarged, extended or structurally altered, provided that
4288 no additional dwelling units result therefrom. However, any such enlargement,
4289 extension or alteration shall comply with the dimensional requirements of the MR-30
4290 Residential District.

4291 (d) Expansion of a nonconforming use of a building or
4292 structure into portions of the structure which, at the time the use became
4293 nonconforming, were already erected and arranged and designed for the
4294 nonconforming use.

4295 (4) When any nonconforming use of a building or structure is
4296 discontinued for a period in excess of 180 days, the building or structure shall not
4297 thereafter be used except in conformance with the regulations of the district in which
4298 it is located.

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4299 (5) When any nonconforming use was not in compliance with
4300 the Henderson County Zoning Ordinance immediately prior to the adoption of this
4301 chapter.

4302 (E) *Reconstruction of damaged buildings or structures.* Any
4303 nonconforming use which has been damaged by fire, wind, flood or other causes may
4304 be repaired and used as before, provided that:

4305 (1) Repairs are initiated in 12 months and completed within 2 years
4306 of the damage.

4307 (2) The total amount of space devoted to a nonconforming use may
4308 not be increased.

4309 (3) The dimensions of a reconstructed building may not be larger
4310 than the original building if the non-conformance was related to dimensional
4311 restrictions.

4312 (F) *Use of existing lot of record.* Where the owner of a lot of official record
4313 in any district at the time of the adoption of this chapter or any amendment thereto,
4314 or his or her successor in title thereto, does not own sufficient contiguous land to
4315 enable him or her to conform to the minimum lot size requirements of this chapter,
4316 the lot may be used as a building site, provided that the Board of Adjustment is
4317 authorized to approve as a variance such dimensions as shall conform as closely as
4318 possible to the required dimensions.

4319 (G) *Non-conforming Residential.* Non-conforming residential lots may be
4320 permitted for family child care home, adult day care homes, adult day health homes
4321 and incidental home occupations.

4322 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4323 00055, passed 4-23-2009)

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4324 § 154.106 OFF-STREET PARKING.

4325 Off-street automobile storage or parking spaces shall be provided on every lot
4326 on which any of the following uses are hereafter established. The number of parking
4327 spaces provided shall be at least as great as the number specified below for various
4328 uses. When application of the provision results in a fractional space requirement, the
4329 next larger requirement shall prevail. Each lot abutting a major thoroughfare, as
4330 determined by the Zoning Administrator, shall be provided with vehicular access
4331 thereto and shall be provided with adequate space for turning so that no vehicle shall
4332 be required to back into the street.

4333 (A) *Minimum parking requirements.*

4334 (1) Motor vehicle parking spaces shall measure nine feet by 18 feet.
4335 Aisle width shall be based on parking angle and direction of flow according to the
4336 following table:

<i>Parking Angle (Degrees)</i>	<i>One Way Aisle Width (Feet)</i>	<i>Two Way Aisle Width (Feet)</i>
30	14	18
45	15	19
60	17	21
90	24	24

4337

4338 (2) The required number of off-street parking spaces specified
4339 below for each use shall be provided, (etc.)

<i>Residential Uses</i>	Required Parking
Residential dwellings, single-family and duplexes 2-family	2 spaces for each dwelling unit

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<i>Residential Uses</i>	Required Parking
Residential dwelling, multifamily	1-1/2 spaces for each dwelling unit
<i>Public and Semipublic Uses</i>	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

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<i>Residential Uses</i>	Required Parking
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
<i>Business Uses</i>	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

4340

<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

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	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</i> Industrial Uses	Required Parking
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

4341

4342 (B) Location on other property. If the required automobile parking
4343 spaces cannot reasonably be provided on the same lot on which the principal use is
4344 conducted, the spaces may be provided on other off-street property, provided that
4345 the property lies within 400 feet of the main entrance to the principal use. The

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4346 automobile parking space shall be associated with the principal use and shall not
4347 thereafter be reduced or encroached upon in any manner.

4348 (C) Extension of parking space into a residential district. Required
4349 parking space may extend up to 120 feet into a residential zoning district, provided
4350 that the parking space:

4351 (1) Adjoins a commercial or industrial district;

4352 (2) Has its only access to or fronts upon the same street as the
4353 property in the commercial or industrial district for which it provides the required
4354 parking space; and

4355 (3) Is separated from abutting properties in the residential district
4356 by a buffer strip.

4357 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4358 00055, passed 4-23-2009; Am. Ord. 2018-10, passed 11-8-2017)

4359 **§ 154.107 OFF-STREET LOADING AND UNLOADING SPACE.**

4360 Every lot on which a business, trade or industry use is hereafter established
4361 shall provide space as indicated herein for the loading and unloading of vehicles off
4362 the street. The space shall have access to an alley or, if there is no alley, to a street. For
4363 the purpose of this section, an off-street loading space shall have minimum
4364 dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in height above
4365 the alley or street grade.

4366 (A) Retail businesses and adult establishments: 1 space for each 10,000
4367 square feet of gross floor area.

4368 (B) Wholesale and industry: 1 space for each 25,000 square feet of gross
4369 floor area or area devoted to principal use.

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4370 (C) Truck terminals and other nonresidential uses: sufficient space to
4371 accommodate the maximum number of trucks to be stored or to be loading or
4372 unloading at any [one](#) time.

4373 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4374 **§ 154.108 REQUIRED YARDS AND OTHER SPACES.**

4375 No part of a yard or open space or off-street parking or loading space required
4376 about or in connection with any building for the purpose of complying with this
4377 chapter shall be included as part of a yard, open space or off-street parking or loading
4378 space similarly required for any other building.

4379 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4380 **§ 154.109 ONE PRINCIPAL BUILDING ON A LOT.**

4381 ~~Only~~ [Only one \(1\)](#) principal building and its customary accessory buildings
4382 may hereafter be erected on any ~~1~~ [one](#) lot, except as otherwise provided in this
4383 chapter. This restriction shall not apply in the MR-MU District or the MR-LI District.

4384 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4385 00071, passed 3-22-2012)

4386 **§ 154.110 CONFORMITY WITH REGULATIONS REQUIRED.**

4387 No building or land shall hereafter be used and no building or part thereof
4388 shall be erected, moved or altered, except in conformity with the regulation ~~herein~~
4389 specified for the [zoning](#) district in which it is located and ~~except as hereinafter as~~
4390 [otherwise](#) provided in the ~~Mills River Town Code~~ [Mills River Town Code](#) ~~is chapter~~. Any existing building or
4391 land that is proposed for a change of use shall conform to the regulation ~~herein in the~~
4392 [Mills River Town Code and as](#) specified for the [zoning](#) district in which it is located.

4393 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4394 2017-07, passed 11-10-2017)

4395 **§ 154.111 RELATIONSHIP OF BUILDING TO LOT.**

4396 Every building hereafter erected, moved or structurally altered shall be
4397 located on a lot, and in no case shall there be more than [one \(1\)](#) principal building and
4398 its customary accessory buildings on the lot, except in the case of a specially designed
4399 group development of institutional, residential, commercial or industrial buildings in
4400 an appropriate zoning district, e.g., school campus, cluster housing, shopping centers,
4401 industrial parks, manufactured home parks and planned unit developments. This
4402 restriction shall not apply in the MR-MU District or the MR-LI District.

4403 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4404 00071, passed 3-22-2012)

4405 **§ 154.112 ACCESSORY STRUCTURES AND BUILDINGS.**

4406 (A) Rear yards. Accessory structures and buildings shall be permitted in
4407 rear yards, provided that they are located not less than 10 feet from any property line.

4408 (B) Side yards. Accessory structures and buildings may be permitted in
4409 side yards, provided that their placement shall not exceed the minimum side yard
4410 setback requirement for that district or use.

4411 (C) Front yards.

4412 (1) Accessory structures and buildings shall not be permitted in
4413 front yards, except in the following cases:

4414 (a) Where, by definition, more than [one \(1\)](#) front yard exists,
4415 such as in corner lots or double fronted lots.

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4416 (b) Where the measurement of a lot's perimeter boundary is
4417 equal to or exceeds 50% of the abutting road right-of-way [width](#).

4418 (2) In division (C)(1)(a) and (b) above, an accessory building or
4419 structure shall not be located closer to the center line of the abutting road than is
4420 otherwise permitted by this chapter.

4421 (3) In these cases only, the determination shall be made by the
4422 Zoning Administrator on a case-by-case basis. Determinations shall take into account
4423 orientation of the structure and dwelling, road and driveway location, topographical
4424 features, traffic volume and visual buffers.

4425 (D) Height. In no case shall an accessory structure or building be
4426 permitted in any front, side or rear yard if it exceeds 15 feet in height or if it occupies
4427 more than 30% of the required yard area; however, height restrictions do not apply
4428 on lots of 1 acre or more.

4429 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4430 **§ 154.113 VEHICLE GRAVEYARD OR MOBILE/MANUFACTURED**
4431 **HOME GRAVEYARD AS ACCESSORY USES.**

4432 Where a vehicle graveyard or a mobile/manufactured home graveyard is
4433 allowed as an accessory use, the following site standards shall apply:

4434 (A) Secured fencing shall be required.

4435 (B) Full screening shall be required.

4436 (C) There shall be a minimum front yard, side yard and rear yard setback
4437 of 25 feet.

4438 (D) At least [one \(1\)](#) direct access road corridor, as defined in § 154.066(B),
4439 having a minimum width of 20 feet, and a minimum travelways width of 20 feet, shall
4440 be required.

4441 (E) Fire protection shall be required.

4442 (F) The vehicle graveyard and/or mobile/manufactured home graveyard
4443 shall be separated from any existing school by a minimum of ½ mile.

4444 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4445 **§ 154.114 RECREATIONAL VEHICLES.**

4446 Recreational vehicles may be used as a temporary single-family dwelling only
4447 in those districts that permit recreational vehicle parks and then only within the
4448 parks. In no case shall a recreational vehicle be used as a single-family dwelling on an
4449 individual lot or in conjunction with a primary residence on an individual lot, except
4450 as provided in § 154.179(D).

4451 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4452 **§ 154.115 COMMERCIAL WASTE CONTAINER SCREENING**
4453 **REQUIREMENTS.**

4454 (A) Commercial waste container screening *requirements*. New commercial
4455 sites in all districts shall locate commercial waste containers so that they are screened
4456 from view from the public right of way by either:

4457 (1) A solid fence; or

4458 (2) Screened with evergreen landscaping. Shrubbery used for
4459 screening must be a minimum of 24" high at planting and maintained so as to grow
4460 vertically to screen the commercial waste container. Any landscaping used for
4461 screening may also count towards interior plantings on the landscape plan; or

4462 (3) By a building or natural barrier.

4463 (4) Construction related waste containers, as defined in §
4464 154.007(B) are to be excluded from this provision.

4465 (Ord. 00066, passed 4-28-2011)

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4466 **§ 154.116 TRAFFIC IMPACT ANALYSIS (TIA) REQUIRED.**

4467 Residential developments that are defined as a major subdivision ~~require a~~
4468 ~~special use permit~~ must provide a traffic impact analysis (TIA) prepared by a licensed
4469 North Carolina civil engineer ~~administered by a Certified Traffic Engineer~~. The
4470 analysis must be submitted with an application for a special use permit. The report
4471 shall document the traffic operational impacts and any recommended improvements
4472 on the key roadway segments and intersections that have been identified as primary
4473 accesses to the proposed development.

4474 (Ord. 2018-02, passed 2-8-2018)

4475 **EXCEPTIONS AND MODIFICATIONS**

4476 **§ 154.130 WAIVER OF REQUIREMENTS.**

4477 Compliance with the requirements of this chapter is mandatory, except that
4478 under the specific conditions enumerated in the following sections of this subchapter,
4479 the requirements may be waived or modified as so stated.

4480 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4481 **§ 154.131 EXISTING LOTS.**

4482 (A) *Lots of insufficient land area.* Where the owner of a lot at the time of
4483 the adoption of this chapter or any amendment thereto or his or her successor in title
4484 thereto does not own sufficient land to enable him or her to conform to the minimum
4485 lot area requirements of this chapter, the lot may nonetheless be used as a building
4486 site, provided that any principal structure on an existing lot with an area below the
4487 minimum set forth in this chapter shall meet the setbacks required in the district.
4488 Applicants ~~who do not feel they that~~ cannot meet the setback requirements may
4489 appeal to the Board of Adjustment as provided in § 154.105(F). If, however, the

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4490 owner of [two \(2\)](#) or more adjoining lots either of which contains insufficient land area
4491 to comply with the applicable provisions of this chapter decides to build on or sell
4492 these lots as a building lot, he or she must first combine the lots to comply with the
4493 area and dimensional requirements of this chapter [and meet the lot design standards](#)
4494 [of Chapter 153 Subdivisions](#). As used in the section, “the time of the adoption of this
4495 chapter or any amendment thereto” means the date on which this chapter or any
4496 amendment thereto is made applicable to the use district in which the lot is located.

4497 (B) *Nonconforming occupied lots established prior to the date this chapter is*
4498 *adopted or any amendment thereto.* Any lot on which a building is located or
4499 improvements thereon shall be considered a nonconforming occupied lot if the
4500 building or improvement located on the lot was lawfully constructed in compliance
4501 with the Henderson County Zoning Ordinance prior to the date this chapter or any
4502 amendment thereto is adopted. All conditions and provisions of Subsection A of this
4503 section and § 154.105, "Nonconforming Uses" shall apply to the aforementioned lots
4504 and the development thereon.

4505 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4506 Ord. 00055, passed 4-23-2009)

4507 **§ 154.132 FRONT YARD SETBACK.**

4508 (A) Front yard setback requirements. The front yard setback
4509 requirements of this chapter for buildings shall not apply on any lot where the
4510 average setback of existing buildings located wholly or in part within 100 feet on each
4511 side of the lot within the same block and zoning district and fronting on the same side
4512 of the street is less than the minimum required setback. In such cases, the setback
4513 may be less than the required setback but not less than the average of the setbacks of
4514 the aforementioned existing buildings.

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4515 (B) Reduction of front yard setback for single-family dwellings on steep
4516 slopes.

4517 (1) On undeveloped lots for single-family dwellings located in the
4518 MR-30 District, the minimum front yard setback requirements may be reduced as
4519 follows:

4520 (a) Where the average slope at the proposed building site is
4521 greater than 18% but is less than 25%, the minimum front yard setback may be
4522 reduced by 10 feet.

4523 (b) Where the average slope at the proposed building site is
4524 equal to or greater than 25% but is less than 35%, the minimum front yard setback
4525 may be reduced by 15 feet.

4526 (2) The Zoning Administrator shall verify that lots qualify for the
4527 reduction in front yard setbacks and may therefore require that documentation
4528 indicating the average slope at proposed building sites be submitted at the time of
4529 application for zoning compliance permits. The average slope (percent) of a proposed
4530 building site shall equal the difference in elevation divided by the horizontal distance
4531 measured from a point 100 feet from the front property line (edge of right-of-way).

4532 (3) The provisions of this section shall not apply to undeveloped
4533 lots for single-family dwellings which front on a major street as defined by this
4534 chapter.

4535 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4536 **§ 154.133 SIDE YARD SETBACK.**

4537 Where a side yard abuts a street, the setback requirements for the side yard
4538 shall be the same as the front yard setback requirements for the district.

4539 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4540 **§ 154.134 GROUP DEVELOPMENTS.**

4541 (A) A shopping center, industrial park, cluster housing or school campus of
4542 2 or more buildings to be located on a plot of land at least 1-1/2 acres not to be
4543 subdivided into customary streets and lots, and which will not be so subdivided, may
4544 be constructed, provided that:

4545 (1) Uses are limited to those permitted within the district in which
4546 the project is located.

4547 (2) The overall intensity of land use within the project is no higher
4548 and the standard of open space is no lower than that permitted in the district in which
4549 the project is located.

4550 (3) The distance of every building from the nearest property line
4551 shall meet the front yard setback and the side and rear yard requirements of the
4552 district in which the project is located.

4553 (4) There shall be a buffer strip along the rear or side lot lines
4554 abutting residential zoned properties.

4555 (5) Other information, maps or plans that the Planning Board may
4556 request in order to properly review the project are provided.

4557 (B) Before any group development shall be constructed, plans, maps,
4558 graphs and other information shall be submitted to the Planning Board for its
4559 approval. No group development shall be allowed to be constructed until the
4560 developer shows that the project will be landscaped with shrubs, grass, trees, flower
4561 beds, as required by [the Landscaping subchapter](#) of this chapter.

4562 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4563 **§ 154.135 COMPLETION OF BUILDINGS UNDER CONSTRUCTION.**

4564 Nothing in this chapter shall require any change in the plans, construction or
4565 designated use of a building under construction at the date of the passage of this
4566 chapter or any amendment thereto, provided that construction of the building is
4567 diligently pursued and the entire building is completed within 18 months from the
4568 date of passage of this chapter or any amendment thereto and construction is
4569 consistent with the Henderson County Zoning Ordinance. A building shall be deemed
4570 to be under construction if, at the date of passage of this chapter or any amendment
4571 thereto, architect's plans have been prepared and preparation of the site has
4572 commenced. As used in this section, the "date of passage of this chapter or any
4573 amendment thereto" means the date on which this chapter or any amendment
4574 thereto is first made applicable to the use district in which the property is located.

4575 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4576 **§ 154.136 RESIDENCE ADDITIONS AND ACCESSORY BUILDINGS.**

4577 A zoning compliance permit shall be required for the construction of an
4578 addition to a single-family dwelling, or for the construction of an accessory building
4579 on the same lot as a single-family dwelling, to ensure that the addition or outbuilding
4580 is constructed in such a manner as to comply with the other requirements of this
4581 chapter.

4582 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4583 **§ 154.137 ~~CONDITIONAL~~ MINOR SPECIAL USE PERMITS.**

4584 (A) When a ~~conditional~~ Minor Special Use ~~Use~~ Permit is required by the
4585 terms of this chapter, application for such a permit shall accompany the application
4586 for a zoning compliance permit. The application shall be transmitted immediately to

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4587 the Zoning Board of Adjustment, which may refer it to the Planning Board for review
4588 and recommendations prior to an ~~public~~ evidentiary hearing.

4589 (B) A notice of the ~~public-evidentiary~~ hearing shall be given once a week
4590 for 2 successive calendar weeks in a newspaper published in the county, as provided
4591 in § 154.179(C)(1)(b).

4592 (C) The applicant shall identify all adjacent property owners, whom the
4593 Zoning Administrator will notify by registered mail of the ~~conditional-special~~ use
4594 application. The Zoning Administrator shall post the property with a hearing notice
4595 detailing the ~~conditional-special~~ use sought and the hearing time. The Mills River
4596 Town Council may establish and maintain a fee schedule to recover costs of legal
4597 notices, posting the property and notifying the adjacent property owners. These fees
4598 shall be paid by the applicant before a ~~conditional-special~~ use permit is issued.

4599 (D) If the Zoning Board of Adjustment shall find after the ~~public~~evidentiary
4600 hearing the use for which the ~~conditional-special~~ use permit is sought will not
4601 adversely affect the health and safety of persons residing or working in the
4602 neighborhood of the proposed use, and will not be detrimental to the public welfare
4603 or injurious to property or public improvements in the neighborhood, it shall issue a
4604 ~~conditional-special~~ use permit. All uses requiring a special use permit must meet the
4605 general site standards listed in § 154.138 (D). In granting such a permit, the Zoning
4606 Board of Adjustment shall designate the conditions in connection therewith as will,
4607 in its opinion, assure that the use will conform to the requirements of this chapter.

4608 (E) If at any time after a ~~conditional-special~~ use permit has been issued for
4609 any ~~conditional~~ use the Zoning Board of Adjustment finds that the conditions imposed
4610 and agreements have not been or are not being fulfilled by the holder of a
4611 ~~conditional~~special use permit, the permit shall be terminated immediately and the
4612 operation of the use discontinued.

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4613 (F) If a ~~conditional~~[special](#) use permit is terminated for any reason, it may
4614 be reinstated upon application as in the case of a new matter.
4615 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4616 **§ 154.138 [MAJOR SPECIAL USES PERMITS.](#)**

4617 (A) When a ~~Major s~~[Special u](#)~~se~~ ~~p~~[Permit](#) is required by the terms of this
4618 chapter, application for such a permit shall accompany the application for a zoning
4619 compliance permit. The application shall be transmitted immediately to the Mills
4620 River Town Council, which shall refer it to the Planning Board for review and
4621 recommendations prior to an ~~an~~ [publicevidentiary](#) hearing.

4622 (B) A notice of the ~~publicevidentiary~~ hearing shall be given once a week for
4623 2 successive calendar weeks in a newspaper published in the county as provided in §
4624 154.180(A)(1)(b).

4625 (C) The applicant shall identify all adjacent property owners, whom the
4626 Zoning Administrator will notify by registered mail of the special use application. The
4627 Zoning Administrator shall post the property with a hearing notice detailing the
4628 special use sought and the hearing time. The Mills River Town Council may establish
4629 and maintain a fee schedule to recover costs of legal notices, posting the property and
4630 notifying the adjacent property owners. These fees shall be paid by the applicant
4631 before a special use permit is issued.

4632 (D) General site standards. All uses requiring a special use permit must
4633 meet the general site standards listed below. In evaluating whether the general site
4634 standards have been met, the Mills River Town Council may consider the type and
4635 size of the principal use, size of the property and other relevant factors. The applicant
4636 will not bear the burden of proving that all of the general site standards as listed
4637 below have been met. The applicant will, however, be required to produce evidence

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4638 sufficient to rebut any evidence presented that the general site standards would not
4639 be met or that a condition is necessary.

4640 (1) The following general site standards shall apply to all uses
4641 requiring a special use permit:

4642 (a) Establishments requiring a special use permit shall not
4643 be located or developed in such a manner as to adversely affect the health or safety
4644 of the persons residing or working in the neighborhood of the proposed use and will
4645 not be detrimental to the public welfare or injurious to property or public
4646 improvements in the neighborhood.

4647 (b) Establishments requiring a special use permit shall be
4648 located or developed in such a manner as to minimize the effects of noise, glare, dust,
4649 solar access and odor on those persons residing or working in the neighborhood of
4650 the proposed use and the property and public improvements in the neighborhood.

4651 (c) Establishments requiring a special use permit shall not
4652 be located or developed in such a manner as to seriously worsen the traffic congestion
4653 so as to endanger the public safety.

4654 (d) Establishments requiring a special use permit shall be
4655 located or developed in such a manner as to comply with all applicable federal, state
4656 and local laws, rules and regulations.

4657 (e) Establishments requiring a special use permit shall be
4658 located and developed in such a manner as to be consistent with any approved Official
4659 Thoroughfare Plans.

4660 (f) Establishments requiring a special use permit shall be
4661 located and developed in such a manner as to minimize the environmental impacts
4662 on the neighborhood including the following: groundwater, surface water, wetlands,

4663 endangered and threatened species, archeological sites, historical preservation sites
4664 and unique natural areas.

4665 (2) In the event that the Mills River Town Council determines that a
4666 proposed use is contrary to ~~1~~[one](#) or more of the general site standards, then the Town
4667 Council may impose a condition on the issuance of the special use permit when the
4668 condition will avoid a violation of the general site standards. The condition imposed
4669 may be an increase in any minimum specific site standards stated for the regulated
4670 use. The imposition of a condition may only be based on evidence presented at the
4671 hearing that the general site standards would not be met without the imposition of
4672 the condition. The Town Council must make specific findings of fact based upon the
4673 evidence presented prior to the imposition of the condition.

4674 (E) If at any time after a special use permit has been issued for any special
4675 use, the Mills River Town Council finds that the conditions imposed and agreements
4676 made have not been or are not being fulfilled by the holder of a special use permit, the
4677 permit shall be terminated immediately and the operation of the use discontinued.

4678 (F) If a special use permit is terminated for any reason, it may be reinstated
4679 upon application as in the case of a new matter.

4680 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4681 Ord. 00052, passed 6-26-2008)

4682 **§ 154.139 TEMPORARY USES.**

4683 (A) An application for a temporary use permit shall accompany the
4684 application for a zoning compliance permit. The application shall be transmitted
4685 immediately to the Zoning Board of Adjustment, which shall hold a public hearing at
4686 its next regularly scheduled meeting.

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4687 (B) A notice of the public hearing shall be given in a newspaper of general
4688 circulation published in the county.

4689 (C) No temporary use permit may be granted in any district for the
4690 following uses:

4691 (1) Adult establishments.

4692 (2) Hazardous waste disposal facility.

4693 (3) Radioactive waste disposal facility.

4694 (D) Except as provided in § 154.139(E), no temporary use permit may be
4695 granted in the MR-MU District for any regulated use except for the following uses:
4696 asphalt plants; concrete plants; and chip mills. In such instances, the Zoning Board of
4697 Adjustment may impose as a condition of the temporary use permit any specific site
4698 standards listed for the regulated use necessary to make the temporary use comply
4699 with the general site standards listed for special use permits.

4700 (E) Isolated racing events, not otherwise allowed under a valid zoning
4701 permit, may be conducted only upon the issuance of a temporary use permit in
4702 accordance with this subsection and subject to the restrictions and limitations
4703 contained within this subsection:

4704 (1) Temporary use permits may not be issued for more than ~~two~~ [\(2\)](#)
4705 racing events per calendar year for any ~~1~~ [one](#) location or individual or entity.

4706 (2) Temporary use permits for racing events shall be limited in
4707 duration to a 24 hour period.

4708 (3) Temporary use permits for racing events shall not be issued for
4709 locations that would violate the separation requirements for motor sports facilities
4710 contained within the applicable zoning district, if any.

4711 (4) The Zoning Board of Adjustment should consider the following
4712 factors in evaluating the application:

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- 4713 (a) Type and size of the proposed event.
4714 (b) Size of the parcel on which the event will be conducted.
4715 (c) Time and duration of the event.
4716 (d) Other activities in the specified geographic area at the
4717 same time as the proposed event that might be disturbed by the proposed event.
4718 (e) Residential density in the proposed location.
4719 (f) Effect of the racing event on the residential areas.
4720 (g) Economic benefit to the community; any economic
4721 hardship on the applicant if the permit is denied or on others if it is allowed.
4722 (h) Previous violations of this chapter by the applicant.
4723 (i) Any other relevant factor.
4724 (5) The Zoning Board of Adjustment may impose as a condition of
4725 the temporary use permit any specific site standards listed for motor sports facilities
4726 necessary to make the temporary use comply with the general site standards listed
4727 for special use permits.
4728 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4729 **§ 154.140 ACQUISITION OF LAND FOR PUBLIC PURPOSES.**

- 4730 (A) Nothing in this chapter shall prohibit duly authorized agencies of the
4731 Town of Mills River from acquiring and using land whenever necessary to protect the
4732 public health and provide necessary public services and public works; however, the
4733 Mills River Town Council shall hold a public hearing before the action is taken.
4734 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

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ADMINISTRATION AND ENFORCEMENT

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§ 154.155 ZONING ENFORCEMENT OFFICER.

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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)

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§ 154.156 ZONING COMPLIANCE PERMIT.

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(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.

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(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.

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4760 (C) A zoning compliance permit shall be required for those uses permitted
4761 with standards in the MR-MU District, (See § 154.066(E)).

4762 (D) Events occurring off-site subsequent to the date of an application for
4763 any zoning compliance permit shall not operate to invalidate any permit validly
4764 issued.

4765 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4766 Ord. 00052, passed 6-26-2008; Am. Ord. 2018-02, passed 2-8-2018)

4767 **§ 154.157 DURATION OF PERMIT.**

4768 If no substantial construction progress has been made within 6 months of the
4769 date of the issuance of the zoning compliance permit, the permit becomes invalid.

4770 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4771 **§ 154.158 APPEALS.**

4772 It is the intention of this chapter that all questions arising in connection with
4773 the enforcement of this chapter shall be presented first to the Zoning Administrator
4774 and that the questions shall be presented to the Zoning Board of Adjustment only on
4775 appeal from the Zoning Administrator.

4776 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4777 **§ 154.159 REMEDIES.**

4778 If any building or structure is erected, constructed, repaired, converted or
4779 maintained or any building, structure or land is used in violation of this chapter, the
4780 Zoning Administrator or any other appropriate authority or adjacent or other
4781 property owner who would be damaged by the violation, in addition to other
4782 remedies, may institute injunction, mandamus or other appropriate action in
4783 proceeding to stop the violation.

4784 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4785 **ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL**

4786 **§ 154.175 ESTABLISHMENT OF ZONING BOARD OF ADJUSTMENT.**

4787 A Zoning Board of Adjustment is hereby established. The Board shall consist
4788 of 5 regular members, who shall be citizens of the Town of Mills River and shall be
4789 appointed by the Mills River Town Council for overlapping terms of 3 years. The
4790 Board shall also consist of as many alternate members as the Town Council deems
4791 appropriate, who shall be citizens of the Town of Mills River and who shall also serve
4792 overlapping 3 year terms. Alternate members shall serve in the absence of any regular
4793 member and, while serving, shall have and exercise all the powers and duties of a
4794 regular member of the Zoning Board of Adjustment. The Mills River Town Council
4795 may, by resolution duly adopted, establish guidelines for appointment of regular
4796 and/or alternate members, including, but not limited to, the establishment of
4797 representative districts for Zoning Board of Adjustment membership. Initial
4798 appointment of regular members shall be as follows: 1 member for a term of 3 years,
4799 2 members for terms of 2 years and 2 members for terms of 1 year. Initial
4800 appointment for alternate members shall be staggered in a like manner. Any vacancy
4801 in the membership shall be filled for the unexpired term in the same manner as the
4802 initial appointment. Members shall serve without pay but may be reimbursed for any
4803 expenses incurred while representing the Zoning Board of Adjustment.

4804 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4805 **§ 154.176 PROCEEDINGS OF ZONING BOARD OF ADJUSTMENT.**

4806 The Zoning Board of Adjustment shall elect a Chairperson and a Vice
4807 Chairperson from its members, who shall serve for 1 year or until reelected or until

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4808 their successors are elected. The Board shall appoint a Secretary, who may be a town
4809 officer, an employee of the town, a member of the Planning Board or a member of the
4810 Zoning Board of Adjustment. The Board shall adopt rules and bylaws in accordance
4811 with the provisions of this chapter and of Chapter 160DA of the North Carolina
4812 General Statutes (G.S. § 160D-302A-388). Meetings of the Board shall be held at the
4813 call of the Chairperson and at the other times as the Board may determine. The
4814 Chairperson or, in his or her absence, the Vice Chairperson may administer oaths and
4815 compel the attendance of witnesses by subpoena. All hearings held by the Board shall
4816 be open to the public.

4817 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4818 **§ 154.177 DECISIONS OF ZONING BOARD OF ADJUSTMENT.**

4819 The concurring vote of 4/5 of the members of the Zoning Board of Adjustment
4820 shall be necessary to approve a variance. The concurring vote of a majority of the
4821 members shall be required to decide any other quasi-judicial matter, to determine an
4822 appeal to the Zoning Board of Adjustment in the nature of certiorari or any other
4823 matter upon which the Zoning Board of Adjustment is required to act. For purposes
4824 of this chapter, vacant positions on the Zoning Board of Adjustment and members
4825 who are disqualified from voting on quasi-judicial matters shall not be considered
4826 members of the Zoning Board of Adjustment for calculation of the requisite majority
4827 if there are no qualified alternates available to take the place of such members. On all
4828 appeals, applications and other matters brought before the Board of Adjustment, the
4829 Board shall inform in writing all parties involved of its decisions and the reasons
4830 thereof. The Zoning Board of Adjustment is authorized to interpret the Zoning Map
4831 and pass upon disputed questions of lot lines or district boundary lines and other
4832 similar questions as they arise in the administration of this chapter.

4833 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4834 Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014)

4835 **§ 154.178 APPEALS OF ZONING BOARD OF ADJUSTMENT.**

4836 Appeals to the Zoning Board of Adjustment may be taken by any person
4837 aggrieved or by any official or board of the Town of Mills River affected by any action
4838 of the Zoning Administrator. The appeal shall be taken within 30 days, as provided by
4839 the rules of the Board, by filing with the Zoning Administrator and with the Secretary
4840 of the Zoning Board of Adjustment a notice of appeal and specifying the grounds
4841 thereof. The Zoning Administrator shall forthwith transmit to the Board all papers
4842 constituting the record upon which the action appealed was taken. An appeal stays
4843 all proceedings in furtherance of the action appealed unless the Zoning Administrator
4844 certifies to the Zoning Board of Adjustment, after the notice of appeal shall have been
4845 filed with him or her, that by reason of facts stated in the certificate a stay would, in
4846 his or her opinion, cause imminent peril to life or property. In such case, proceedings
4847 shall not be stayed other than by a restraining order which may be granted by the
4848 Board of Adjustment or by a court of record on application on notice to the Zoning
4849 Administrator and on due cause shown.

4850 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4851 **§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF**
4852 **ADJUSTMENT.**

4853 The Zoning Board of Adjustment shall have the following powers and duties:

4854 (A) *Administrative review.* To hear and decide appeals where it is alleged
4855 there is error in an order, requirement, decision, determination or interpretation
4856 made by the Zoning Administrator in the enforcement of this chapter pursuant to any
4857 of the following:

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4858 (1) Any person who has standing under G.S. § [160D-1402\(c\)](#)~~160A-~~
4859 ~~393(d)~~ or the city may appeal a decision to the board of adjustment. An appeal is
4860 taken by filing a notice of appeal with the city clerk. The notice of appeal shall state
4861 the grounds for the appeal.

4862 (2) The official who made the decision shall give written notice to
4863 the owner of the property that is the subject of the decision and to the party who
4864 sought the decision, if different from the owner. The written notice shall be delivered
4865 by personal delivery, electronic mail, or by first-class mail.

4866 (3) The owner or other party shall have 30 days from receipt of the
4867 written notice within which to file an appeal. Any other person with standing to
4868 appeal shall have 30 days from receipt from any source of actual or constructive
4869 notice of the decision within which to file an appeal.

4870 (4) It shall be conclusively presumed that all persons with standing
4871 to appeal have constructive notice of the decision from the date a sign containing the
4872 words "Zoning Decision" or "Subdivision Decision" in letters at least 6 inches high and
4873 identifying the means to contact an official for information about the decision is
4874 prominently posted on the property that is the subject of the decision, provided the
4875 sign remains on the property for at least 10 days. Posting of signs is not the only form
4876 of constructive notice. Any such posting shall be the responsibility of the landowner
4877 or applicant. Verification of the posting shall be provided to the official who made the
4878 decision. Absent an ordinance provision to the contrary, posting of signs shall not be
4879 required.

4880 (5) The official who made the decision shall transmit to the board
4881 all documents and exhibits constituting the record upon which the action appealed
4882 from is taken. The official shall also provide a copy of the record to the appellant and

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4883 to the owner of the property that is the subject of the appeal if the appellant is not the
4884 owner.

4885 (6) An appeal of a notice of violation or other enforcement order
4886 stays enforcement of the action appealed from unless the official who made the
4887 decision certifies to the board of adjustment after notice of appeal has been filed that
4888 because of the facts stated in an affidavit, a stay would cause imminent peril to life or
4889 property or because the violation is transitory in nature, a stay would seriously
4890 interfere with enforcement of the ordinance. In that case, enforcement proceedings
4891 shall not be stayed except by a restraining order, which may be granted by a court. If
4892 enforcement proceedings are not stayed, the appellant may file with the official a
4893 request for an expedited hearing of the appeal, and the board of adjustment shall meet
4894 to hear the appeal within 15 days after such a request is filed. Notwithstanding the
4895 foregoing, appeals of decisions granting a permit or otherwise affirming that a
4896 proposed use of property is consistent with the ordinance shall not stay the further
4897 review of an application for permits or permissions to use such property; in these
4898 situations the appellant may request and the board may grant a stay of a final decision
4899 of permit applications or building permits affected by the issue being appealed.

4900 (7) Subject to the provisions of subdivision (6) of this subsection,
4901 the board of adjustment shall hear and decide the appeal within a reasonable time.

4902 (8) The official who made the decision shall be present at the
4903 hearing as a witness. The appellant shall not be limited at the hearing to matters
4904 stated in the notice of appeal. If any party or the city would be unduly prejudiced by
4905 the presentation of matters not presented in the notice of appeal, the board shall
4906 continue the hearing. The board of adjustment may reverse or affirm, wholly or
4907 partly, or may modify the decision appealed from and shall make any order,

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4908 requirement, decision, or determination that ought to be made. The board shall have
4909 all the powers of the official who made the decision.

4910 (9) When hearing an appeal pursuant to G.S. § ~~160A-400.9(e)~~160D,
4911 Article 4, or any other appeal in the nature of certiorari, the hearing shall be based on
4912 the record below and the scope of review shall be as provided in G.S. §160D-1402(c)
4913 ~~160A-393(k).~~

4914 (10) The parties to an appeal that has been made under this
4915 subsection may agree to mediation or other forms of alternative dispute resolution.
4916 The ordinance may set standards and procedures to facilitate and manage such
4917 voluntary alternative dispute resolution.

4918 (B) *Variances.* To authorize, upon appeal, variations or modifications of any
4919 regulation or provision of this chapter relating to the dimensional requirements,
4920 construction or alteration of buildings or other provisions, so that the spirit of this
4921 chapter is observed, public safety and welfare secured and substantial justice done;
4922 however, the Zoning Board of Adjustment shall not permit a use of land, building or
4923 structure which is not permitted by right or ~~conditional~~by a special use permit in the
4924 district involved.

4925 (1) The Zoning Board of Adjustment may issue a variance only on
4926 the basis of affirmative findings of fact for all of the following criteria:

4927 (a) There are practical difficulties or unnecessary hardships
4928 in carrying out the strict letter of this chapter, as demonstrated by:

4929 (b) The hardship results from conditions that are peculiar to
4930 the property, such as location, size, or topography. Hardships resulting from personal
4931 circumstances, as well as hardships resulting from conditions that are common to the
4932 neighborhood or the general public, may not be the basis for granting a variance.

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4933 (c) The hardship did not result from actions taken by the
4934 applicant or the property owner. The act of purchasing property with knowledge that
4935 circumstances exist that may justify the granting of a variance shall not be regarded
4936 as a self-created hardship.

4937 (d) The requested variance is consistent with the spirit,
4938 purpose, and intent of the ordinance, such that is secured, and substantial justice is
4939 achieved. No change in permitted uses may be authorized by variance.

4940 (2) Appropriate conditions may be imposed on any variance,
4941 provided that the conditions are reasonably related to the variance.

4942 (C) ~~Conditional~~ Minor Special ~~Uses~~; *conditions governing application*. To
4943 grant, in particular cases and subject to appropriate conditions and safeguards,
4944 permits for ~~conditional~~ Minor Special ~~Uses~~ as authorized by this chapter and set
4945 forth as conditional uses under the various use districts.

4946 (1) The Zoning Board of Adjustment shall not grant a
4947 ~~conditional~~ special use permit unless and until:

4948 (a) A written application for a ~~conditional~~ special use permit
4949 shall be submitted indicating the section of this chapter under which the
4950 ~~conditional~~ special use permit is sought.

4951 (b) An ~~public~~ evidentiary hearing is held pursuant to §
4952 154.182.

4953 (2) If the Board of Adjustment finds that in the particular case in
4954 question, the use for which the ~~conditional~~ special use permit is sought will not
4955 adversely affect the health or safety of the persons residing or working in the
4956 neighborhood of the proposed use and will not be detrimental to the public welfare
4957 or injurious to property or public improvements in the neighborhood, a permit may
4958 be granted. In granting such a permit, the Zoning Board of Adjustment may designate

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4959 the conditions in connection therewith as will, in its opinion, assure that the proposed
4960 use will conform to the requirements and spirit of this chapter.

4961 (3) If at any time after a ~~conditional~~[special](#) use permit has been
4962 issued the Board of Adjustment finds that the conditions imposed and agreements
4963 made have not been or are not being fulfilled by the holder of a ~~conditional~~[special](#)
4964 use permit, the permit shall be terminated and the operation of the use discontinued.
4965 If the ~~conditional~~[special](#) use permit is terminated for any reason, it may be reinstated
4966 only after an ~~an~~ [public](#)[evidentiary](#) hearing is held.

4967 (4) The Planning Board and/or Zoning Board of Adjustment may
4968 ask for the submission of a preliminary site plan where a site plan is not required by
4969 this chapter.

4970 (5) Before any ~~conditional~~[special](#) use permit is issued, the Board
4971 may ask for advice and recommendation of the Planning Board.

4972 (6) Before any ~~conditional~~[special](#) use permit is issued, the Zoning
4973 Board of Adjustment shall make written findings certifying compliance with the
4974 specific rules governing the individual ~~conditional~~[special](#) use and that satisfactory
4975 provision and arrangement has been made concerning the following where
4976 applicable:

4977 (a) Satisfactory ingress and egress to property and proposed
4978 structures thereon with particular reference to automotive/pedestrian safety and
4979 convenience and traffic flow and control.

4980 (b) Provision of off-street parking and loading areas where
4981 required, with particular attention to the items in division (C)(6)(a) above and the
4982 economic, noise, glare and odor effects of the ~~conditional~~[special](#) use on adjoining
4983 properties in the area.

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4984 (c) Utilities with reference to locations, availability and
4985 compatibility.

4986 (d) Buffering with reference to type, location and
4987 dimensions.

4988 (e) Playgrounds, open spaces, yards, landscaping, access
4989 ways and pedestrian ways with reference to location, size and suitability.

4990 (f) Building and structures with reference to location, size
4991 and use.

4992 (D) *Temporary uses.* Except as otherwise provided in this chapter, the
4993 Zoning Board of Adjustment may grant a temporary use permit to allow a use not
4994 ordinarily permitted in the district, provided that the permit has a fixed expiration
4995 date, and the applicant satisfies any conditions imposed by the Zoning Board of
4996 Adjustment.

4997 (E) *Watershed Review Board.* The Henderson County Board of
4998 Adjustment may hear and decide cases which arise from appeals or may perform
4999 other proper administrative functions pursuant to the provisions set forth in Chapter
5000 192, *General Provisions*, Henderson County Water Supply Watershed Protection.

5001 (F) [Major Special](#) ~~u~~Uses. The Zoning Board of Adjustment shall have the
5002 authority to hear and grant, grant with conditions or deny an application for a [Major](#)
5003 ~~s~~Special ~~u~~Use ~~p~~Permit where the Mills River Town Council has determined that the
5004 Mills River Town Council cannot hear the application due to conflict of interest, bias,
5005 lack of a quorum or other similar reasons and has specifically delegated its authority
5006 to hear and decide the application to the Zoning Board of Adjustment by resolution.
5007 In such event, the Board of Adjustment shall have all of the powers and duties of the
5008 Town Council as defined in § 154.180(A). Notice requirements of § 154.182 shall
5009 apply.

5010 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
5011 Ord. 00083, passed 10-10-2013)

5012 ***Editor's note:***

5013 *G.S. § 160A-393 repealed by S.L. 2013-264, § 2, passed 7-17-2013.*

5014 **§ 154.180 POWERS AND DUTIES OF MILLS RIVER TOWN**
5015 **COUNCIL.**

5016 (A) ~~Major~~ Special ~~u~~Uses; conditions governing application. The Mills River
5017 Town Council shall have the power to grant, in particular cases and subject to
5018 appropriate conditions and safeguards, permits for ~~Major s~~Special ~~u~~Uses as
5019 authorized by this chapter and set forth as special uses under the various use districts.

5020 (1) The Mills River Town Council shall not grant a special use
5021 permit unless and until:

5022 (a) A written application for a special use permit is
5023 submitted, indicating the section of this chapter under which the special use permit
5024 is sought.

5025 (b) ~~An evidentiary~~public hearing is held. Notice of the ~~public~~
5026 hearing shall be given per § 154.182.

5027 (2) If the Mills River Town Council finds that in the particular case
5028 in question the use will meet all of the required general standards (see § 154.138)
5029 and the applicable specific site standards or site conditions, a permit may be granted.
5030 In granting such a permit, the Mills River Town Council may designate the conditions
5031 in connection therewith as will, in its opinion, assure that the proposed use will
5032 conform to the requirements and spirit of this chapter.

5033 (3) If at any time after a special use permit has been issued the Mills
5034 River Town Council finds that the conditions imposed and agreements made have not

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5035 been or are not being fulfilled by the holder of a special use permit, the permit shall
5036 be terminated and the operation of the use discontinued. If a special use permit is
5037 terminated for any reason, it may be reinstated only after an ~~an~~ [publicevidentiary](#)
5038 hearing is held.

5039 (4) The Planning Board and/or Town Council may ask for the
5040 submission of any additional information or evidence relevant to the determination
5041 of whether the proposed special use meets the applicable requirements of this
5042 chapter.

5043 (5) Before any special use permit is issued, the Mills River Town
5044 Council shall ask for advice and recommendation of the Planning Board.

5045 (6) Before any special use permit is issued, the Mills River Town
5046 Council shall make written findings certifying compliance with the specific rules
5047 governing the individual special use and that satisfactory provision and arrangement
5048 has been made concerning the following where applicable:

5049 (a) Satisfactory ingress and egress to property and proposed
5050 structures thereon with particular reference to automotive/pedestrian safety and
5051 convenience and traffic flow and control.

5052 (b) Provision of off-street parking and loading areas where
5053 required, with particular attention to the items in division A(6)(a) above and the
5054 economic, noise, glare and odor effects of the special use on adjoining properties in
5055 the area.

5056 (c) Utilities with reference to locations, availability and
5057 capability.

5058 (d) Buffering with reference to type, location and
5059 dimensions.

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5060 (e) Playgrounds, open spaces, yards, access ways and
5061 pedestrian ways with reference to location, size and suitability.

5062 (f) Building and structures with reference to location, size
5063 and use.

5064 (7) Variances. The Town Council shall be authorized, upon
5065 application, to approve variations or modifications of any regulation or provisions of
5066 this chapter for any special use so that the spirit of this chapter is observed, public
5067 safety and welfare secured and substantial justice done; however, the Town Council
5068 shall not permit a use of land, building or structure which is not allowed in the district
5069 involved.

5070 (a) The Town Council may issue a variance only on the basis
5071 of affirmative findings of fact for all of the following criteria:

5072 1. There are practical difficulties or unnecessary
5073 hardships in carrying out the strict letter of this chapter, as demonstrated by the
5074 following:

5075 a. If the applicant complies with the literal
5076 terms of this chapter, he or she cannot secure a reasonable return from, or make a
5077 reasonable use of, his or her property.

5078 b. The hardship of which the applicant
5079 complains results from unique circumstances related to the applicant's land.

5080 c. The hardship is not the result of the
5081 applicant's own action.

5082 2. The variance is in harmony with the general
5083 purpose and intent of this chapter and will preserve its spirit.

5084 3. The variance will secure the public safety and
5085 welfare and will do substantial justice.

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5086 (b) The existence of a nonconforming use of neighboring
5087 land, buildings or structures in the same district or permitted or nonconforming uses
5088 in other districts shall not constitute a reason for the requested variance.

5089 (c) A notice that describes the variance requested, property
5090 location and time and place of the hearing shall be published as a legal notice in a local
5091 newspaper of general circulation not less than 5 days before the hearing date. A
5092 second notice shall be published in the same newspaper as a commercial
5093 advertisement between the legal notice date and the hearing date.

5094 (B) The Mills River Town Council may establish and maintain a fee
5095 schedule to recover costs of legal notices, posting the property and notifying adjacent
5096 property owners. These fees shall be paid by the applicant before a special use permit
5097 is issued. Additionally, the applicant shall be required to pay the cost of any special
5098 experts or studies which the Town Council and the applicant agree are necessary to
5099 evaluate the application.

5100 (C) The Mills River Town Council shall have the authority to delegate the
5101 power to hear and grant, grant with conditions or deny an application for a [Major](#)
5102 ~~s~~Special ~~u~~Use ~~p~~Permit to the Zoning Board of Adjustment by resolution, where it
5103 determines that the Mills River Town Council cannot hear the application due to
5104 conflict of interest, bias, lack of a quorum or other similar reasons. In the event the
5105 Board of Adjustment shall have all of the powers and duties of the Mills River Town
5106 Council as defined in § 154.180(A) above. In adopting such a resolution, the Mills
5107 River Town Council shall state with specificity the reasons that it could not hear the
5108 application.

5109 (D) *Voting for special uses.* The consideration of a special use permit is a
5110 quasi-judicial matter. The granting of a special use permit shall require the concurring
5111 vote of a majority of the Town Council. For purposes of this section, vacant positions

5112 on the Town Council and members who are disqualified from voting on quasi-judicial
5113 matters shall not be considered members of the Town Council for calculation of the
5114 requisite majority if there are no qualified alternates available to take the place of
5115 such members.
5116 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
5117 Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014)

5118 **§ 154.181 APPEALS TO COURT.**

5119 Appeals from decisions of the Zoning Board of Adjustment and the Mills River
5120 Town Council shall be taken to the appropriate court of record as provided by law.
5121 Appeals must be filed within 30 days from the date the Zoning Board of Adjustment
5122 or the Mills River Town Council issues its order.
5123 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5124 **§ 154.182 NOTICE REQUIREMENTS FOR QUASI-JUDICIAL PUBLIC**
5125 **HEARINGS.**

5126 The following shall be required notice requirements when conducting quasi-
5127 judicial hearings:

5128 (A) Notice of hearings shall be mailed to the person or entity whose appeal,
5129 application, or request is the subject of the hearing; to the owner of the property that
5130 is the subject of the hearing if the owner did not initiate the hearing; and to the owners
5131 of all parcels abutting the parcel of land that is the subject of the hearing. Notice shall
5132 be deposited in the mail at least 10 days, but not more than 25 days prior to the date
5133 of the hearing.

5134 (B) Notice shall be placed via prominently posted notice of ~~public~~ hearing
5135 on the site that is the subject of the hearing or on an adjacent street or highway right-

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5136 of-way not less than 10 days, but not more than 25 days prior to the date of the
5137 hearing.
5138 (Ord. 00083, passed 10-10-2013)

5139 **AMENDMENTS**

5140 **§ 154.195 AUTHORITY OF MILLS RIVER TOWN COUNCIL.**

5141 This chapter, including the Official Zoning Map of the Town of Mills River, may
5142 be amended by the Mills River Town Council [upon a majority vote on first reading](#)
5143 [and](#) in accordance with the provisions of this subchapter.
5144 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5145 **§ 154.196 INITIATION.**

5146 (A) The text of this chapter and the Official Zoning Map of the Town of Mills
5147 River may be amended in order to:

- 5148 (1) Correct an error or clarify statements or boundaries;
- 5149 (2) Change the regulations in the text;
- 5150 (3) Apply zoning to previously unzoned areas of the town; or
- 5151 (4) Change the zoning of an area (re-zoning).

5152 (B) Proposed changes or amendments to this chapter or to the Official
5153 Zoning Map ~~of the~~ [of the](#) Town of Mills River may be initiated by the Mills River
5154 Town Council, the Planning Board, the Zoning Board of Adjustment, the Town
5155 Manager, the Henderson County Watershed Review Board, or 1 or more owners of
5156 property within the area proposed to be changed or affected, as applicable.

5157 (C) [When adopting or rejecting any zoning text or map amendment](#) ~~All~~
5158 proposed changes to this chapter, ~~including the Official Zoning Map of the Town of~~
5159 ~~Mills River,~~ shall first be reviewed by the Planning Board prior to consideration by

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5160 the Town Council. All changes shall include a statement describing whether its action
5161 is consistent or inconsistent with an adopted comprehensive plan. If a zoning map
5162 amendment is adopted and the action was deemed inconsistent with the adopted plan,
5163 the zoning amendment shall have the effect of also amending any future land-use map in
5164 the approved plan, and no additional request or application for a plan amendment shall
5165 be required.

5166 (D) When adopting or rejecting any petition for a zoning map amendment, a
5167 statement analyzing the reasonableness of the proposed rezoning shall be approved by
5168 the governing board. This statement of reasonableness may consider, among other
5169 factors, (i) the size, physical conditions, and other attributes of the area proposed to be
5170 rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the
5171 surrounding community, (iii) the relationship between the current actual and
5172 permissible development on the tract and adjoining areas and the development that
5173 would be permissible under the proposed amendment; (iv) why the action taken is in the
5174 public interest; and (v) any changed conditions warranting the amendment. If a zoning
5175 map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the
5176 governing board statement on reasonableness may address the overall rezoning.

5177 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-
5178 2005)

5179 **§ 154.197 APPLICATION.**

5180 (A) Text amendments. In order for a person authorized by § 154.197 to
5181 initiate a change to the text of this chapter, an application accompanied by the
5182 application fee shall be submitted to the Mills River Town Hall at least 30 days prior
5183 to the date of the Planning Board meeting at which the application is to be considered.
5184 The application shall contain the name(s) and address(es) of the applicant(s), a copy

5185 of the proposed text change and a statement from the applicant(s) which explains the
5186 purpose for the amendment.

5187 (B) Map amendments. In order for a property owner to initiate a change
5188 to the Official Zoning Map, an application accompanied by the application fee shall be
5189 submitted to the Mills River Town Hall at least 30 days prior to the date of the
5190 Planning Board meeting at which the application is to be considered. The application
5191 shall contain the name(s) and address(es) of the owner(s) of the property in question,
5192 the location of the property, a list of the name(s) and address(es) of the owner(s) of
5193 property abutting the property in question as shown on the county tax listing and a
5194 description and/or statement of the present and proposed zoning regulation or
5195 district. All applications requesting a change in the Zoning Map shall include a
5196 description of the property in question sufficient to unequivocally describe and
5197 identify the property. The description may take the form of a property survey, a legal
5198 description or a legible copy of a Henderson County cadastral or composite Tax Map
5199 clearly annotated with district lines which follow political boundaries, geographical
5200 features or property lines.

5201 (C) Modification. Application forms may be modified by the Town
5202 Council or Planning Board, as necessary.

5203 (D) Consideration. The Planning Board and the Mills River Town Council
5204 will not consider an application for an amendment denied within the preceding 12
5205 months by the Town Council.

5206 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5207 **§ 154.198 PLANNING BOARD ACTION.**

5208 Before taking any action on a proposed amendment to this chapter or the
5209 Official Zoning Map, the Mills River Town Council shall consider the Planning Board's

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5210 recommendation on each proposed amendment. The Planning Board shall have 45
5211 days after the first consideration of an application for re- zoning at a regular meeting
5212 to submit its recommendations to the Mills River Town Council. Failure of the
5213 Planning Board to submit recommendations within the 45 day period shall constitute
5214 a favorable recommendation, except that, if by agreement of the Planning Board and
5215 the applicant 45 days is insufficient due to the size of the area, the complexity of the
5216 request or similar circumstances, the Planning Board shall have 90 days to submit the
5217 recommendation. Time limitations, however, shall not be applied to applications for
5218 areas not previously zoned, to text amendments or to zoning amendments initiated
5219 by the Planning Board, the Board of Adjustment, the Town Manager, the Town
5220 Council, or the Henderson County Watershed Review Board.
5221 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5222 **§ 154.199 ~~PUBLIC~~ LEGISLATIVE HEARING.**

5223 Before enacting any amendment to this chapter or the Official Zoning Map, the
5224 Mills River Town Council shall hold a ~~public~~legislative hearing. Public notification of
5225 the hearing shall comply with the provisions of G.S. §§ ~~160D-601~~~~160A-364~~ and ~~160A-~~
5226 ~~384, if applicable, both~~ as amended.

5227 (A) Newspaper notice. In accordance with G.S. § ~~160D-601~~~~160A-364~~, a
5228 notice of the ~~public~~legislative hearing shall be published in a newspaper of general
5229 circulation in the Town of Mills River once a week for two (2) successive weeks, the
5230 first publication of which shall not appear less than 10 days or more than 25 days
5231 prior to the date fixed for the ~~public~~ hearing. The notice shall include the time, place
5232 and date of the hearing and include a description of the property or the nature of the
5233 change or amendment to the ordinance and/or map.

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5234 (B) Mailed notice. In accordance with G.S. §~~160A-384~~160D-602,
5235 whenever there is an amendment to the Official Zoning Map, the owner of that parcel
5236 of land as shown on the county tax listing and the owners of all parcels of land
5237 abutting that parcel of land as well as all properties separated from the subject
5238 property by street, reserved right-of-way, railroad, or other transportation corridor
5239 as shown on the county tax listing shall be mailed a notice of a ~~public~~legislative
5240 hearing on the proposed amendment by first class mail at the last addresses listed for
5241 the owners on the county tax abstracts. This notice must be deposited in the mail at
5242 least 10 but not more than 25 days prior to the date of the ~~public~~legislative hearing.
5243 The person(s) mailing the notices shall certify to the Town Council that fact, and the
5244 certificate shall be deemed conclusive in the absence of fraud. However, with specific
5245 approval of the Mills River Town Council at the time the Town Council sets a
5246 ~~public~~legislative hearing on a particular application, the Town Council may elect to
5247 use the expanded notice procedure which follows in lieu of or in addition to the first
5248 class notice required by this division if:

5249 (1) The proposed amendment would initially zone property added
5250 to the territorial coverage of the Official Zoning Map; or

5251 (2) The proposed amendment directly affects more than 50
5252 properties owned by a total of at least 50 different property owners.

5253 (C) Expanded published notice procedure. If the Town Council elects to
5254 utilize the expanded notice procedure, the town shall publish once a week for 4
5255 successive calendar weeks in a newspaper having general circulation in the area an
5256 advertisement of the ~~public~~legislative hearing that shows the boundaries of the area
5257 affected by the proposed Zoning Map amendment and explains the nature of the
5258 proposed change. The final two (2) advertisements shall comply with and be deemed
5259 to satisfy the provisions of G.S. § ~~160A-364~~160D-602. The advertisement shall not be

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5260 less than ½ of a newspaper page in size. The advertisement shall only be effective for
5261 property owners who reside in the area of general circulation of the newspaper which
5262 publishes the notice. Property owners who reside outside of the newspaper
5263 circulation area, according to the address listed on the most recent property tax
5264 listing for the affected property, shall be notified by first class mail pursuant to this
5265 section. The person(s) mailing the notices shall certify to the Town Council that fact,
5266 and the certificates shall be deemed conclusive in the absence of fraud. In addition to
5267 the published notice, the Town of Mills River shall post one (1) or more prominent
5268 signs on or immediately adjacent to the subject area reasonably calculated to give
5269 public notice of the proposed re-zoning.

5270 (D) Posted notice. For any proposed amendment to the Official Zoning
5271 Map, the Town of Mills River shall post a sign in a prominent location on or near the
5272 subject property which indicates that a zoning change has been proposed for the
5273 subject property. In the event that more than one (1) parcel is involved in a particular
5274 Zoning Map amendment, at least one (1) sign shall be posted in a central location;
5275 however, the Town of Mills River may post multiple signs. The sign(s) shall be posted
5276 at least ~~10~~during the period between 25 days prior ~~to~~and 10 days prior to the
5277 ~~public~~legislative hearing date.

5278 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

CONFLICT OF INTEREST

§ 154.201 CONFLICT OF INTEREST REQUIREMENTS

5281 Elected and appointed boards and Town of Mills River staff shall maintain
5282 conflict of interest procedures pursuant to G.S. § 160D-109 in administering Title XV
5283 of the Mills River Town Code. The Mills River Town Council serves as the Governing
5284 Board for the Town. The Planning Board and Zoning Board of Adjustment are

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5285 Appointed Boards. Town of Mills River staff includes and anyone employed by the
5286 Town or acting in an official capacity on behalf of the Town. These boards and
5287 individuals shall follow conflict of interest rules as described in this section.

5288 (a) Governing Board. A governing board member shall not vote on any
5289 legislative decision regarding a development regulation adopted pursuant to Title XV
5290 of the Mills River Town Code where the outcome of the matter being considered is
5291 reasonably likely to have a direct, substantial, and readily identifiable financial impact
5292 on the member. A governing board member shall not vote on any zoning amendment
5293 if the landowner of the property subject to a rezoning petition or the applicant for a
5294 text amendment is a person with whom the member has a close familial, business, or
5295 other associational relationship.

5296 (b) Appointed Boards. Members of appointed boards shall not vote on any
5297 advisory or legislative decision regarding a development regulation adopted
5298 pursuant to Title XV of the Mills River Town Code where the outcome of the matter
5299 being considered is reasonably likely to have a direct, substantial, and readily
5300 identifiable financial impact on the member. An appointed board member shall not
5301 vote on any zoning amendment if the landowner of the property subject to a rezoning
5302 petition or the applicant for a text amendment is a person with whom the member
5303 has a close familial, business, or other associational relationship.

5304 (c) Administrative Staff. No staff member shall make a final decision on an
5305 administrative decision required by Title XV of the Mills River Town Code if the
5306 outcome of that decision would have a direct, substantial, and readily identifiable
5307 financial impact on the staff member or if the applicant or other person subject to that
5308 decision is a person with whom the staff member has a close familial, business, or
5309 other associational relationship. If a staff member has a conflict of interest under this
5310 section, the decision shall be assigned to the supervisor of the staff person or such

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5311 other staff person as may be designated by the governing board. No staff member
5312 shall be financially interested or employed by a business that is financially interested
5313 in a development subject to regulation under Title XV of the Mills River Town Code
5314 unless the staff member is the owner of the land or building involved. No staff
5315 member or other individual or an employee of a company contracting with the Town
5316 of Mills River to provide staff support shall engage in any work that is inconsistent
5317 with his or her duties or with the interest of the Town, as determined by the
5318 governing board.

5319 (d) Quasi-Judicial Decisions. A member of any board or Town staff member
5320 facilitating or exercising quasi-judicial functions pursuant to Title XV of the Mills
5321 River Town Code shall not participate in or vote on any quasi-judicial matter in a
5322 manner that would violate affected persons' rights to an impartial decision maker and
5323 process. Impermissible violations of due process include, but are not limited to, a
5324 member having a fixed opinion prior to hearing the matter that is not susceptible to
5325 change, undisclosed communications with affected persons outside of defined
5326 decision making processes, a close familial, business, or other associational
5327 relationship with an affected person, or a financial interest in the outcome of the
5328 matter.

5329 (e) Resolution of Objection. If an objection is raised to a board member's
5330 participation at or prior to the hearing or vote on a particular matter and that member
5331 does not recuse himself or herself, the remaining members of the board shall by
5332 majority vote rule on the objection.

5333 (f) Familial Relationship. For purposes of this section, a "close familial
5334 relationship" means a spouse, parent, child, brother, sister, grandparent, or
5335 grandchild. The term includes the step, half, and in-law relationships.

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5336 (g) Additional Rules and Procedures. Nothing in this section precludes the
 5337 Town, its boards or its staff from enacting additional rules and procedures to ensure
 5338 conflict of interest issues do not adversely affect parties seeking rulings and
 5339 approvals on legislative or quasi-judicial matters that come before the Town provided
 5340 that additional rules and procedures are not inconsistent with G.S. § 160D-109 and
 5341 any amendments thereto.

LEGAL STATUS

5343 **§ 154.215 CONFLICT WITH OTHER LAWS.**

5344 Wherever the regulations of this chapter require a greater size of yards or
 5345 require a greater percentage of lot to be left unoccupied or impose other more
 5346 restrictive standards than are required in or under any other statutes, the
 5347 requirements of this chapter shall govern. Whenever the provisions of any other
 5348 statute require more restrictive standards than are required by this chapter, the
 5349 provisions of the statute shall govern.

Table A. Dimensional Requirements							
	Minimum Lot Area	Minimum Lot Area Per Dwelling (Family) Unit	Maximum Building Height	Yard Setback From Center Line of Street		Minimum Setbacks	
				Major¹	All Others	Side	Rear
District	(sq. ft.)	(sq. ft.)	(ft.)	(ft.)	(ft.)	(ft.)	(ft.)
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

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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.

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
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.
	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum
Screening	Secured	Secured	Secured	Secured	Secured
Fencing	100	500	500	100	100
Buffer (feet)	300	1,500 (landfill) 500 (other)	No stated minimum	200	500
Setback (feet)	See § 154.106	See § 154.106	See § 154.106	See § 154.106	See § 154.106
Parking	See § 154.107	See § 154.107	See § 154.107	See § 154.107	See § 154.107
Loading	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
Access Road Corridor	30	30	30	30	30

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Width of Travel-way (feet)					
	Required	Required	Required	Required	Required
Fire Protection	Plan required	Plan required	Plan required	Plan required	Plan required
Noise Mitigation	Required	Required	Required	Required	Required
Lighting	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
Separation1	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

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant	
Maximum Residential Density	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	
Protected Mountain Ridge						
Table B Part 2: Minimum Specific Standards	Incinerator	Junkyard	Motor Sports Facility	Slaughtering Plant	Amusement Park	Chip Mill
	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.

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Hours of Operation	No Stated Minimum	Full	No State d Mini mum	No Stated Minimum	No Stated Minimum	No Stated Minimum
Screening	Secured	Secured	Secur ed	Secured	Secured	Secured
Fencing	100	50	100	100	100	100
Buffer (feet)	300	300 (from public road)	500 (min or) 1,500 (maj or)	1,000	500	200
Setback (feet)	see § 154.106	see § 154.106	see § 154.1 06	see§ 154.106	see § 154.106	see § 154.106
Parking	see § 154.107	see § 154.107	see § 154.1 07	see § 154.107	see § 154.107	see § 154.107

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Loading	Number :1 Width: 60 feet	Number : 1 Width: 60 feet	Num ber: 1 (min or); 2 (maj or) Widt h: 45 feet	Number:1 Width: 60 feet	Number:2 Width: 45 feet	Number:1 Width: 60 feet
Access Road Corridor	30	20	20	30	20	30
Width of Travelways (feet)	Required	Require d	Requ ired	Required	Required	Required
Fire Protection	Plan required	Plan require d	Plan requi red	Plan required	Plan required	Plan required

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Noise Mitigation	Required	Required	Required	Required	Required	Required
Lighting	½ mile- schools ½ mile- health- care	½ mile- schools	½ mile- scho ols ½ mile- healt h- care	½ mile- schools ½ mile- health- care	½ mile- schools ½ mile- health- care	½ mile- schools
Separation1	1 unit per 8 acres radius: 1 mile	N/A	1 unit per 2 acres radiu s: 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

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Maximum Residential Density	Prohibited	Prohibit ed	Prohi bited	Prohibited	Prohibited	Prohibited
Protected Mountain Ridge						
<p style="text-align: center;">NOTES:</p> <p style="text-align: center;">1. The term HEALTH-CARE refers to health-care facilities as that term is defined in this chapter. (See § 154.007(B))</p>						

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5352 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.

5353 Ord. 00066, passed 4-28-2011)

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LANDSCAPING

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§ 154.230 LANDSCAPE PLAN REQUIRED.

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(A) This ~~section~~-subchapter 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.

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(B) For the purposes of this ~~chapter~~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, ~~either paved or unpaved~~ 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.

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(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.

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- (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

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5379 and preserved for credit; ~~the size is to be measured by taking the circumference of~~
5380 ~~the tree at approximately 4-1/2 above the grade.~~

5381 (3) The location and description of any barriers to be erected to
5382 protect any vegetation from damage both during and after construction.

5383 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5384 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5385 **§ 154.231 ~~LANDSCAPE SPECIFICATIONS~~ [RESERVED.](#)**

5386 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5387 2005; Am. Ord. 00038, passed 11-21-2006)

5388 **§ 154.232 STREETS OR PERIMETER PLANTING BEDS.**

5389 (A) Street and perimeter planting beds shall be at least 10 feet in width and
5390 shall be provided for all commercial or industrial uses that are visible from the public
5391 right-of-way.

5392 (1) Plantings within this area shall include trees and vegetative
5393 ground cover.

5394 (2) Earth berms may be used in addition to, but not instead of
5395 plantings. Earth berms should have a minimum of 4 feet at its highest point. Walls
5396 constructed of similar material as the principal building and not exceeding 3 feet in
5397 height may also be used; however, they may not be used instead of plantings.

5398 (3) Planting areas shall be protected from vehicular encroachment
5399 by curbing or wheel stops at least 4 inches in height.

5400 (B) One large shade tree (expected height of 15 feet at maturity) is required
5401 for every 40 feet of linear street frontage of the lot minus the width of driveways and
5402 access points.

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5403 (1) Required street trees shall be placed 30 feet apart at minimum
5404 or 50 feet at maximum.

5405 Example: If a lot has street frontage of 150 feet on Hwy 280 and a proposed
5406 driveway is a total 30 feet in width, the developer will be required to plant 3 trees in
5407 the perimeter planting bed.

5408 (2) Inclusion of existing trees in the landscape design is encouraged.

5409 (C) Shrubbery, ground cover, and other planting materials shall be used to
5410 complement the tree planting.

5411 (1) No area in the perimeter planting area may be exposed soil, but
5412 instead shall be covered with vegetation, whether grass, mulch or shrubbery. The
5413 only area which shall remain uncovered is the 6 foot radius surrounding the trunk of
5414 any tree; however, it is recommended that this area be mulched.

5415 (2) Within the perimeter planting bed, shrubs shall be planted at a
5416 minimum rate of ~~three~~ (3) per every 100 square feet.

5417 Example: If a perimeter planting bed has a total square footage of
5418 950 square feet, then the developer is required to plant 28 shrubs within the planting
5419 bed.

5420 (3) Shrubs shall be a minimum of 18 inches in height at planting and
5421 reach a minimum height of 36 inches in ~~three~~ (3) years. No more than 50% may be
5422 deciduous.

5423 (4) At the discretion of the Zoning Administrator, the requirement
5424 for street trees ~~may~~ be waived if the applicant submits detailed plans which show
5425 a suitable vegetation screen will surround the perimeter of the property adjacent to
5426 public ~~rights-of-way~~. An example of a suitable vegetative screen would be an
5427 appropriate combination of earth berms and evergreen hedges.

5428 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5429 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5430 **§ 154.233 INTERIOR PLANTINGS.**

5431 All parking areas (not including parking decks) shall provide and maintain
5432 landscaped planting areas within the interior of or adjacent to the parking area or
5433 both, which planting areas shall exclude and be in addition to the street or perimeter
5434 planting beds.

5435 (A) Landscaped planting areas are to be located within or adjacent to the
5436 parking area as tree islands, at the end of parking bays, inside medians, or between
5437 rows of cars. Planting areas shall be protected from vehicular encroachment by
5438 curbing or wheel stops at least [four \(4\)](#) inches in height.

5439 (B) There shall be [one \(1\)](#) large shade tree for every 10 parking spaces.
5440 There shall be 1 large shade tree for any additional 1,500 square feet of driveway or
5441 loading area.

5442 (C) There shall be 6 shrubs [for every](#) 10 parking spaces. There shall be [two](#)
5443 [\(2\)](#) shrubs for every 500 square feet of additional area of driveway or loading area.
5444 Shrubs must be 18 inches tall at planting and reach a minimum height of 36 inches in
5445 3 years. No more than 50% may be deciduous.

5446 (D) All trees and shrubs are to be planted within a landscaped planting area
5447 not less than 175 square feet in area.

5448 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5449 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5450 **§ 154.234 PARKING AREA LANDSCAPING FOR STRUCTURES.**

5451 Employee and customer parking areas and the driveway(s) which serve these
5452 areas, unless located on or within a structure, shall be separated from the exterior
5453 wall of a structure by a paved pedestrian walkway or a landscaped strip at least 5 feet
5454 in width. The landscaping may consist of small trees, a variety of shrubs or ground
5455 cover appropriate to the area. The Zoning Administrator must approve the planting
5456 plans.

5457 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5458 2005; Am. Ord. 00038, passed 11-21-2006)

5459 **§ 154.235 EXCEPTIONS.**

5460 Modifications to these standards may be granted in writing by the Zoning
5461 Administrator if the Administrator finds any of the following circumstances exist on
5462 the proposed building site, or surrounding properties:

5463 (A) Natural land characteristics such as topography or existing vegetation
5464 on the proposed building site would achieve the same intent of this section.

5465 (B) Innovative landscaping or architectural design is employed on the
5466 building site to achieve an equivalent screening or buffering effect.

5467 (C) The required screening and landscaping would be ineffective at
5468 maturity due to the proposed topography of the site, and or the location of the
5469 improvements on the site.

5470 (D) The topography of adjacent and surrounding sites is such as to render
5471 required screening ineffective at maturity.

5472 (E) If, in the opinion of the Zoning Administrator, the landscaping or
5473 screening required will interfere with traffic safety.

5474 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5475 2005; Am. Ord. 00038, passed 11-21-2006)

5476 **§ 154.236 NONCONFORMING PARKING AREAS.**

5477 Nonconforming parking lots existing at the time of the adoption of this
5478 amendment shall be required to comply with this amendment at the time the parking
5479 area is increased to a total area greater than 30,000 square feet.

5480 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5481 2005; Am. Ord. 00038, passed 11-21-2006)

5482 **§ 154.237 MAINTENANCE.**

5483 (A) Landscaping shall not be installed or retained in any location which
5484 constitutes a hazard or infringement to the public health, safety and welfare.
5485 Landscaping shall not obstruct the view of motorists using any street, private
5486 driveway, parking aisles or the approach to any street intersection.

5487 (B) Whenever any planting areas required by this section are adjacent to
5488 parking or vehicular circulation areas, the planting areas shall be protected from
5489 vehicular intrusion or damage from excessive vehicle fuels.

5490 (C) All landscaped planting areas shall be stabilized from soil erosion
5491 immediately upon planting and shall be maintained for the duration of the premises.

5492 (D) The property owner is responsible for maintaining all required plant
5493 material in good health. Any dead, unhealthy or missing plants must be removed
5494 which conforms with the initial planting standards of this section within 1 planting
5495 season.

5496 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5497 2005; Am. Ord. 00038, passed 11-21-2006)

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SIGNS

§ 154.250 PURPOSE AND INTENT.

5500 It is the intent of this subchapter to authorize the use of signs:

5501 (A) To encourage the effective use of signs as a means of communication in
5502 the town.

5503 (B) To preserve Mills River as a community that is attractive to business
5504 and industry while also preserving the natural beauty of the area.

5505 (C) To protect existing property values in both residential and non-
5506 residential areas.

5507 (D) To improve pedestrian and traffic safety.

5508 (E) To minimize the possible adverse effects of signs on nearby public and
5509 private property.

5510 (F) To improve the overall aesthetics of the community by preventing
5511 over-concentration, improper placement, and excessive height, bulk, and area of
5512 signs.

5513 (Ord. 2017-07, passed 11-10-2017)

§ 154.251 GENERAL PROVISIONS/ APPLICABILITY.

5515 The regulations in the following sections pertaining to signs specify the
5516 number, types, sizes, heights, and locations of signs, which are permitted within the
5517 jurisdiction of the town. Except as otherwise provided, no sign shall be erected,
5518 placed, altered, constructed, moved, converted, or enlarged except with the
5519 provisions of this chapter.

5520 (Ord. 2017-07, passed 11-10-2017)

5521 **§ 154.252 DEFINITIONS.**

5522 The following words or terms shall have the meanings as herein defined:

5523 **ABANDONED SIGN.** A sign erected on property in conjunction with a particular
5524 use, which use has been discontinued for a period of 180 days or more, or a temporary
5525 sign for an event which has occurred.

5526 **AGRICULTURAL SIGN.** A sign in use advertising the sale of seasonal produce,
5527 crops, livestock and animal products and horticulture products.

5528 **AWNINGS.** Cloth, vinyl, plastic or other similar type material permanently
5529 attached to a rigid frame on the face of a structure, typically over a door or entryway.
5530 This is not intended to include banners as defined and regulated in this chapter.

5531 **BANNER.** A sign or outside advertising display having the characters, letter,
5532 illustrations, ornamentation, symbol, color or visual representation applied to cloth,
5533 paper, vinyl, fabric, plastic or like kind of malleable material, with or without frame.
5534 The term **BANNER** shall include flags, pennants, ribbons, spinners, streamers, kites,
5535 balloons and/or, or any other material or outside advertising display fastened in such
5536 a manner as to move upon being subjected to movement of the atmospheres or any
5537 mechanical device. Flags on residential use properties are exempt from regulation.

5538 **BILLBOARD.** A panel for the display of advertisements in public areas, such as
5539 along highways or on the sides of buildings.

5540 **CHANGEABLE COPY SIGN.** A sign on which message copy is changed
5541 manually in the field or through electronic means. Time and temperature signs are
5542 not included in this definition.

5543 **CONSTRUCTION SIGN.** A temporary sign whose message is limited to
5544 identification of architects, engineers, contractors, and other individuals or firms
5545 involved with construction on a specific site, the name of the building, the intended
5546 purpose of the building and the expected completion date.

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5547 **EXEMPT SIGN.** Any sign that is specifically listed as exempt from this
5548 subchapter. The listed exempt signs are not regulated by the terms of this subchapter.

5549 **FLASHING SIGN.** A sign that incorporates flashing, strobe, pulsating or
5550 blinking lights, or a sign with moving or rotating parts or parts which simulate
5551 movement, including signs or lights or signs reflecting or emitting a glaring light that
5552 could impair driver vision.

5553 **FREESTANDING SIGN.** A sign which stands alone or on its own foundation free
5554 of support or attachment to a building or other structure.

5555 **GOVERNMENTAL SIGN.** Any sign erected by or on the order of an authorized
5556 public official in the performance of his or her office or duty including, but not limited
5557 to, traffic control signs, street name signs, warning and directions signs, public notice
5558 or signs of a similar nature.

5559 **INCIDENTAL SIGN.** A single face, non- illuminated professional or
5560 announcement sign attached wholly to a building, window or door or posted on
5561 property containing information relative to emergencies, store hours, credit cards
5562 honored and other similar accessory information. Including signs directing drivers
5563 such a "Drive Thru", "ATM", "Loading Dock", "Truck Entrance Only", and the like.

5564 **MARQUEE (AWNING).** A permanent rooflike structure other than a roof
5565 attached to, supported by, and projecting from a building, providing protection from
5566 the natural elements over the ground, sidewalk, or walkway.

5567 **MONUMENT SIGN.** Similar to a freestanding sign, typically with a substantial
5568 base made of natural material and with a lower height requirement.

5569 **NONCONFORMING SIGN.** A sign legally erected and in existence prior to the
5570 date of adoption of this subchapter or an amendment, that does not meet the
5571 standards imposed by this chapter.

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5572 **NO TRESPASSING/WARNING SIGNS.** A sign which carries a message
5573 forbidding the unlawful entry upon the land or building of another or a sign which
5574 carries a message warning of danger which could cause injury to a person entering
5575 upon the land or building of another.

5576 **POLITICAL SIGN.** A sign erected for the purpose of advertising a candidate or
5577 stating a position regarding an issue upon which the voters of the town may vote.

5578 **PORTABLE SIGN.** A sign generally constructed to be easily movable without a
5579 permanent attachment to the ground and which may or may not be equipped with
5580 wheels. Such signs may be designed for changeable messages. Signs painted on or
5581 attached to operational vehicles and trailers with permanent signage are not included
5582 in this definition.

5583 **PROJECTING SIGN.** A sign which projects from and is supported by a building
5584 or other structure.

5585 **REAL ESTATE SIGN.** A sign erected by the owner, or his or her agent,
5586 advertising real property upon which the sign is located for rent, for lease or for sale.

5587 **SEASONAL/HOLIDAY SIGN.** A sign setting forth information concerning the
5588 observance of activities which occur once per year.

5589 **SETBACK.** The shortest horizontal distance between the edge of the pavement
5590 or traveled surface and the closest point of a sign or its supporting member.

5591 **SIGN.** Any form of publicity or advertising which is designed to be visible from
5592 any public way, directing attention to an individual business, commodity, service,
5593 activity or product by means of words, lettering, numerals, trade names or
5594 trademarks, or other pictorial matter designed to convey such information. **SIGNS**
5595 shall include the SIGN STRUCTURE.

5596 **SIGN STRUCTURE.** A supporting structure erected or intended for the purpose
5597 of identification, with or without a sign thereon, situated upon or attached to the

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5598 premises upon which any sign may be fastened, affixed, displayed or applied,
5599 provided however, said definition shall not include a building or fence.

5600 ***SUBDIVISION AND DEVELOPMENT SIGNS.*** Signs that are intended to identify
5601 larger scale developments such as major subdivisions, multi- family developments,
5602 office parks, and industrial parks.

5603 ***TEMPORARY SIGN.*** Any sign, whether attached to a principle structure or
5604 freestanding, which is intended to be displayed for a limited time. This definition does
5605 not include portable signs. If a sign display area is permanent but the copy displayed
5606 is subject to periodic changes, that sign shall not be regarded as temporary.

5607 ***WALL SIGN.*** A sign which is placed on and/or attached to and supported
5608 throughout its entire length by the facade or exterior side of a building wall by means
5609 of adhesive, paint, manufacturing process, structural and/or mechanical attachment,
5610 which said sign is not more than 12 inches from the facade or exterior wall line and
5611 when its exposed face is parallel or approximately parallel to the plane of the building
5612 or structure on which the sign is affixed. Such sign may not extend above the roofline.
5613 (Ord. 2017-07, passed 11-10-2017)

5614 **§ 154.253 SIGN PERMIT REQUIRED.**

5615 (A) Unless otherwise provided, all signs must obtain a sign permit This
5616 includes the erection, placement, alteration, construction, moving, conversion, or
5617 enlargement of any sign within the town's jurisdiction.

5618 (B) All permit requests are reviewed by the Zoning Administer of his/her
5619 designee. Applications for a sign permit shall be accompanied by plans or drawings
5620 that depict the location and dimensions of said sign(s). Sign permits expire after 6
5621 months after issuance unless the applicant has completed construction of the
5622 permitted sign(s).

5623 (C) Notwithstanding the above, changing or replacing the permanent copy
5624 of an existing and conforming sign shall not require a permit, provided the copy
5625 change does not change the nature of the sign such as to render the sign in violation
5626 of the Town Code.
5627 (Ord. 2017-07, passed 11-10-2017)

5628 **§ 154.254 DETERMINATION OF SIGN COPY AREA AND SIGN**
5629 **HEIGHT.**

5630 (A) In measuring the copy area of a sign, the entire face of the sign shall be
5631 included. Where both sides of a double-faced sign contain lettering or other allowable
5632 display, one side only shall be used to compute the allowable copy area of the sign.
5633 Where the sign consists of individual letters, numbers, characters, figures, or displays
5634 attached in some manner to a building or a sign face of irregular shape, the sign copy
5635 area shall include the area of the smallest circle, square, or rectangle that can
5636 encompass the total sign area composed of letters, numbers, characters, figures, or
5637 displays or the irregular shaped sign face. Where signs have appendages or additions,
5638 such as "pop-ups" or "cutouts" that extend beyond the main sign copy area, the area
5639 of such appendages or additions shall be measured separately, but included in the
5640 total sign copy area. Also to be included in the total sign copy area shall be any area
5641 designed for changeable copy as defined in § 154.261. Spherical, cylindrical or other
5642 three-dimensional signs not having conventional sign faces shall be computed from
5643 the smallest three- dimensional geometrical shape or shapes which best approximate
5644 the actual surface area of the sign.

5645 (B) The maximum height of a sign shall be measured from the highest point
5646 of natural grade under the sign to the highest point of the sign. The grade shall not be
5647 altered in such a way as to increase the sign height.

5648 (Ord. 2017-07, passed 11-10-2017)

5649 **§ 154.255 SIGN ILLUMINATION.**

5650 All sign illumination shall be provided by a continuous light source that is
5651 installed only with the intent to illuminate said sign.

5652 (A) Signs illuminated by an external source shall be directed to the sign
5653 only with minimal spillover onto a street or adjacent properties.

5654 (B) Whether illuminated internally or externally, the sign shall not produce
5655 glare or reflection that interferes with traffic safety.

5656 (C) No internal or external illuminated sign shall flash, pulse, blink, strobe,
5657 or alternate light at any time.

5658 (Ord. 2017-07, passed 11-10-2017)

5659 **§ 154.256 CONSTRUCTION STANDARDS.**

5660 All signs shall be constructed according to requirements of Chapter 31 of the
5661 North Carolina State Building Code, as amended.

5662 (Ord. 2017-07, passed 11-10-2017)

5663 **§ 154.257 COMMON SIGNAGE PLAN FOR MULTI-UNIT**
5664 **DEVELOPMENTS OR DEVELOPMENTS WITH MORE THAN ONE**
5665 **PRINCIPAL BUILDING.**

5666 (A) A Common Signage Plan shall be prepared for developments with
5667 multiple buildings and/or multiple units. The signs must be uniform in design and
5668 features. All types and colors of signs, as long as they produce a unifying theme and
5669 meet all dimensional requirements in § 154.258, will be considered except for those
5670 expressly prohibited by the Town Code.

5671 (B) A site layout plan shall be part of the sign permit application for each
5672 existing and proposed signs. The plan shall contain all sign types, location, lighting
5673 scheme, and provisions for shared usage of freestanding signs.
5674 (Ord. 2017-07, passed 11-10-2017)

5675 **§ 154.258 SIGNS PERMITTED IN THE MR-GB, MR-NC, MR-LI, AND**
5676 **MR-MU ZONING DISTRICTS.**

- 5677 (A) Freestanding signs.
- 5678 (1) The maximum height of a freestanding sign shall be 20 feet.
- 5679 (2) The maximum area of a freestanding sign shall be 80 square feet.
- 5680 (3) The maximum area of a freestanding sign requiring a common
5681 signage shall be 125 square feet.
- 5682 (4) The maximum number of freestanding signs shall be 1 per street
5683 frontage.
- 5684 (5) All freestanding signs shall be located behind the street right-of-
5685 way or 10 feet from the curb or edge of a street where right-of-way does not exist or
5686 cannot be determined.
- 5687 (6) No sign shall be placed so as to interfere with automobiles
5688 entering or exiting the roadway.
- 5689 (7) Freestanding signs that adjoin a residential use shall adhere to
5690 a 15-foot side yard setback.

- 5691 (B) Projecting signs.
- 5692 (1) The minimum width of a building front for a projecting sign shall
5693 be 20 feet.
- 5694 (2) The maximum height of a projecting sign shall be 8 feet.
- 5695 (3) The maximum area of a projecting sign shall be 16 square feet.

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- 5696 (4) The maximum projection from a wall shall be [four \(4\)](#) feet.
- 5697 (5) The maximum number of projecting signs shall be 1 per tenant
5698 frontage.
- 5699 (6) No projecting sign shall extend above the highest point of a
5700 roofline or parapet.
- 5701 (7) No projecting sign shall be permitted on the same facade along
5702 which there is a wall sign.
- 5703 (C) Marquee *or* awning signs.
- 5704 (1) The maximum height shall be 16 inches.
- 5705 (2) The maximum width shall be 40 inches.
- 5706 (3) Signs hung below a marquee or awning shall conform in size and
5707 appearance to existing signs under the same marquee or awning.
- 5708 (4) Sign clearance shall be 8 feet from sidewalk or other walkway.
- 5709 (D) Wall signs.
- 5710 (1) Wall signage shall not exceed 10% of the total surface area of
5711 the wall to which the sign(s) is located up to a maximum of 150 square feet. The 150
5712 square foot maximum can be waived as part of a Common Signage Plan if no sign(s)
5713 on a building wall or building unit exceeds the 10% surface area wall requirement.
- 5714 (2) No wall sign shall project more than 18 inches from the building
5715 wall.
- 5716 (3) No wall sign intended for the facade of a building shall cover any
5717 window or part of a window.
- 5718 (4) Signs that are displayed on or through windows are exempt.
- 5719 (5) No wall sign shall extend above the highest point of a roofline or
5720 parapet.
- 5721 (E) Monument signs.

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5722 (1) Only buildings set back more than 30 feet from the right-of-way
5723 and having 100 feet or more of street frontage may use a monument sign.

5724 (2) All monument signs shall be located behind the street right of
5725 way or 10 feet to any adjacent lot line. A 15-foot side yard setback shall be required
5726 of the side lot line abuts a residential use.

5727 (3) Changeable copy is not permitted for a monument sign.

5728 (4) The maximum number of monument signs shall be 1 per street
5729 frontage.

5730 (5) Computation of sign height and area shall be 50% of allowable
5731 height and area of a freestanding sign.

5732 (Ord. 2017-07, passed 11-10-2017)

5733 **§ 154.259 SIGNS FOR NON-RESIDENTIAL USES PERMITTED IN**
5734 **THE MR-30 ZONING DISTRICT.**

5735 Signs for permitted uses in the MR-30 zoning district shall not exceed 50% of
5736 the requirements found in § 154.258.

5737 (Ord. 2017-07, passed 11-10-2017)

5738 **§ 154.260 CHANGEABLE COPY SIGNS.**

5739 (A) *Manual* changeable copy signs. Manual changeable signs must comply
5740 with the following standards:

5741 (1) In no case shall a manual changeable copy sign comprise more
5742 than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5743 (2) The copy area (background) must be one uniform color.

5744 (3) The letters and numbers may be colored red or black.

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5745 (B) *Electronic* changeable copy signs. Electronic changeable copy signs
5746 shall not be permitted in Mills River. Electronic changeable copy signs permitted
5747 before (Amendment adoption date) must comply with the following standards:

5748 (1) Shall be located on freestanding signs only.

5749 (2) In no case shall an electronic changeable copy sign comprise
5750 more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5751 (3) Messages shall remain in a fixed position for at least 8 seconds.

5752 (4) Messages shall not contain flashing, scrolling, blinking or similar
5753 type movements. In addition messages shall not contain any animation.

5754 (5) Message transition must be instantaneous.

5755 (6) Electronic changeable copy shall shall have a black background
5756 screen. All lighted characters, letters, and numbers shall only be green or red in color.

5757 (Ord. 2017-07, passed 11-10-2017; Am. Ord. 2020-06, passed 3-13-2020)

5758 Changeable copy signs are permitted by right in the MR-GB zoning district. In
5759 all other zoning districts a special use permit approval from Town Council is required
5760 as defined in §§ 154.138 and 154.180.

5761 (A) *Manual* changeable copy signs.

5762 (1) In no case shall a manual changeable copy sign comprise more
5763 than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5764 (2) The copy area (background) must be one uniform color.

5765 (3) The letters and numbers may be colored red or black.

5766 (B) *Electronic* changeable copy signs.

5767 (1) Shall be located on freestanding signs only.

5768 (2) In no case shall an electronic changeable copy sign comprise
5769 more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5770 (3) Messages shall remain in a fixed position for at least 8 seconds.

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5771 (4) Messages shall not contain flashing, scrolling, blinking or similar
5772 type movements. In addition messages shall not contain any animation.

5773 (5) Message transition must be instantaneous.

5774 (6) Electronic changeable copy shall shall have a black background
5775 screen. All lighted characters, letters, and numbers shall only be green or red in color.
5776 (Ord. 2017-07, passed 11-10-2017)

5777 **§ 154.261 SIGNS EXEMPT FROM OBTAINING A SIGN PERMIT.**

5778 (A) Signs required by law, statute, or ordinance.

5779 (B) Public (governmental) signs.

5780 (1) Signs erected by or pursuant to the authorization of
5781 governmental agencies including but not limited to DOT (Department of
5782 Transportation), Americans with Disabilities Act signage and warning or hazard
5783 signage. Governmental signs unique to the Town of Mills River are required to abide
5784 by the sign ordinance which would include for example school signage or water
5785 treatment facility signage.

5786 (C) Flags (non-advertising/non-informational).

5787 (D) Political signs. Political signs (less than 4 square feet) may be placed up
5788 to 60 days prior to an election and must be removed within 72 hours of the close of
5789 voting. This includes polling place identification signage. Candidates should obtain
5790 property owners permission before placing signs on their property.

5791 (E) Address numbers.

5792 (F) Window signs. Signs placed or attached to the interior side of a
5793 window or door glass of a building.

5794 (G) Building memorial sign.

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5795 (H) No trespassing or warning signs (soliciting, hunting, fishing, parking,
5796 etc.).

5797 (I) Signs associated with a seasonal or religious holiday.

5798 (J) Agricultural signs. Signs that are designed to advertise seasonal
5799 agricultural products and are limited to 32 square feet of copy area.

5800 (K) Sidewalk. Signs that are used by businesses to advertise daily
5801 specials, sales, etc. These signs must be placed on sidewalks within the development
5802 (not on sidewalks in public right-of- way).

5803 (L) Temporary signs.

<i>On Premise</i>				
	<i>Maximum Number</i>	<i>Maximum Square Feet</i>	<i>Maximum Height</i>	<i>Maximum Time</i>
Real Estate/For Lease (Residential)	2	12	6	Until sold/leased
<i>Real Estate</i> /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
<i>Construction</i>	1	32	10	Project duration
Remodeling/Repair	1	12	10	Project duration
Special Event	1	32	10	30 days prior to event

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<i>On Premise</i>				
	<i>Maximum Number</i>	<i>Maximum Square Feet</i>	<i>Maximum Height</i>	<i>Maximum Time</i>
Info/Advertisement (<i>Banners</i> /Flags, etc.)	2	12	10	30 days
<i>Off Premise</i>				
<i>Real Estate</i> /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

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5805 (Ord. 2017-07, passed 11-10-2017)

5806 **§ 154.262 EXTENDED USE TEMPORARY SIGNS.**

5807 Signs that are listed in § 154.261(L) that are larger than the maximum
 5808 dimensions/time may be permitted with an extended use temporary sign permit. The
 5809 sign shall not exceed 32 square feet of copy area with a height not to exceed 10 feet.
 5810 Extended use temporary signs can be issued for up to 1 year and can be applied for
 5811 annually.

5812 (Ord. 2017-07, passed 11-10-2017)

5813 **§ 154.263 SIGNS PROHIBITED.**

5814 (A) Billboards (outdoor advertising).

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- 5815 (B) Flashing, strobing, pulsating, blinking.
- 5816 (C) Motion. [Moving parts by mechanical means.](#)
- 5817 (D) Snipe. Signs attached to utility poles, fences, street lights, hydrants,
- 5818 trees, etc. on public property or right-of-way.
- 5819 (E) Signs obstructing motorist visibility.
- 5820 (F) Signs in a right-of-way.
- 5821 (G) Signs above roofline.
- 5822 (H) Obscene signs.
- 5823 (I) Permanent off-premise.
- 5824 (I) Balloons and other [inflatables.](#)
- 5825 (K) Signs erected or placed without a permit or not in compliance with
- 5826 regulations.
- 5827 (Ord. 2017-07, passed 11-10-2017)

5828 **§ 154.264 SUBDIVISION AND DEVELOPMENT SIGNS.**

- 5829 (A) *Residential subdivisions and developments.*
- 5830 (1) One monument sign (per § 154.258) is allowed for each road or
- 5831 driveway into the development.
- 5832 (2) The sign may identify a single-family residential subdivision or
- 5833 multi-family residential complex.
- 5834 (3) The sign must be located on a parcel that is associated with the
- 5835 approved subdivision or development.
- 5836 (B) *Industrial and office parks.*
- 5837 (1) One monument sign (per § 154.258) is allowed for each road or
- 5838 driveway into the development.

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5839 (2) The sign may identify the name of the subdivision and/or the
5840 tenants of the subdivision.

5841 (3) The sign must be located on a parcel that is associated with the
5842 approved subdivision or development.

5843 (4) Said signs are allowed in addition to the signage allowed for
5844 each individual development in the subdivision.

5845 (Ord. 2017-07, passed 11-10-2017)

5846 **§ 154.265 NON-CONFORMING SIGNS.**

5847 (A) Signs that were erected and were in place prior to the adoption of this
5848 subchapter but which do not conform to the provisions of this chapter are declared
5849 non-conforming signs. Signs that were erected and that are in place and which
5850 conformed to the provisions of this subchapter at the time erected, but which do not
5851 conform to an amendment of this subchapter enacted subsequent to the erection of
5852 said signs are also declared non-conforming signs. Any sign erected after the passage
5853 of this chapter must meet all criteria within this chapter.

5854 (B) A non-conforming sign may be continued but shall not be:

5855 (1) Changed or replaced with another non-conforming sign, except
5856 that copy may be changed.

5857 (2) Expanded or modified in any way which increases the sign's
5858 non-conformity or adds illumination.

5859 (3) Moved except to bring the sign into conformity.

5860 (4) Re-established once the sign structure has been removed.

5861 (5) Re-established after the sign has been damaged as defined in §
5862 154.268.

5863 (6) Re-established after it has been discontinued regardless of
5864 reason or intent for 180 days or more.
5865 (Ord. 2017-07, passed 11-10-2017)

5866 **§ 154.266 SIGN MAINTENANCE.**

5867 All parts of a sign, including the copy area, supports, braces, poles, wires, and
5868 other appurtenances of signs or sign structures shall be kept in good repair and
5869 maintained in safe condition. Any sign deemed to be in a state of disrepair by this
5870 section shall be considered in violation of this chapter.

5871 (A) A sign shall be in a state of disrepair when more than 20% of its total
5872 surface area is covered with disfigured, cracked, ripped, or peeling paint or poster
5873 paper or any combination of these conditions.

5874 (B) No sign shall be allowed to stand with bent or broken sign facing,
5875 broken supports, loose appendages or struts which cause the sign to stand more than
5876 15 degrees from the perpendicular.

5877 (C) No sign or sign structure shall be allowed to have weeds, vines, or other
5878 vegetation growing on it and obscuring it from the street or highway from which it is
5879 intended to be viewed.

5880 (D) No illuminated sign shall be allowed to stand with only partial
5881 illumination operational. All illuminated signs must comply with § 154.255.

5882 (E) Unlawful cutting of trees or shrubs. No person may, for the purpose of
5883 increasing or enhancing the visibility of any sign, damage, trim, destroy or remove
5884 any trees, shrubs or other vegetation located within a public right-of-way of any road
5885 or highway except as required by the North Carolina Department of Transportation.
5886 The Administrator may use discretion in determining alternative forms of compliance
5887 for landscaping in situations where sign visibility is affected.

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5888 (Ord. 2017-07, passed 11-10-2017)

5889 **§ 154.267 DANGEROUS OR UNSAFE SIGNS.**

5890 Pursuant to G. S. 160A-193, the Town Council shall have the authority to
5891 summarily remove, abate, or remedy a sign which is dangerous or prejudicial to the
5892 public health or safety. The expense of the action shall be paid by the sign owner, or
5893 if the sign owner cannot be determined, the land owner, and if not paid, shall be a lien
5894 upon the land or premises where the nuisance arose, and shall be collected as unpaid
5895 taxes.

5896 (Ord. 2017-07, passed 11-10-2017)

5897 **§ 154.268 ENFORCEMENT.**

5898 (A) If the Zoning Administrator or his/her designee shall find any of the
5899 provisions of the Sign Ordinance are in violation, he/she shall notify the person
5900 responsible for such violation, indicating the nature of the violation and ordering the
5901 action necessary to correct it or shall take any other action authorized by §154.999
5902 of the Town Code.

5903 (B) In addition to actions authorized by §154.999 of the Town Code, civil
5904 penalties for sign ordinance violations shall [be set by the Mills River Town Council](#)
5905 [and](#) double ~~from \$50 to \$100~~ after 15 days from the date the individual is notified.
5906 Each day's violation after the initial 15-day period shall be treated as a separate
5907 offense.

5908 (Ord. 2017-07, passed 11-10-2017)

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ARCHITECTURAL DESIGN GUIDE REQUIREMENTS

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§ 154.270 RESERVED.

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(Ord. 00065, passed 7-22-2010; Am. Ord. 2020-07, passed 3-13-2020)

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§ 154.999 PENALTY.

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(A) Equitable remedies. This chapter may be enforced by equitable

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remedies, and any unlawful condition existing in violation of this chapter may be

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restrained or abated by injunction and order of abatement in accordance with G.S. §

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160A-175.

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(1) Injunction. Where necessary to effectuate compliance with

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this chapter the Zoning Administrator or the other official charged with the

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responsibility of enforcing the Town of Mills River Zoning Ordinance may institute an

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action in a court of competent jurisdiction seeking an injunction against the further

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violation of this chapter. The action may be joined with a civil action instituted to

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collect accrued civil penalties in accordance with the provisions herein.

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(2) Order of abatement. Where necessary to abate a condition

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existing upon land in violation of this chapter or a use made of land in violation of this

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chapter, the Zoning Administrator or the other official charged with the responsibility

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of enforcing the Town of Mills River Zoning Ordinance may institute an action in a

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court of competent jurisdiction seeking an order of abatement of the use or condition

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of land in violation of this chapter. The action may be joined to an action for an

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injunction and/or an action to recover civil penalties accrued against an individual

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for the use or condition of land in violation of this chapter.

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(3) Other equitable remedies. This chapter may be enforced by

5932

any other equitable remedy which a court of competent jurisdiction deems just and

5933

proper.

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5934 (B) Civil penalties. Any individual who is found in violation of this
5935 chapter may be subject to a civil penalty of \$50 or other amount as established by
5936 Town Council. Each day's violation shall be treated as a separate offense. The civil
5937 penalty may be recovered in a civil action in the nature of debt if the penalty is not
5938 paid within 15 days after the individual is notified by the Zoning Administrator of a
5939 violation.

5940 (1) ~~Compliance order~~Notice of Violation.

5941 (a) Upon making a determination that a person is in
5942 violation of this chapter, the Zoning Administrator or the other official charged with
5943 the responsibility of enforcing the Town of Mills River Zoning Ordinance shall issue a
5944 ~~compliance order~~notice of violation to the person in violation of this chapter in
5945 accordance with § 154.999. ~~The compliance order shall notify the violator of the~~
5946 ~~violation in writing~~. The ~~order~~notice shall identify the circumstances giving rise to
5947 the violation, including the times, dates and places of the violation. The notification
5948 shall further identify the action which is necessary to comply with this chapter. The
5949 ~~notification~~notice shall state that if the violator does not comply within a reasonable
5950 time, not to exceed 15 days, the individual will be subjected to a civil penalty. If
5951 circumstances exist such that the violator cannot come into compliance within 15
5952 days, the Zoning Administrator or the other official charged with the responsibility of
5953 enforcing the Town of Mills River Zoning Ordinance may grant an extension of time
5954 after which the individual will be subjected to a criminal penalty commensurate with
5955 the magnitude of the violation. The ~~compliance order~~notice of violation shall further
5956 state that failure to comply with the terms of the ~~compliance order~~notice of violation
5957 will subject the violator to a civil penalty and shall further state the amount of the civil
5958 penalty.

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5959 (b) Failure to comply with the terms of a ~~compliance~~
5960 ~~order~~notice of violation issued by the Zoning Administrator or the other official
5961 charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance
5962 within the time stated in the order shall subject the violator to a civil penalty of \$50
5963 or other amount as established by Town Council. Each day that the violation
5964 continues shall be considered a separate offense, and the violator may be subject to
5965 an additional civil penalty for each such separate offense.

5966 (2) Civil action. When necessary to collect any civil penalty or
5967 accrued civil penalties, a civil action may be instituted against an individual for the
5968 collection of all accrued penalties by the Zoning Administrator or the other official
5969 charged with the responsibility of enforcing the Town of Mills River Zoning
5970 Ordinance.

5971 (C) Criminal penalties. Unless otherwise provided by this chapter or
5972 other applicable law, violation of §§ 154.001 - 154.237 shall constitute a Class 3
5973 misdemeanor punishable by a fine which may be up to but may not exceed \$500. Each
5974 day's violation shall be treated as a separate offense.

5975 (1) Warning ticket. Upon the initial violation of a particular
5976 provision of §§ 154.001 - 154.237, an individual may be issued a warning ticket or
5977 notice of violation. The warning ticket shall identify the particular practice which is
5978 in violation of §§ 154.001 - 154.237 and shall state the time, date and place of the
5979 violation. The warning ticket shall further state that if the individual commits further
5980 similar violations within the 6 months following the date of the warning ticket, the
5981 Zoning Administrator or the other official charged with the responsibility of enforcing
5982 the Town of Mills River Zoning Ordinance may issue a notice of violation or cause a
5983 warrant to be issued for the individual's arrest.

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5984 (2) Warrant. If an individual violates §§ 154.001 - 154.237 within
5985 the 6 months following the issuance of a warning ticket or notice of violation in a
5986 manner that is similar to the violation specified in the warning ticket or notice of
5987 violation, the Zoning Administrator or the other official charged with the
5988 responsibility of enforcing the Town of Mills River Zoning Ordinance may cause a
5989 warrant to be issued for the arrest of the individual.

5990 (3) Notwithstanding any other provisions of §§ 154.001 - 154.237,
5991 the Zoning Administrator or the other official charged with the responsibility of
5992 enforcing the Town of Mills River Zoning Ordinance may issue a notice of violation or
5993 cause a warrant to be issued without having first issued a warning ticket where he or
5994 she deems it necessary to effectively enforce the terms of §§ 154.001 - 154.237.

5995 (D) Revocation of Development Approvals. In addition to initiation of
5996 enforcement actions, development approvals may be revoked by notifying the holder
5997 in writing stating the reason for the revocation. The Town shall follow the same
5998 development review and approval process required for issuance of the development
5999 approval, including any required notice or hearing, in the review and approval of any
6000 revocation of that approval. Development approvals shall be revoked for any
6001 substantial departure from the approved application, plans, or specifications; for
6002 refusal or failure to comply with the requirements of any applicable element of this
6003 chapter; or for false statements or misrepresentations made in securing the approval.
6004 Any development approval mistakenly issued in violation of an applicable State law
6005 or local ordinance may also be revoked. The revocation of a development approval by
6006 a staff member may be appealed pursuant to G.S. § 160D-405.

6007 ~~(DE)~~ Other remedies. The town may utilize any other authority set forth
6008 in the General Statutes of the State of North Carolina to abate any violations of §§
6009 154.250 - ~~2~~154.269.

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6010 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
6011 2005; Am. Ord. 00037, passed 8-24-2006)

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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)

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24 **§ 153.004 AUTHORITY.**

25 The enactment of this chapter is authorized pursuant to G.S. Chapter [160D](#),
26 [Article 8](#)~~160A~~, [Article 19](#), [Part 2](#).

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

28 **§ 153.005 JURISDICTION.**

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

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

34 **§ 153.006 GENERAL APPROVAL FOR SUBDIVISIONS PLATS.**

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

40 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-
41 10-2017)

42 **§ 153.007 COMPLIANCE REQUIRED.**

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

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

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46 **§ 153.008 COMPLIANCE WITH OTHER PROVISIONS.**

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

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

54 **§ 153.009 TRAFFIC IMPACT ANALYSIS (TIA) REQUIRED.**

55 Residential developments that are defined as a major subdivision must
56 provide a traffic impact analysis (TIA) ~~prepared administered~~ by a [licensed North](#)
57 ~~Carolina civil engineer~~ ~~Certified Traffic Engineer~~ ~~certified or experienced traffic~~
58 ~~engineer~~. The analysis must be submitted with an application for a major subdivision.
59 The report shall document the traffic operational impacts and any recommended
60 improvements on the key roadway segments and intersections that have been
61 identified as primary accesses to the proposed development [from major roads within](#)
62 [the Town](#).

63 (Ord. 2018-02, passed 2-8-2018)

64 **DEFINITIONS AND WORD USAGE**

65 **§ 153.025 SUBDIVISION DEFINED.**

66 (A) Pursuant to G.S. § ~~160D-802~~ ~~160A-376~~ the word *SUBDIVISION*, as used
67 in this chapter, means all divisions of a tract or parcel of land into [two \(2\)](#) or more
68 lots, building sites or other divisions for the purpose of sale or building development
69 (whether immediate or future) and includes divisions of land involving the dedication

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70 of right-of-way for ~~of~~ a new road, whether by easement or dedication of property, or
71 a change in existing roads; however, the following are not included within this
72 definition and are not subject to any regulations enacted pursuant to this chapter:

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

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

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

81 (4) The division of a tract in single ownership the entire area of
82 which is no greater than two (2) acres into not more than three (3) lots, if no road
83 right-of-way dedication is involved and if the resultant lots are equal to or exceed the
84 standards of the town as shown in its subdivision regulations.

85 (5) The division of a tract into parcels in accordance with the terms of
86 a probated will or in accordance with intestate succession under Chapter 29 of the
87 General Statutes.

88 (b) A local government may provide for expedited review of
89 specified classes of subdivisions.

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

93 (1) The tract or parcel to be divided is not exempted
94 under subdivision (2) of subsection (a) of this section.

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95 (2) No part of the tract or parcel to be divided has been
96 divided under this subsection in the 10 years prior to division.

97 (3) The entire area of the tract or parcel to be divided is
98 greater than 5 acres.

99 (4) After division, no more than three lots result from the
100 division.

101 (5) After division, all resultant lots comply with all of the
102 following:

103 a. All lot dimension size requirements of the
104 applicable land-use regulations, if any.

105 b. The use of the lots is in conformity with the
106 applicable zoning requirements, if any.

107 c. A permanent means of ingress and egress is
108 recorded for each lot.

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

111 **§ 153.026 DEFINITIONS OF TERMS.**

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

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

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

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120 **BOND.** See **IMPROVEMENT GUARANTEE.**

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

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

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

130 **DESIGNATED PUBLIC WATER SUPPLY WATERSHED.** An area designated
131 by the North Carolina Environmental Management Commission, delineated on the
132 official map entitled "Henderson County Water Supply Watershed Protection Map,"
133 and regulated by the Water Supply Watershed Protection Ordinance for Henderson
134 County.

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

138 **DEVELOPER.** See **APPLICANT.**

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

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

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

156 **FINAL PLAT.** A plat representing a lot, parcel, subdivision or a tract of land
157 showing the boundaries and location of individual properties, street [rights-of-ways](#)
158 and other information required by this chapter and North Carolina General Statutes.
159 A final plat shall be prepared by a professional land surveyor, currently licensed and
160 registered in the State of North Carolina, in such a fashion as to be suitable for
161 recording by the Henderson County Register of Deeds and in accordance with G.S. §
162 47-30.

163 **IMPROVEMENT GUARANTEE.** Cash, letters of credit, trust agreements,
164 bonds or similar financial instruments deposited with the ~~€~~Town [or an agreed upon](#)
165 [third party](#) to assure that required improvements will be constructed or installed.

166 **LOT.** A portion of a subdivision or any other parcel of land intended as a unit
167 for transfer of ownership or for [residential or non-residential](#) development, or both.

168 **LOT AREA.** The total area within the lot lines of a lot exclusive of [property](#)
169 [dedicated for](#) street or highway rights-of-way. [Areas dedicated for street or driveway](#)
170 [right-of-way by easement are included in lot area calculations.](#)

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

173 **MAJOR SUBDIVISION.** A proposed subdivision of land where 11 or more
174 lots ~~or parcels~~ will result after the subdivision is complete.

175 **MINOR SUBDIVISION.** A proposed subdivision of land where not more than
176 10 lots ~~or parcels~~ will result after the subdivision is complete. One phase of a
177 development cannot be considered a minor subdivision unless the entire
178 development does not exceed 10 lots.

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

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

188 **PLANNING BOARD.** The Town of Mills River Planning Board.

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

192 **RECOMBINATION.** The combining of previously subdivided and recorded
193 lots or portions thereof where the total number of lots is not increased and the
194 resulting lots meet the requirements of this chapter.

195 **RECREATION AREA.** See **COMMON AREA.**

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

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

205 **ROAD.** A dedicated public or private right-of-way for vehicular [and](#)
206 [pedestrian](#) traffic; roads may be of any of the following types and classifications:

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

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

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

217 **PRIVATE RESIDENTIAL COLLECTOR ROAD** is a road or a section of a road which:

218 (a) Provides direct or indirect access from the entrance of
219 the subdivision inward to 25 or more existing or proposed residential lots and/or
220 dwelling units and is designed to be the main travel path for the residential access. In
221 calculating residential density, dwelling units having driveway access on the subject

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222 road and dwelling units on side roads which feed the subject residential collector
223 road shall be counted. The terminus or **LAST BLOCK** of a residential collector road
224 ending in a dead end may be designed to the standards of a local residential
225 subdivision road as long as the **LAST BLOCK** serves fewer than 25 units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

269 **STAFF.** Employees of the Town of Mills River or Mills River Town Council
270 designees.

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

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273 **STREET.** See **ROAD.**

274 **SUBDIVISION.** See **MAJOR SUBDIVISION, MINOR SUBDIVISION, FAMILY**
275 **SUBDIVISION** and **NONSTANDARDS SUBDIVISION** in this section. (See also §
276 153.025.)

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

285 **TOWNHOUSE.** Two or more single-family attached dwelling units within a
286 larger parcel where the land beneath each [planned and existing](#) unit, and any area
287 immediately adjacent thereto, is ~~individually~~ [separately](#) owned [as lots](#) and an
288 undivided interest in the common elements of the development is vested in the
289 individual [lot](#) owners.

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

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

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

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

302 (2) **PUBLIC WATER SYSTEM:**

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

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

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

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

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

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

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322 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
323 2007)

324 **§ 153.027 WORD INTERPRETATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

346 **§ 153.028 ABBREVIATIONS.**

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

349 **G.S.** North Carolina General Statute.

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

352 **NCDOT.** The North Carolina Department of Transportation.

353 **Ref.** Refer to.

354 **ROW.** Right-of-way.

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

356 **PROCEDURE FOR SUBDIVISION APPLICATIONS**

357 **§ 153.045 SUBDIVISION TYPES.**

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

364 (B) *Certificate of understanding.* The following certificate of understanding
365 shall be required to accompany all final plats including the property owner's
366 signature before being approved for recordation by the Zoning Administrator.
367 Certificates of understanding not printed on the mylar plat must be notarized before
368 approval. The Zoning Administrator or their designee shall record the subdivision file
369 number on all certificates of understanding;

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370 **Certificate of Understanding**

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

380 _____

381 Date Owner(s)

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

386 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
387 2011; Am. Ord. 2018-10, passed 11-8-2017)

388 **§ 153.046 PROCEDURE FOR REVIEW OF MINOR SUBDIVISIONS.**

389 (A) An application (Appendix 1 and Appendix 3) for a minor subdivision
390 (10 or fewer lots) shall be submitted to the Subdivision Administrator on the required
391 forms along with applicable fees. The applicant must demonstrate to the Subdivision
392 Administrator that the division is in fact a minor subdivision. If the developable area
393 of the remaining parcel ~~(residual lot)~~ is greater than three (3) times the size of the

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394 proposed lot or lots and the residual ~~lot containing the~~ area has the potential for re-
395 division, then the applicant may be required by the Zoning Administrator to reapply
396 under the major subdivision procedure. The applicant for a minor subdivision shall
397 comply with the following:

398 (1) Expansion.

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

401 1. The expansion results in a total of 10 or fewer lots
402 within the boundaries of the tract that was the subject of the original minor
403 subdivision application.

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

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

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

410 5. Applications for phased minor subdivisions that
411 will ultimately contain four (4) or more lots must comply with the provisions of §
412 153.046(A)(5) and (6) at the time the original application is filed.

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

418 (2) Except in cases of expansions of approved minor subdivisions
419 allowed in division (A)(1)(a), above, the minor subdivision procedure may not be

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420 used a second time within [three \(3\)](#) years on property that is less than 1,500 feet from
421 the original property boundaries of the original tract which was the subject of a
422 previously approved minor subdivision application and which has been in common
423 ownership with the original tract at any time within the [three \(3\)](#) year period. No
424 person may utilize the minor subdivision procedures for the purpose of evading the
425 requirements of major subdivisions. In the event that a person is found to have used
426 this § 153.046 for purposes other than a bona fide minor subdivision, then the person
427 may be required to comply with any and all applicable requirements for a major
428 subdivision and may be required to re-record a plat. In addition, abuse of this §
429 153.046 will be deemed a violation of this chapter and may subject the violator to any
430 and all applicable penalties.

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

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

436 (5) Except as provided in this subsection, minor subdivision roads
437 must be constructed and must be designated as either public or private. If public, the
438 requirements in § 153.069(B) shall apply and, if private, the requirements of §
439 153.069(C) through (J) shall apply. A minor subdivision of fewer than [four \(4\)](#) lots
440 where private roads are proposed is exempt from all road requirements in this
441 chapter except the requirements for road name approval in § 153.071 and for right-
442 of-way access in § 153.075 shall apply. (See also § 153.046A(1)(a)5).

443 (6) Applications for minor subdivisions with [\(four\) 4](#) or more lots
444 must contain a road development plan that has a scaled drawing of the proposed road
445 cross section and associated drainage improvements, which shall be in conformance

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446 with the standards in § 153.069. Upon review and approval of the drawings, the
447 Subdivision Administrator shall issue a conditional approval of the preliminary plat.
448 Upon completion and subsequent inspection and approval by the Subdivision
449 Administrator and upon satisfaction of the applicable requirements in division (A)(7)
450 below, the final plat may be approved by the Subdivision Administrator.

451 (7) In addition to the requirements above, a minor subdivision must
452 comply (where applicable) with § 153.067 (Sedimentation and Erosion Control Plan),
453 § 153.068 (Water supply and sewer system required), § 153.069 (Roads in general),
454 § 153.070 (Shoulder stabilization), § 153.071 (Road name approval), § 153.072
455 (Subdivision names and name signs), § 153.073 (Road name signs and regulatory
456 signs), § 153.074 (Conformance with approved thoroughfare plan), § 153.075 (Right-
457 of-way access), § 153.076 (Road frontage and existing off- site access), § 153.077
458 (Stormwater drainage), § 153.079 (Lot designs), and § 153.082 (Air quality) of this
459 chapter.

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

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

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

470 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2017-07, passed 11-
471 10-2017)

472 **§ 153.047 PROCEDURE FOR REVIEW OF FAMILY SUBDIVISIONS.**

473 (A) The purpose of the family subdivision is to allow the creation of lots
474 from larger tracts for the use of bona-fide family members. Application does not
475 require submission of a development plan, only submission of the final plat for
476 approval. No application forms are required; however, § 153.116, Fees, shall apply.
477 The applicant, however, must satisfy the Subdivision Administrator that such division
478 is in fact a "family subdivision" by submitting a statement in a form substantially
479 similar to that provided in Appendix 10. Each family member may be deeded only [one](#)
480 [\(1\)](#) lot of record per family subdivision. The deed for each lot in a family subdivision
481 must contain an express statement that the conveyance is a conveyance of a lot within
482 a family subdivision and must contain an express grant of a right-of-way to a public
483 road.

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

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

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

498 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
499 2007)

500 **§ 153.048 PROCEDURE FOR REVIEW OF NONSTANDARD**
501 **SUBDIVISIONS.**

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

510 (B) Procedure for review of townhouse developments. In cases where
511 townhouse development review is not superseded by other regulations (such as
512 zoning), the townhouse developments, as defined herein, shall be reviewed by the
513 Planning Board. Application for review shall be made to the Subdivision
514 Administrator. Plans for each development shall be prepared in conformance with §
515 153.049 and with special provisions, general regulations, and exceptions and
516 modifications of this chapter, except that the following sections, upon request, may
517 be modified by the Planning Board: § 153.069(G) (Minimum curve radius), §
518 153.069(H) (Intersections), § 153.075 (Right-of-way access), § 153.079(A) (Lot
519 dimensions) and § 153.079(D) (Lot configuration and frontage). In such cases, the
520 Planning Board may use discretion in applying subdivision standards.

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

522 **§ 153.049 PROCEDURE FOR REVIEW OF MAJOR SUBDIVISIONS.**

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

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

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

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

543 (2) The site analysis sketch shall be prepared based on aerial
544 photography, visual observations and an on-site inspection of the tract. The site
545 analysis sketch need not be professionally prepared. However, it shall be at a scale
546 that is clearly legible and provides sufficient detail to describe the general location of
547 proposed development and the stated features for discussion purposes. It is not

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548 necessary at the pre-application conference to have detailed plans with described lots
549 and rights-of-way. The conference is intended for the free exchange of information
550 between the applicant and the Subdivision Administrator and to explore how the
551 applicant intends to design the development, what density levels are contemplated
552 and what areas are proposed for preservation, and the like, before a great deal of time
553 and expense is expended on subdivision design.

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

558 (B) *Master plan submission.* A master plan developed in conformance
559 with Appendix 4, shall be submitted to the Planning Board through the Subdivision
560 Administrator for review and approval for any major subdivision at least 30 days
561 prior to the date of the regularly scheduled meeting of the Planning Board. The
562 purpose of the master plan is to present the development concept for the entire
563 project. The master plan is intended to provide general information about the
564 proposed development to allow for an assessment of its impact on the orderly growth
565 and development of the town, environmental quality, land values, natural features
566 identified on the site analysis sketch and the town's and governmental services. The
567 applicant shall submit [three \(3\)](#) full-sized copies and [one \(1\)](#) reduced-sized copy of
568 the master plan, all at a scale appropriate to clearly depict the property. If the
569 reduced-sized plan is larger than 11 inches by 17 inches, at least 10 copies shall be
570 submitted. The master plan may consist of multiple sheets, if needed. The Subdivision
571 Administrator may, upon receipt of the master plan, forward a copy to any review
572 agency for information purposes or for comment. Applicants proposing single section
573 or phase subdivisions may submit a combined master plan and development plan

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574 ("master/development plan") that shall be prepared in conformance with this
575 chapter and the requirements of a development plan, as enumerated in Appendix 5.
576 If during the development of the project, the master plan is revised to affect any of the
577 following: increase the number of building lots to be created or units to be
578 constructed; create a substantive change in the subdivision configuration, road
579 layout, and the like; substantially change the use of any portion of the tract; develop
580 or build in areas that were identified as features in the site analysis sketch (see
581 division (A) above) and that were identified in the master plan as open spaces or
582 protected areas, the applicant shall then submit a revised master plan for Planning
583 Board review and approval in accordance with this section.

584 (C) *Development plan submission and review.*

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

592 (2) The development plan may be submitted for the entire
593 subdivision or any section thereof Application shall be made and submitted to the
594 Subdivision Administrator at least 30 days prior to the date of a regularly scheduled
595 meeting of the Planning Board. The application, including all drawings, fees and
596 attachments, shall be submitted at [one \(1\)](#) time to the Subdivision Administrator. The
597 applicant shall submit [three \(3\)](#) full-sized copies and [one \(1\)](#) reduced-sized copy of
598 the development plan, all at a scale appropriate to clearly depict the property. If the
599 reduced-sized plan is larger than 11 inches by 17 inches, at least 10 copies shall be

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600 submitted. The development plan may consist of multiple sheets, if needed. Formal
601 review of the subdivision shall not begin until the Administrator has verified that the
602 application is complete. The verification should, when possible, be made within [two](#)
603 [\(2\)](#) business days of its receipt. The Subdivision Administrator shall notify the
604 applicant, in writing, of the application's status and the date of the Planning Board's
605 first consideration of the application.

606 (3) The Subdivision Administrator shall review the application with
607 regard to all applicable standards and conformity to this chapter. The Subdivision
608 Administrator shall submit to the Planning Board a summary of findings along with
609 comments from review agencies. A copy of the findings shall be given to the applicant
610 prior to the Planning Board's review. The Planning Board shall have a maximum of
611 60 days from the date of its first consideration of the plan within which to take action.
612 In the opinion of the Planning Board, if a development plan application is incomplete,
613 the Planning Board may return the application to the applicant identifying the specific
614 omissions, without invoking the 60 day action requirement. The Planning Board may
615 take the following actions: approve a development plan as submitted; or approve the
616 plan with conditions; or deny the plan. The Subdivision Administrator shall, within
617 10 days after Planning Board review, notify the applicant, in writing, of the Planning
618 Board's action and any conditions imposed by the Board. Unless otherwise stated by
619 the Planning Board, any conditions of development plan approval must be satisfied
620 within the time specified by the Planning Board. If the conditions on the development
621 plan are accepted by the applicant, the development plan shall be approved and the
622 conditions shall be put in writing and become binding. Failure to comply with any
623 conditions of approval set by the Planning Board, including failure to meet deadlines,
624 shall result in the development plan approval becoming null and void.

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625 (4) The applicant may, only upon receipt of approval of the
626 development plan from the Planning Board, proceed with the establishment of
627 erosion and sedimentation control measures, clearing and other land disturbing and
628 improvement activities associated with the project. Development plan approval shall
629 be valid for two (2) years, and the approval shall be annotated on the plan itself and
630 certified by the Subdivision Administrator. The Planning Board may, for just cause,
631 grant extensions of development plan approval for a maximum of (1) additional year.
632 The plan shall have the date of approval and the date of written notification to the
633 owner or owner's agent specifying the conditions, if any, of the approval. Where the
634 conditions involve the redesign of the plan, annotations shall be made on the "revised
635 development plan" only, and approval shall not be effective until the plan is certified
636 by the Subdivision Administrator. Following development plan approval, any
637 substantive changes to the plan such as those due to site conditions must be approved
638 by the Planning Board. The changes should be submitted to the Subdivision
639 Administrator on a plan titled "Revised development plan." Incidental changes may
640 be approved by the Subdivision Administrator as long as the changes do not
641 constitute a substantial deviation from the approved master plan.

642 (D) Final plat *submission and review*. A final plat, developed in
643 conformance with Appendix 7, shall be submitted to the Subdivision Administrator
644 with the required forms and applicable fees. The final plat may include the entire
645 subdivision or any section thereof. The Subdivision Administrator may approve a plat
646 for fewer than the number of lots approved but a surcharge may be assessed. The
647 Subdivision Administrator shall review the final plat for conformance with all
648 applicable standards and conformance to the approved development plan. The final
649 plat may be approved administratively if the plan meets all requirements of the
650 ordinance and satisfies all conditions imposed by the Planning Board. If the final plat

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651 is not administratively approved, it must be submitted to the Planning Board for
652 approval. The submission must be made to the Subdivision Administrator 15 days
653 prior to the regularly scheduled meeting of the Planning Board. Upon approval, and
654 before any lots are transferred, the applicant shall record the final plat at the office of
655 the Henderson County Register of Deeds. Incidental changes to the final plat which do
656 not in any way affect the character of the development may be submitted prior to or
657 after recordation and may be approved for ~~rerecordation~~[recordation](#) by the
658 Subdivision Administrator. No lots governed by this chapter may be sold or conveyed
659 until a final plat is approved and recorded in the office of the Register of Deeds of
660 Henderson County.

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

662 **MINIMUM DESIGN AND CONSTRUCTION STANDARDS FOR**
663 **MAJOR SUBDIVISIONS**

664 **§ 153.065 GENERAL.**

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

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

669 **§ 153.066 [RESERVED]**

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

671 **§ 153.067 SEDIMENTATION AND EROSION CONTROL PLAN.**

672 Any subdivision of land regulated by the terms of this chapter shall submit to
673 the Subdivision Administrator a written notice from the NCDENR, Land Quality
674 Section, verifying that a soil erosion and sedimentation control plan has been

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675 received or a written notice from a professional land surveyor, engineer, landscape
676 architect, architect, or professional planner certifying that no plan is required. The
677 plans are required anytime [one \(1\)](#) acre or more of land is disturbed.
678 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

679 **§ 153.068 WATER SUPPLY AND SEWER SYSTEM REQUIRED.**

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

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

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

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

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

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

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

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

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

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

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

722 (3) Exceptions to this provision may be allowed on the basis of
723 terrain, availability of acquiring easements, denial of allocation by the public utility,
724 insufficient capacity of the public system or other circumstances which are unusual
725 or unique to this site. Requests for exceptions must be made, in writing, to the

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726 Subdivision Administrator who may require that such requests be supported by a
727 professional engineer's review of the subdivision plans and planned route of the
728 utility extension. If the Subdivision Administrator determines that it would not be
729 economically feasible for a subdivision to be connected to a public water or sewer
730 system, another system may be used, subject to approval by the appropriate agencies.

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

739 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
740 2007)

741 **§ 153.069 ROADS IN GENERAL.**

742 If the tract to be subdivided is located on both sides of an existing, recorded
743 private right-of-way that contains an existing private road, the applicant shall be
744 required to upgrade the portions of the existing private road which are contained on
745 the tract that is being subdivided to meet the road standards found in this chapter. It
746 should be understood that all roads proposed to be public must originate as private
747 roads until there is formal dedication and acceptance by the state or a municipality.
748 All roads proposed to be private may, if designed and constructed to public standards
749 and dedicated by those with the authority to do so, eventually become public. The
750 applicant shall determine at the time of application if the subdivision roads are to be

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751 public, private or a combination of both types. The designation shall be subsequently
752 noted on final subdivision plats. The applicant for a commercial or industrial
753 subdivision shall provide roads constructed at no less than state road standards for
754 public residential collector roads, regardless of whether the roads are proposed to be
755 public or private.

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

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

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

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776 roads indicated on this final plat need not meet the requirements of the North
777 Carolina Department of Transportation for acceptance into the state road system.

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

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

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

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

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

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

800 (2) **PRIVATE LOCAL RESIDENTIAL SUBDIVISION ROAD** is a road or
801 group of roads which abuts less than 25 residential lots or serves less than 25 existing

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802 or proposed residential dwelling units and does not connect thoroughfares. (NOTE:
803 See Table 1, "Local" column.)

804 (3) **PRIVATE LIMITED LOCAL RESIDENTIAL SUBDIVISION ROAD** is
805 a road which abuts no more than three (3) residential lots, each containing or to
806 contain no more than one (1) existing or proposed residential dwelling unit and its
807 associated driveway and which does not connect thoroughfares. (NOTE: See Table 1,
808 "Limited Local" column.) ~~Only 1 above provides any different definition than §~~
809 ~~153.026 but the repetition could create confusion. — I suggest taking the substance of~~
810 ~~1 and adding it to the definition of private residential collector road in § 153.026.~~
811 ~~This paragraph should simply refer to those definitions.~~

TABLE 1			
<i>Road Classification</i>			
Item	Collector	Local	Limited Local
Number of residential units served	25 +	1 to 24 (1)	1 to 3 (1)
<i>Right-of-way width</i>			
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)
<i>Maximum grade</i>			

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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)

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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 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.)

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813 Definitions:

814 ABC - Aggregate base course

815 I-2 - Asphalt

816 BST - Bituminous surface treatment (tar and gravel)

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

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

830 (F) Road *construction*. All roads must be constructed with suitable stone
831 and compacted properly. Used asphalt is unacceptable as a base course. The subbase
832 must be of suitable soil capable of supporting the road above. The road should be built
833 so that water will drain from the road surface into side ditches. Because of the
834 difficulty of operating vehicles on steep grades and the high potential for erosion,
835 where possible, roads should be constructed along the contour of the land. No stone-
836 based road may exceed the following grades: 15% local residential road and 12%
837 collector, and no paved road may exceed 18% and 16%, respectively. If combination
838 paved and stone-based road sections are proposed, the paved sections must extend

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839 50 feet from any point a road grade exceeds the minimum for a stone-based road. The
840 Subdivision Administrator may require that a professional engineer or professional
841 land surveyor certify on the final plat that no portion of the road(s) have grades that
842 exceed maximum allowable grade as defined herein or submit a final as-built graded
843 center line profile showing grade and alignment for all roads.

844 (G) *Minimum curve radius.* Where practical, roads shall be centered in
845 the road right-of-way. The minimum curve radius (the distance measured from the
846 centerline of the road to a fixed point inside the curve) shall be no less than 90 feet
847 except as provided below. The right-of-way must include sufficient width for the
848 travelway and the necessary shoulders, ditches and slopes. Where the existing cross
849 slope on private limited local residential subdivision roads or private local residential
850 subdivision roads is 15% or greater, a minimum centerline radius of 60 feet shall be
851 permitted. Where the existing cross slope on private residential collector roads is
852 15% or greater, a minimum centerline radius of 80 feet shall be permitted. Curve radii
853 must be noted on development plans.

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

863 (I) *Dead ends, culs-de-sac and turnarounds.* All roads or sections thereof
864 with dead-ends or culs-de-sac should not exceed 2,500 feet in length. Loop roads

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865 should be encouraged where possible in lieu of culs-de-sac. The Planning Board may
866 require the installation of a temporary turnaround at the end of a phased project or a
867 partial turnaround along any road that exceeds 1,500 feet in length. Vehicle
868 turnaround areas shall be provided at the end of all dead-end roads that exceed 300
869 feet. The required turnaround on a dead-end road shall have a roadway radius of not
870 less than 35 feet. Stub roads shall be designed in locations which will permit the
871 future extension of subdivision roads.

872 (J) Bridges.

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

885 (2) Bridges *on private roads in residential* subdivisions. If bridges on
886 private roads in residential subdivisions are proposed, the applicant must submit a
887 copy of bridge plans showing certification from a registered professional engineer
888 indicating that the bridge plans meet state road standards for public road bridges for
889 drainage, hydraulics and minimum live load. Bridges proposed for private roads shall
890 comply with state road standards for public road bridges for drainage, hydraulics and

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891 minimum live load. The proposed bridges must meet the standards for vertical
892 clearance for roads shown in Table 1. The travelway width across the proposed
893 bridge must not be less than the travelway width of the road on either side of the
894 proposed bridge, but in no event shall the bridge travelway be less than 12 feet. If the
895 travelway of a private bridge is less than 18 feet wide and the bridge is proposed to
896 accommodate ~~two~~-way traffic, a paved or gravel turnout shall be provided on each
897 end of the proposed bridge to provide space for at least one (1) vehicle to safely pull
898 over and allow an oncoming vehicle to traverse the bridge. However, prior to final
899 plat approval or release of any improvement guarantee, however, the applicant must
900 submit a copy of an as-built drawing of the bridge with certification from a registered
901 professional engineer that the bridge meets the standards required in this subsection.

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

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

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917 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00047, passed 8-23-
918 2007; Am. Ord. 00066, passed 4-28-2011)

919 **§ 153.070 SHOULDER STABILIZATION.**

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

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

925 **§ 153.071 ROAD NAME APPROVAL.**

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

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

936 **§ 153.072 SUBDIVISION NAMES AND NAME SIGNS.**

937 All major subdivisions may provide for, at the primary entrance, a subdivision
938 name sign to conform with Henderson County sign standards. The signs should be
939 located in dedicated sign easements, which must be shown on the final plat. The name

940 of a subdivision shall not duplicate a name that is identical to or phonetically similar
941 to any other subdivision or named community in Henderson County.
942 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

943 **§ 153.073 ROAD NAMES SIGNS AND REGULATORY SIGNS.**

944 Each subdivision shall provide road name signs and regulatory signs (speed
945 limit signs, stop signs, and the like) in accordance with the Henderson County
946 Property Address Ordinance and with applicable federal, state and local laws, rules
947 and regulations.
948 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

949 **§ 153.074 CONFORMANCE WITH APPROVED THOROUGHFARE**
950 **PLAN.**

951 No subdivision application shall be approved unless the application preserves
952 all lands proposed as future rights-of-way for any public road as may from time to
953 time be included in an adopted official thoroughfare plan for Town of Mills River.
954 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

955 **§ 153.075 RIGHT-OF-WAY ACCESS.**

956 All subdivision lots must abut on a private or public right-of-way. The right-of-
957 way shall, for public roads, meet or exceed the minimum width specified in the state
958 road standards or, for private roads, the minimum width specified in Table 1 of §
959 153.069 and must be capable of supporting a road. The right-of-way standards apply
960 within the boundaries of the property being developed. Proposed subdivisions which
961 abut an existing or recorded public or private right-of-way which do not meet the
962 minimum width requirements of this chapter shall be required to provide additional
963 rights-of-way to conform to the ordinance standards to the maximum extent possible,

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964 as provided below. The applicant shall provide up to [half \(½\)](#) of the required right-
965 of-way measured from the center line of the existing right-of-way. If the subdivision
966 is located on both sides of the existing road right-of-way, then the full right-of-way
967 requirement shall be required. (See also § 153.069.) Access to a proposed subdivision
968 through another jurisdiction shall meet or exceed all right-of-way requirements
969 herein. Exceptions to the state road standards for right-of-way or the right-of-way
970 standards shown in Table 1, whichever is applicable, may be provided for lots in
971 conservation areas and for planned unit developments, but the exceptions must be
972 specifically approved by the Planning Board.

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

974 **§ 153.076 ROAD FRONTAGE AND EXISTING OFF-SITE ACCESS.**

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

TABLE 2	
If Road Frontage or Existing Off-Site Access ROW at the Narrowest Point is Less than 30 feet	Then, the maximum number of lots allowed is 1 lot per acre

30 feet or greater	No maximum
--------------------	------------

983

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

987 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
988 2011)

989 **§ 153.077 STORMWATER DRAINAGE.**

990 (A) All development plans shall show the general drainage patterns of all
991 areas of the subdivision. Where the drainage of the subdivision does not follow the
992 natural drainage of the property, the applicant shall design the new drainage systems,
993 including swales, ditches, pipes, culverts, detention ponds, lakes or similar devices, to
994 minimize any adverse effect on the proposed subdivision and on adjacent and
995 downstream properties. Stormwater drainage improvements shall be designed and
996 constructed to minimize erosion and downstream sedimentation, to follow natural
997 drainage where possible, to minimize flooding or standing water conditions, to
998 maintain desirable groundwater conditions and to avoid excessive stormwater
999 discharge. Points of stormwater discharge shall be within the site unless otherwise
1000 approved by the Planning Board and adjoining property owners.

1001 (B) All roads, bridges and major culverts shall be designed according to
1002 state road standards.

1003 (C) An easement shall be reserved on-site by the applicant, or otherwise
1004 provided, conforming with the lines of any drainageway into which natural runoff has
1005 been diverted. Drainage improvements, where applicable, shall be designed in
1006 accordance with state road standards.

1007 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1008 **§ 153.078 PEDESTRIAN FACILITIES.**

1009 (A) All subdivisions of 100 or more lots shall provide one linear foot of
1010 sidewalk or walking trail for every linear foot of proposed roadway.

1011 (B) Sidewalks should be at least five (5) feet in width, made with
1012 permanent weather proof material, and located in a road right of way or sidewalk
1013 easement.

1014 (C) Maintenance provisions shall be recorded in the homeowner's
1015 association covenants at the Henderson County Register of Deeds with a copy
1016 submitted for review by the Zoning Administrator prior to final plat.

1017 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00066, passed 4-28-
1018 2011)

1019 **§ 153.079 LOT DESIGNS.**

1020 (A) *Lot dimensions.* The lot area, width, depth, shape, orientation and
1021 building setback lines shall be reasonable for the location of the subdivision and for
1022 the type of development and use contemplated and shall be sufficient to
1023 accommodate proposed utilities. The minimum lot area, depth, width and setbacks
1024 shall comply with the district requirements of the Town of Mills River Zoning
1025 Ordinance and/or the requirements of the Henderson County Water Supply
1026 Watershed Protection Ordinance, where applicable. Lot area shall be calculated
1027 excluding road right-of-way.

1028 (B) *Special use lots and common areas.* Special use lots that are not
1029 intended for sale and have restricted use such as entrance sign lots, common area,
1030 recreation areas, water tank or pump station sites, and the like, may be exempted for

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1031 the purpose of calculating the number of lots in a subdivision. Proposed structures on
1032 the lots must, however, meet any applicable zoning or watershed requirements. The
1033 special use lots must be clearly identified for their designated use on the development
1034 plan and the final plat.

1035 (C) *Future development.* Development plans and master plans should be
1036 drawn to show all short-term and long-term plans of the applicant, including the
1037 general location of roads, lots and other features. It is expressly acknowledged that
1038 long-term plans are subject to change; however, to the extent that an applicant has
1039 the long-term plans, they should be disclosed. Areas for which no future phases are
1040 known or disclosed should be labeled as "future development" on the master plans
1041 and development plans for major subdivisions. Subdivision of any "future
1042 development" areas on minor subdivisions must meet § 153.046 of the Subdivision
1043 Ordinance. When any "future development" areas of major subdivisions are to be
1044 subdivided, the development must comply with this chapter, including review by
1045 Planning Board under § 153.049.

1046 (D) *Lot configuration and frontage.* Where possible, side lot lines shall be
1047 at right angles or radial to the streets on which the lots face. Flag lots or lots which
1048 only have a narrow strip of land fronting the lot on a street may be approved by the
1049 Planning Board and/or the Subdivision Administrator (only for minor subdivisions)
1050 but only under unusual circumstances. The narrowest width of any lot abutting the
1051 right-of-way will be 30 feet. The 30 foot width may be waived for family subdivisions
1052 pursuant to § 153.047. Double-fronted lots should be used only when necessary.

1053 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1054 **§ 153.080 [RESERVED].**

1055 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1056 **§ 153.081 BUFFERS FOR MAJOR SUBDIVISIONS.**

1057 (A) Buffers for major subdivision shall be planted per the criteria found in
1058 § 154.232.

1059 (B) For residential subdivisions, a buffer strip of no less than 60 feet wide
1060 is required adjacent to a street and no less than 10 feet wide is required around the
1061 perimeter of the subdivision. For street buffers, the buffer strip area can be reduced
1062 to 30 feet with an earth berm.

1063 (C) For commercial or industrial subdivisions, a buffer strip of no less than
1064 10 feet wide is required where lots back up to or are adjacent to a street or between
1065 dissimilar uses of land such as a residential area.

1066 (D) Retention of existing vegetation that would provide an equivalent
1067 buffer is encouraged. The Planning Board shall have the authority to determine if
1068 existing vegetation fulfills the intent of the buffer requirement or if additional
1069 vegetation should be planted.

1070 (E) Street and perimeter areas shall be maintained by the developer or by
1071 an owner's association.

1072 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2018-01, passed 1-12-
1073 2018)

1074 **§ 153.082 AIR QUALITY.**

1075 As required by G.S. Chapter 143, Article 21, of the North Carolina General
1076 Statutes, all subdivisions shall show proof of compliance, if applicable, with air quality
1077 guidelines established by the Division of Air Quality and NCDENR.

1078 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1079 **§ 153.083 FARMLAND PRESERVATION PROGRAM.**

1080 If the property proposed for subdivision lies within [a half \(½\)](#) mile of any land
1081 in a Farmland Preservation District, the applicant must submit an affidavit (see
1082 Appendix 11) certifying that the applicant is aware of existing Farmland Preservation
1083 Districts as identified on maps provided by the Henderson County office of the
1084 Natural Resource Conservation Service. In addition, a note on the final plat shall state
1085 that the property lies within [a \(½\)](#) mile of land in a Farmland Preservation District.
1086 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1087 **§ 153.084 [RESERVED].**

1088 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1089 **§ 153.085 MISCELLANEOUS ~~ADVISORY~~ PROVISIONS.**

1090 The following provisions ~~should be reviewed and~~[shall be](#) followed, if
1091 applicable, by the applicant:

1092 (A) *Stream* setbacks. A minimum 30 foot setback for buildings or other
1093 structures, excluding bridges or culverts, is required along all perennial streams
1094 indicated on the most recent versions of USGS § 1:24,000 (7.5 minute) scale
1095 topographic maps. These maps are available for inspection in the Mills River Town
1096 Hall. The minimum 30 foot setback from perennial streams, where applicable, must
1097 be noted on development plans and final plats.

1098 (B) *Utility* easements. Utility easements are recommended and should
1099 be provided, preferably centered on rear or side lot lines, and should be at least 20
1100 feet in total width. The applicant should discuss easement locations with the
1101 appropriate utility agency.

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1102 (C) *Maintenance of buffers.* All buffer plant materials should be protected
1103 and maintained in a healthy and growing condition. Unhealthy or dead plants should
1104 be replaced with similar plants within 1 growing season.

1105 (D) *Street disclosure requirements.* North Carolina law, under G.S. § 136-
1106 102.6, requires that a developer make certain disclosures to each and every buyer of
1107 property, including whether the road serving the buyer's lot is public or private, who
1108 owns the road, how the road will be maintained and who shall be responsible for the
1109 maintenance. The law further requires certain road maintenance agreements be
1110 executed. A summary of G.S. § 136-102.6 is included in Appendix 9.

1111 (E) *Soils map.* Where subdivisions are proposed, with an average lot area
1112 of less than [one \(1\)](#) acre, and no public or community sewer is available, the applicant
1113 should review a soils map of the property and be knowledgeable of the suitability of
1114 ground absorption systems for his or her development.

1115 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1116 **SUBDIVISION IMPROVEMENT GUARANTEES**

1117 **§ 153.100 GENERAL.**

1118 [In accordance with 160D-804.1](#) ~~Where~~[when](#) the required improvements have
1119 not been completed, prior to the submission of the final plat for approval, the
1120 approval of the plat shall be subject to the applicant guaranteeing the installation of
1121 the improvements within a [two \(2\)](#) year period of time [with extensions possible](#)
1122 [within a timeframe established by the Subdivision Administrator](#). Plans,
1123 specifications, quantities, unit costs and estimated total costs shall be provided by the
1124 applicant to the Subdivision Administrator together with any required fee and a
1125 schedule indicating time of initiation and completion of the work, as a whole or in
1126 stages (see improvement guarantees application in Appendix 8)-. Estimates must be

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1127 prepared by a professional engineer, professional land surveyor or landscape
1128 architect at the applicant's expense. The applicant shall guarantee the installation of
1129 the improvements by either of the methods described below:

1130 (A) Filing a performance or surety bond ~~or~~, an irrevocable standby letter of
1131 credit, [or other form of guarantee that provides equivalent security to a surety bond](#)
1132 [or letter of credit](#) in the amount of 125% of the cost to complete the work as
1133 determined by cost estimates. Portions of the guarantee may be by authorization of
1134 the Subdivision Administrator released as work progresses.

1135 (B) Depositing or placing in escrow a certified check or cash in an amount
1136 equal to 125% of the cost to complete the work as determined by cost estimates
1137 amount. Portions of the guarantee may be released by authorization of the
1138 Subdivision Administrator as work progresses.

1139 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1140 **§ 153.101 AMOUNT AND TERMS OF GUARANTEE; TIME LIMITS.**

1141 All guarantees shall be accompanied by a written agreement (performance
1142 agreement) specifying the terms and the amount of the guarantee. Following receipt
1143 of an improvement guarantees application, the Subdivision Administrator shall
1144 prepare formal recommendations as to amount and terms of the guarantees for
1145 improvements, including time of initiation and completion of the work, to the Mills
1146 River Town Council for approval. The Town Council may, upon proof of difficulty,
1147 grant extension of completion dates set forth in its approval for a maximum of [one](#)
1148 [\(1\)](#) additional year, but the time between initiation and the completion of the
1149 required improvements shall not exceed [two \(2\)](#) years. Where the cost of
1150 uncompleted work is determined in the manner above to be less than \$10,000, the
1151 Subdivision Administrator may administratively approve security guarantees as

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1152 provided for in this section. The amount of the guarantee shall be sufficient to provide
1153 adequate funds to the Town of Mills River to ensure, in the case of default, the
1154 installation of all required improvements uncompleted at the time of default. All
1155 guarantees for improvements shall comply with applicable statutory requirements
1156 and shall be satisfactory to the Town Attorney as to form, sufficiency and manner of
1157 execution. Guarantees employing lending institutions shall require that those
1158 banking corporations be licensed to do business in North Carolina.
1159 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1160 **APPLICATION, ENFORCEMENT AND LEGAL STATUS**
1161 **PROVISIONS**

1162 **§ 153.115 DESIGNATION OF AGENT.**

1163 The applicant for any subdivision review or approval procedure may submit,
1164 along with any initial application, an affidavit (see Appendix 2) specifying an agent
1165 who may represent the owner in all matters.
1166 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1167 **§ 153.116 FEES.**

1168 The applicant shall pay plan and plat review fees and, if applicable, an
1169 extension fee in an amount as may be set from time to time by the Mills River Town
1170 Council and posted at the Town Hall.
1171 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1172 **§ 153.117 APPROVAL PREREQUISITE TO PLAT RECORDATION.**

1173 Pursuant to G.S. § 160DA-372804, and except where otherwise provided in
1174 this chapter, no final plat of a subdivision within the jurisdiction of this chapter shall
1175 be recorded by the Register of Deeds of Henderson County until it has been approved

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1176 by the Subdivision Administrator, the Mills River Planning Board or as provided
1177 herein. The Register of Deeds shall not file or record a plat of the subdivision of land,
1178 any part of which is located within the jurisdiction of this chapter that has not been
1179 approved in accordance with these provisions. In addition to meeting the
1180 requirements of this chapter, subdivisions proposed within designated watershed
1181 areas shall be subject to the provisions of the Water Supply Watershed Protection
1182 Ordinance for Henderson County, and the Watershed Administrator or his or her
1183 designee shall certify on the plats that the subdivision complies with the provisions
1184 of the Water Supply Watershed Protection Ordinance. Subdivisions proposed within
1185 zoned areas of Mills River shall be subject to the appropriate zoning ordinance, and
1186 the Administrator of the ordinance shall certify that the subdivision complies with
1187 the applicable zoning regulations.

1188 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1189 **§ 153.118 CERTIFICATION OF EXEMPTIONS.**

1190 (A) Any plat of property exempted from the regulations of this chapter
1191 shall be certified by the Subdivision Administrator or a professional land surveyor as
1192 exempt, prior to the plat being recorded. The plat is not exempt from the Zoning,
1193 Water Supply Watershed or any other local ordinances. Pursuant to G.S. § 47-30(f)11
1194 (Duty of the Surveyor), a professional land surveyor may certify that the plat
1195 represents an exception to the definition of subdivision and is not subject to the
1196 provisions of the Subdivision Ordinance. The plat may be recorded without being
1197 certified by the Subdivision Administrator. Any exemption from the regulations of
1198 this chapter shall not be deemed an exemption from any other applicable ordinance.

1199 (B) Any court-ordered subdivision should comply, to the maximum extent
1200 possible, with the provisions of this chapter.

1201 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1202 **§ 153.119 PLAT APPROVAL REQUIRED FOR BUILDING PERMIT.**

1203 No building permit may be issued for any construction on any proposed lot
1204 shown on a development plan until a final plat has been approved and recorded,
1205 except that a building permit may be issued for [one \(1\)](#) structure on [one \(1\)](#) lot shown
1206 on any approved development plan prior to recordation of a final plat. The Henderson
1207 County Inspections Department shall deny building permits for subdivision lots
1208 created in violation with the terms and conditions of this chapter.

1209 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1210 **§ 153.120 LAND AUCTIONS.**

1211 Where application for major or minor subdivisions is made with the intent that
1212 the divided property will be sold at land auction, the final plat shall clearly state the
1213 following: "The property herein is to be sold by auction. Any further subdivisions
1214 must meet applicable standards set forth in the Mills River Subdivision Ordinance."
1215 In addition, restrictive covenants regarding road maintenance for any dedicated
1216 rights-of-way must be approved in advance by the Planning Board and recorded prior
1217 to the auction.

1218 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1219 **§ 153.121 [RESERVED].**

1220 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1221 **§ 153.122 VARIANCES.**

1222 The Mills River Town Council may authorize a technical variance from these
1223 regulations. An application for a variance must be made in conjunction with an

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1224 application for subdivision approval. In considering a request for a variance, the Mills
1225 River Town Council shall determine that an undue hardship may result from strict
1226 compliance with the terms of this chapter. The Council shall consider the physical
1227 characteristics of the land, adjacent land uses and the intensity of the proposed
1228 development. In determining an undue hardship, the Council shall consider unique
1229 conditions peculiar to the site and design flexibility to preserve and protect the site's
1230 natural features. The variance shall constitute the minimum variance necessary to
1231 mitigate the hardship and shall not violate the intent of this chapter, nor shall it
1232 constitute a detriment to the health, safety and welfare of other properties within and
1233 adjacent to the subdivision. Any modifications thus authorized must be entered, in
1234 writing, in the minutes of the Mills River Town Council and on the face of the final
1235 plat. In addition, a written decision must be prepared and delivered to the applicant
1236 stating the reasons on which the departure from the terms of the ordinance was
1237 justified.

1238 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1239 **§ 153.123 LIMITATIONS ON APPLICATIONS PENDING.**

1240 Only [one \(1\)](#) application for a subdivision may be reviewed by any board or
1241 agency at any [one](#) time on any of the original property boundaries.

1242 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1243 **§ 153.124 AMENDMENTS.**

1244 (A) The Mills River Town Council may from time to time amend the terms
1245 of this chapter, but no amendment shall become effective unless it shall have been
1246 proposed by or shall have been submitted to the Planning Board for review and
1247 recommendation.

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1248 (B) No amendment shall be adopted by the Mills River Town Council until
1249 it has held a ~~public~~ legislative hearing on the amendment. Notice of the hearing shall
1250 be published in a newspaper of general circulation in the county at least once a week
1251 for two ~~(2)~~ successive calendar weeks before the hearing. The initial notice shall
1252 appear not less than 10 days nor more than 25 days before the hearing date. In
1253 computing the period, the date of publication is not to be counted, but the date of the
1254 hearing shall be counted.

1255 (C) Any modifications to the appendixes of this chapter made necessary by
1256 changes in local, state or federal laws may be made administratively by the
1257 Subdivision Administrator, as necessary, without a public hearing being required.
1258 The applications, forms and appendixes attached to this chapter may be modified by
1259 the Subdivision Administrator, with Planning Board approval.

1260 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1261 **§ 153.125 APPEALS.**

1262 Appeals from decisions of the Subdivision Administrator shall be taken to the
1263 Mills River Board of Adjustment ~~the Planning Board; appeals from the decisions of~~
1264 ~~the Planning Board shall be taken to the Mills River Town Council~~ through an
1265 evidentiary hearing process; appeals from decisions of the Town Council shall be
1266 taken to the appropriate court of record as provided by law. Appeals must be filed, in
1267 writing, within 30 days from the date of the respective order or decision is issued.

1268 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1269 **§ 153.126 [RESERVED].**

1270 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1271 **§ 153.127 EFFECTIVE DATE.**

1272 This chapter shall take effect and be in force from and after 12:01 a.m. on
1273 March 1, 2004.

1274 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1275 **§ 153.999 PENALTY.**

1276 The construction or development of a subdivision in violation of this chapter,
1277 or failure to comply with any of the requirements of this chapter or with any
1278 application or plan submitted pursuant to this chapter may subject the applicant
1279 and/or the owner/developer to revocation of plan or plat approval and the penalties
1280 and enforcement provisions pursuant to G.S. § 160A-175, including, but not limited
1281 to, the following:

1282 (A) *Equitable remedies.* This chapter may be enforced by equitable
1283 remedies, and any unlawful condition existing in violation of this chapter may be
1284 enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

1285 (1) *Injunction.* Where necessary to effectuate compliance with this
1286 chapter, the Ordinance Administrator or the other official charged with the
1287 responsibility of enforcing the Town of Mills River Ordinances may institute an action
1288 in a court of competent jurisdiction seeking an injunction against the further violation
1289 of this chapter. The action may be joined with a civil action instituted to collect
1290 accrued civil penalties in accordance with the provisions herein.

1291 (2) *Order of abatement.* Where necessary to abate a condition
1292 existing upon land in violation of this chapter or a use made of land in violation of this
1293 chapter, the Ordinance Administrator or the other official charged with the
1294 responsibility of enforcing the Town of Mills River Ordinances may institute an action
1295 in a court of competent jurisdiction seeking an order of abatement of the use or

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1296 condition of land in violation of this chapter. The action may be joined to an action for
1297 an injunction and/or an action to recover civil penalties accrued against an individual
1298 for the use or condition of land in violation of this chapter.

1299 (3) *Other equitable remedies.* This chapter may be enforced by
1300 any other equitable remedy which a court of competent jurisdiction deems just and
1301 proper.

1302 (B) *Civil penalties.* Any individual who is found in violation of this
1303 chapter may be subject to a civil penalty ~~of \$50 or other amount as established by~~
1304 Town Council in the most recent version of the annual fee schedule. Each day's
1305 violation shall be treated as a separate offense.

1306 (1) ~~Compliance order~~Notice of Violation.

1307 (a) Upon making a determination that a person is in
1308 violation of this chapter, the Ordinance Administrator or the other official charged
1309 with the responsibility of enforcing the Town of Mills River Ordinances shall issue a
1310 ~~compliance order~~notice of violation to the owner of the property and/or
1311 owner/developer of the property in violation of this chapter in accordance with §
1312 154.999. ~~The compliance order shall notify the violator of the violation in writing.~~ The
1313 ~~order notice~~ shall identify the circumstances giving rise to the violation, including the
1314 times, dates and places of the violation. The ~~notification notice~~ shall further identify
1315 the action which is necessary to comply with this chapter. The ~~notification notice~~ shall
1316 state that if the violator does not comply within a reasonable time, not to exceed 15
1317 days, the individual will be subjected to a civil penalty. If circumstances exist such
1318 that the violator cannot come into compliance within 15 days, the Ordinance
1319 Administrator or the other official charged with the responsibility of enforcing the
1320 Town of Mills River Ordinances may grant an extension of time after which the
1321 individual will be subjected to a criminal penalty commensurate with the magnitude

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1322 of the violation. The ~~compliance order~~notice of violation shall further state that
1323 failure to comply with the terms of the notice of violation~~compliance order~~ will
1324 subject the violator to a civil penalty and shall further state the amount of the civil
1325 penalty.

1326 (b) Failure to comply with the terms of a ~~compliance~~
1327 ~~order~~notice of violation issued by the Ordinance Administrator or the other official
1328 charged with the responsibility of enforcing the Town of Mills River Ordinances
1329 within the time stated in the order shall subject the violator to a civil penalty of \$50
1330 or other amount as established by Town Council. Each day that the violation
1331 continues shall be considered a separate offense, and the violator may be subject to
1332 an additional civil penalty for each separate offense.

1333 (2) *Civil action.* When necessary to collect any civil penalty or
1334 accrued civil penalties, a civil action may be instituted against an individual for the
1335 collection of all accrued penalties by the Ordinance Administrator or the other official
1336 charged with the responsibility of enforcing the Town of Mills River Ordinances.

1337 (C) *Criminal penalties.* Unless otherwise provided by this chapter or
1338 other applicable law, violation of this chapter shall constitute a Class 3 misdemeanor
1339 punishable by a fine not to exceed \$500. Each day's violation shall be treated as a
1340 separate offense.

1341 (1) *Warning ticket.* Upon the initial violation of a particular
1342 provision of this chapter, an individual may be issued a warning ticket or notice of
1343 violation. The warning ticket shall identify the particular practice which is in violation
1344 of this chapter and shall state the time, date and place of the violation. The warning
1345 ticket shall further state that if the individual commits further similar violations
1346 within the 6 months following the date of the warning ticket, the Ordinance
1347 Administrator or the other official charged with the responsibility of enforcing the

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1348 Town of Mills River Ordinances may issue a notice of violation or cause a warrant to
1349 be issued for the individual's arrest.

1350 (2) *Warrant.* If an individual violates this chapter within the 6
1351 months following the issuance of a warning ticket or notice of violation in a manner
1352 that is similar to the violation specified in the warning ticket or notice of violation, the
1353 Ordinance Administrator or the other official charged with the responsibility of
1354 enforcing the Town of Mills River Ordinances may cause a warrant to be issued for
1355 the arrest of the individual.

1356 (3) *Issue.* Notwithstanding any other provisions of this chapter,
1357 the Ordinance Administrator or the other official charged with the responsibility of
1358 enforcing the Town of Mills River Ordinances may issue a notice of violation or cause
1359 a warrant to be issued without having first issued a warning ticket where he or she
1360 deems it necessary to effectively enforce the terms of this chapter.

1361 (D) Revocation of Development Approvals. In addition to initiation of
1362 enforcement actions under 160D-404, development approvals may be revoked by
1363 notifying the holder in writing stating the reason for the revocation. The Town shall
1364 follow the same development review and approval process required for issuance of
1365 the development approval, including any required notice or hearing, in the review
1366 and approval of any revocation of that approval. Development approvals shall be
1367 revoked for any substantial departure from the approved application, plans, or
1368 specifications; for refusal or failure to comply with the requirements of any applicable
1369 element of this chapter; or for false statements or misrepresentations made in
1370 securing the approval. Any development approval mistakenly issued in violation of
1371 an applicable State law or local ordinance may also be revoked. The revocation of a
1372 development approval by a staff member may be appealed pursuant to G.S. § 160D-
1373 405.

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1374

1375 (Ord. passed 3-1-2004; Am. Ord. passed 10-13-2005)

1402 Fee: \$ _____ Paid

1403 Method

1404 I certify that the information shown above is true and accurate and is in conformance
1405 with the Town of Mills River Subdivision Ordinance.

1406 APPLICANT (OWNER OR AGENT) DATE

1407 *****

1408 TOWN USE ONLY

1409 Received by:

1410 Date:

1411 Fee Paid: Received by:

1412 Date:

1413 Development Plan Approval / Conditions

1414 Final Plat Approval:

1415 Plat Recorded

1416 **APPENDIX 2: APPOINTMENT OF AGENT FORM (OPTIONAL)**

1417 I _____ owner of property located

1418 on _____,

1419 (name)

1420 _____ (street name)

1421 recorded in _____ and having a parcel

1422 identification number (PIN) of _____,

1423 (deed book / page)

1424 located in the Town of Mills River, North Carolina, do hereby appoint

1425

1426

1427 _____ (agent's name)

1428 to represent me in an application for subdivision of land and authorize him/her to act

1429 as my agent in all matters, formal and informal except as stated herein, and authorize

1430 him / her to receive all official correspondence. I however understand that as

1431 the listed property owner, I must sign all affidavits and statements required by this

1432 Ordinance.

1433 Property Owner

1434 _____ date

1435 *****

1436 TOWN USE ONLY

1437 Received by:

1438 Date:

1439 Comments:

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1440 **APPENDIX 3: SUBDIVISION PLAN CHECKLIST FOR MINOR**
1441 **SUBDIVISIONS**

1442 **Town of Mills River**

1443 **SUBDIVISION PLAN CHECKLIST FOR MINOR SUBDIVISIONS**

1444 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1445 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1446 or less.

1447 Please check appropriate space. If item does not apply, mark "N/A" in the YES
1448 column. Attach this checklist to your application for Minor Subdivisions being
1449 considered under § 153.046 of the Town of Mills River Subdivision Ordinance. Note
1450 : this is not a complete list of requirements; its purpose is to expedite the
1451 review process.

1452 **Name of Subdivision:**

1453 **Yes _____ No**

1454 Is road development Plan attached? (Plan
1455 should shown road and drainage improvements and a road
1456 cross section).

1457 Are streets marked "Public" or "Private" as
1458 proposed?

1459 Have street names been approved by the Town of
1460 Mills River Property Address Office?

1461 Have drainage improvements been designed
1462 according to NCDOT standards?

1463 Do public roads meet minimum NCDOT design
1464 standards and have they been approved by NCDOT?

1465 Have the road plans been approved by NCDOT?

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1466 Do private roads meet minimum private road
1467 standards?

1468 Has the applicant familiarized himself with street
1469 disclosure requirements?

1470 Is a road plan submitted showing location and
1471 type construction?

1472 Is the plan in conformance with latest approved
1473 Thoroughfare Plan?

1474 Does existing off-site access meet Town
1475 standards?

1476 Does the development meet the minimum access
1477 requirements?

1478 Are minimum setbacks shown on the plats?

1479 Have road and drainage improvements be
1480 completed?

1481 Will improvement guarantees be provided in lieu
1482 of completing road and drainage improvements?

1483 Is the application form signed by the property
1484 owner or agent?

1485 Are application fees included?

1486 Are any other attachments included? If so,
1487 please list below:

1488 To whom should all official correspondence regarding review of this subdivision be
1489 sent:

1490 Application completed and submitted by:

1491 Date:

1492

1493

TOWN USE ONLY

1494

Received by:

1495

Date:

1496

Comments:

1497

1498

1499

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

1500

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1501 **APPENDIX 4: MASTER PLAN REQUIREMENTS**

1502 **Town of Mills River**

1503 **MASTER PLAN REQUIREMENTS**

1504 A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or
1505 Professional Planner may prepare the Master Plan. The following information shall
1506 be shown on the plan for information and discussion purposes unless not applicable
1507 or specifically waived by the Subdivision Administrator*. **If the Master Plan does**
1508 **not contain the required items by the submittal deadline, the application will**
1509 **be considered incomplete and the plan will not be presented to the** Planning
1510 Board. Combined Master and Development Plans must be prepared in accordance
1511 with Appendix 5 [per Section § 153.049(B)]. For each item below, please indicate
1512 whether the requested information has been provided

1513 **General Legend**

1514 **Yes No**

1515 Scale (written and graphic): Scale for full-sized
1516 and reduced copies should be appropriate to clearly depict
1517 property

1518 North arrow

1519 Owner's and applicant's name(s) and address(es)

1520 Vicinity map

1521 If no was checked for any above, please explain:

1522

1523 **Title Block**

1524 **Yes No**

1525 Project name

1526 Title of map (must state "Master Plan")

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1527

Date

1528

Name, title, address, and phone number of

1529

individual, firm, or corporation preparing the plan If no was

1530

checked for any above, please explain:

1531 **Plan Details**

1532 **Yes**

No

1533

Contours at maximum of twenty-foot (20')

1534

intervals

1535

Location of existing ponds, lakes or watercourses

1536

with direction of flow

1537

Boundaries of the proposed project

1538

Approximate location of the 100-year floor

1539

hazard line, if applicable

1540

Location of existing street/roads, bridges,

1541

culverts, utilities, or other major elements affecting the

1542

property

1543

Water supply watershed boundaries, zoning

1544

district lines, fire district boundaries and municipal, county,

1545

state boundaries (except townships lines), if applicable

1546

General layout of proposed road system

1547

General lot layout

1548

Location of utility sites (if known)

1549

Names of adjoining property owners or

1550

subdivisions

1551

Proposed project phasing lines, if applicable

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1552 **Project summary containing the**
1553 **following information:**

1554 Total project area in acres
1555 Number of proposed lots/units by type
1556 Approximate length of road system (public;
1557 private)

1558 Type of Water system
1559 (public/private/individual)

1560 Type of Sewer system
1561 (public/private/individual)

1562 If no was checked for any above, please explain:

1563 **Other Master Plan Application Requirements**

1564 The following information or other items shall be provided or otherwise addressed
1565 in writing by the submittal deadline of the application for Master Plan approval unless
1566 not applicable or specifically waived by the Subdivision Administrator*, otherwise
1567 the application will be considered incomplete and will not be presented to the
1568 Planning Board.

1569 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1570 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1571 or less.

1572 **Yes No**

1573 Application Form

1574 Fee

1575 Master Plan (3 full-sized copies and 1 reduced
1576 copy per § 153.049(B))

1577

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1578 If no was checked for any above, please explain:

1579 Application completed and submitted by:

1580 Date:

1581 TOWN USE ONLY

1582 Received by:

1583 Date

1584 Received by:

1585 Date:

1586 Comments:

1587

1588

1589 (Am. Ord. 00066, passed 4-28-2011)

1590 **APPENDIX 5: DEVELOPMENT PLAN REQUIREMENTS**

1591 **Town of Mills River**

1592 **DEVELOPMENT PLAN REQUIREMENTS**

1593 A Professional Engineer, Land Surveyor, Architect, Landscape Architect, or
1594 Professional Planner may prepare the Development Plan. The following information
1595 shall be shown on the plan for information and discussion purposes unless not
1596 applicable or specifically waived by the Subdivision Administrator*. **If the**
1597 **Development Plan does not contain the required items by the submittal**
1598 **deadline, the application will be considered incomplete and the plan will not be**
1599 **presented to the** Planning Board. Combined Master and Development Plans must be
1600 prepared in accordance with Appendix 5 [per § 153.049(B)]. For each item below,
1601 please indicate whether the requested information has been provided.

1602 **General Legend**

1603 **Yes** **No**

- 1604 Scale (written and graphic):
1605 Scale for full-sized and reduced copies should be
1606 appropriate to clearly depict property
1607 North arrow
1608 Owner's and applicant's names and addresses
1609 Legend provide appropriate symbols
1610 Vicinity map
1611 Phase map showing location of phase in the entire
1612 development (if applicable)

1613 If no was checked for any above, please explain:

1614 **Title Block**

1615 **Yes** **No**

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1616 Project name (include phase number, if
1617 applicable)

1618 Title of map (must state "Development Plan" or
1619 "Combined Master & Development Plan," as applicable)

1620 Name, address, and phone number of individual
1621 or firm preparing the various elements of the plan

1622 Date and revision date(s), if required

1623 If no was checked for any above, please explain:

1624 **Plan Details**

1625 **Yes**

No

1626 Contours at no more than five foot (5') intervals

1627 Location of existing ponds, lakes or watercourses
1628 and directions of flow

1629 Outside boundaries of the proposed project with
1630 bearings and distances

1631 Approximate location of the 100-year flood
1632 hazard line, if applicable

1633 Location of existing roads with rights-of-way,
1634 easements, bridges, water features, culverts (showing size),
1635 utilities, structures, etc.

1636 Cross-section of typical street for each proposed
1637 road classification used (collector, local, etc.) and/or cul-de-sac
1638 with indication of design standards of paving/base to be met,
1639 road width, right-of-way width, shoulder width, cut and fill
1640 slope, and ditch slope

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- 1641 All roads or sections thereof with dead-ends or
- 1642 culs-de-sac no more than 2,500 feet in length
- 1643 Location of proposed streets/roads (with rights-
- 1644 of-way, approximate finished grades and approximate curve
- 1645 radii), bridges, and easements
- 1646 Proposed road(s) named and received name(s)
- 1647 approval from Henderson County Property Addressing and are
- 1648 designated as public/private
- 1649 Location of proposed ponds and lakes shown with
- 1650 approximate elevation, and proposed alterations to existing
- 1651 water courses, if applicable
- 1652 Names of adjoining property owners or
- 1653 subdivisions
- 1654 Proposed locations of multi-family units shown, if
- 1655 applicable
- 1656 Proposed lot lines and approximate length
- 1657 Proposed lot numbers shown
- 1658 Size of lots to 0.1 acres (not including road right-
- 1659 of-way)
- 1660 Proposed open space or common area
- 1661 Location of proposed project sign(s), if applicable
- 1662 Water supply watershed boundaries, zoning
- 1663 district lines, fire district lines and municipal, county, or state
- 1664 boundaries, if applicable

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- 1690 Sewer system
- 1691 (public/private/individual)
- 1692 Distance to public water system
- 1693 Distance to public sewer system
- 1694 Current zoning and proposed or required
- 1695 building setbacks
- 1696 Setback from perennial stream(s), if applicable
- 1697 (see § 153.085(A))
- 1698 Site triangles conforming to § 153.069(H)

1699 If no was checked for any above, please explain:

1700

1701 **Other Development Plan Application Requirements**

1702 The following information and/or other items shall be provided or otherwise
1703 addressed in writing by the submittal deadline of the application for Development
1704 Plan approval unless not applicable or specifically waived by the Subdivision
1705 Administrator*, otherwise the application will be considered incomplete and will not
1706 be presented to the Planning Board.

1707 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1708 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1709 or less.

1710 **Yes No**

1711 Application Form: Filled-out and signed by
1712 property owner

1713 Agent Form: Filled-out and signed by property
1714 owner, if applicable

1715 Fee

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1716 Development Plan (or combined Master and
1717 Development Plan [3 full-sized copies & 1 reduced copy per
1718 Section § 153.049(C))

1719 Where connection to a public or community
1720 water and/or sewer system is required or otherwise proposed,
1721 the applicant shall submit a letter from the appropriate review
1722 authorities for the water and/or sewer system indicating that
1723 water and/or sewer system has sufficient capacity for the
1724 proposed development.

1725 List any additional attachment(s) below: (if
1726 applicable)

1727 To whom should all official correspondence
1728 regarding review of this subdivision is sent

1729

1730 If no was checked for any above, please explain:

1731

1732 The following information shall be provided or otherwise addressed in writing by
1733 submittal deadline of the application for Development Plan approval; however, the
1734 Planning Board may conditionally approve the Development Plan subject to receipt
1735 of such information if it is not available at the time of the Planning Board review:

1736 **Yes**

No

1737 Additional information as required to adequately
1738 explain the character or services of the proposed development

1739 Approval of intermediate water and sewer
1740 systems to be used, if applicable

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1741 Final Approval of plans for proposed water and
1742 sewer systems

1743 Erosion and sedimentation control plan approval
1744 from NCDENR, evidence of submission from NCDENR, or
1745 certification that no plan is required in accordance with §
1746 153.067

1747 Any other approvals as required by Federal, State,
1748 or Local agencies

1749 Bridge design plans, if applicable

1750 Affidavit of Understanding of Farmland
1751 Preservation District (if applicable)

1752 If no was checked for any above, please explain:

1753 Submitted by:

1754 Date:

1755 *****

1756 TOWN USE ONLY

1757 Received by:

1758 Date:

1759 Comments:

1760

1761

1762 (Am. Ord. 00066, passed 4-28-2011)

1763 **APPENDIX 6: SUBDIVISION PLAN CHECKLIST FOR MAJOR**
1764 **SUBDIVISIONS**

1765 **Town of Mills River**

1766 **SUBDIVISION PLAN CHECKLIST FOR MAJOR SUBDIVISIONS**

1767 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1768 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1769 or less.

1770 Please check appropriate space. If item does not apply, mark "N/A" in the YES
1771 column. Attach this checklist to your application for Major Subdivisions being
1772 considered under § 153.049 of the Town of Mills River Subdivision Ordinance. Note
1773 : this is not a complete list of requirements; its purpose is to expedite the
1774 review process.

1775 **Name of Subdivision:**

1776 Section

1777 Yes No

1778 Master Plan attached or on file? (3 blue line
1779 copies plus 1 reduced copy required)

1780 Development Plan attached? (3 blue line copies
1781 plus 1 reduced copy)

1782 This Development Plan includes vicinity map,
1783 contour map, drainage improvements, lot sizes, setbacks,
1784 project summary, adjacent owner's names, required R-O-W
1785 widths, road & cul-de-sac cross sections, etc.?

1786 Are streets marked "Public" or "Private" as
1787 proposed?

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1788 Have street names been approved by the
1789 Henderson County Property Address Office?

1790 Are all cul-de-sacs less than 2500 feet in length?

1791 Have drainage improvements been designed
1792 according to NCDOT standards?

1793 Do public roads meet minimum NCDOT design
1794 standards and have they been approved by NCDOT?

1795 Do private roads meet minimum private road
1796 standards?

1797 Has the applicant familiarized himself with street
1798 disclosure requirements?

1799 Is the plan in conformance with latest approved
1800 Thoroughfare Plan?

1801 Are any off-site road or utility improvements
1802 required?

1803 Does the development meet the minimum access
1804 requirements?

1805 Are proposed subdivision covenants and
1806 restrictions attached?

1807 Does the property require a US Army Corps of
1808 Engineers "Section 404" permit for filling wetlands?

1809 Is any of the property within the 100-year flood
1810 hazard area?

1811 Are any common areas marked accordingly?

1812 Are there any Farmland Preservation Districts
1813 within one half mile?

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1814 Are there any natural areas on the property, as
1815 identified in the publication titled: Preliminary Inventory
1816 of the Natural Areas of Henderson County?

1817 **Yes** _____ **No**

1818 Is a letter attached from the appropriate review
1819 authority (MDS, City of Hendersonville Sewer Dept., private
1820 sewer company, etc.) indicating that sewer is available for the
1821 project?

1822 Is a letter attached from the appropriate review
1823 authority (Hendersonville City Water Dept.) indicating that
1824 water is available for the project?

1825 Is the application form signed by the property
1826 owner or owner's agent?

1827 Are application fees included?

1828 Are any other attachments included? If so,
1829 please list below:

1830 To whom should all official correspondence regarding review of this subdivision be
1831 sent?

1832 Submitted by:

1833 Date

1834 *****

1835 *****

1836 TOWN USE ONLY

1837 *****

1838 *****

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1839 Received by

1840 Date

1841 Comments:

1842

1843

1844 (Am. Ord. 00066, passed 4-28-2011)

1845 **APPENDIX 7: FINAL PLAT REQUIREMENTS**

1846 **Town of Mills River**

1847 **FINAL PLAT REQUIREMENTS**

1848 The Final Plat shall be designed to provide for the legal conveyance of all lands or
1849 buildings shown thereon, and to provide information to any public body and to any
1850 subsequent owner as to the physical dimension and shape of the land and the type
1851 and location of the improvements to be built or installed thereon.

1852 A professional land surveyor providing the appropriate seals shall prepare the plat.

1853 An unsealed copy of all plats shall be submitted in addition to requirements for sealed
1854 plats and plans. All drawings shall be submitted with at least one copy in 11 x 17 size
1855 or less.

1856 The following information shall be required on the Final Plat, which shall be prepared
1857 in accordance with the G.S. § 47-30, as amended.

1858 **General**

1859 **Yes No**

1860 All visible and apparent right-of-way, easements,
1861 utilities, roadways, and other such improvements shall be
1862 accurately located where crossing or forming any boundary line
1863 of the property shown.

1864 Sufficient engineering data to determine readily
1865 and reproduce on the ground every straight or curved boundary
1866 line, street line, lot line, right-of-way line and easement line,
1867 including dimensions, bearings or deflection angles, radii,
1868 central angles and tangent curved property lines that are not
1869 boundary of curved streets.

1870 Building setback lines are to be annotated.

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1871 The accurate locations and descriptions of all
1872 monument markers and control points.

1873 The blocks numbered consecutively throughout
1874 the entire subdivision and the lots numbered consecutively
1875 throughout each block.

1876 Street names and right-of-way lines of all streets.

1877 Streets are to be designated as public or private.

1878 If private roads are shown, the plat must include a note stating: **The private roads**
1879 **indicated on this Final Plat may not meet the requirements**
1880 **of the North Carolina Department of Transportation for**
1881 **acceptance into the state road system.**

1882 The location and dimension of all rights-of-way,
1883 utility or other easements, riding trails, natural buffers,
1884 pedestrian or bicycle paths, and areas to be dedicated to public
1885 use with the purpose of each stated.

1886 All parcels proposed for either general or limited
1887 public use, such as parks, playgrounds and building sites with a
1888 statement of the purpose of each (if applicable).

1889 Farmland Preservation District note (see §
1890 153.083), if applicable

1891 If no was checked for any above, please explain:

1892 **REQUIRED CERTIFICATES**

1893 The following certificates are to appear on the Final Plat in such a manner as to ensure
1894 that the said certificate will be legible on any prints made
1895 therefrom or are to be submitted with, and recorded with the

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1896 Final Plat in accordance with the provisions of this chapter(if
1897 applicable).

1898 **Yes** **No**

1899 Certificate of Survey and Accuracy signed by the
1900 Surveyor

1901 Certificate of Compliance to Construction
1902 Standards of Public Roads by NCDOT Engineering Certificate of
1903 Compliance by the Subdivision Administrator or Planning Board
1904 as applicable

1905 Certificate from officials of other jurisdictions if
1906 the subdivision includes property that falls in multiple planning
1907 jurisdictions

1908 Certificate for Plat Review Officer

1909 Certificate of Understanding

1910 If no was checked for any above, please explain:

1911 Submitted by:

1912 Date:

1913 *****

1914 TOWN USE ONLY

1915 Received by:

1916 Date:

1917 Comments:

1918

1919

1920 (Am. Ord. 00066, passed 4-28-2011)

1921 **APPENDIX 8: APPLICATION FOR IMPROVEMENT GUARANTEES**

1922 **TOWN OF MILLS RIVER**

1923 **APPLICATION FOR IMPROVEMENT GUARANTEES**

1924 Name of Subdivision

1925 Name of Owner

1926 Address

1927 Phone:

1928 Agent Phone:

1929 Date of Preliminary Plan Approval by Planning Board

1930 Significant Conditions Imposed:

1931

1932 Type of improvement requested:

1933 Cash on Deposit (Certified Check)

1934 Bank Escrow Account

1935 Irrevocable Letter of Credit

1936 Surety Performance Bond

1937 Trust Agreement

1938 Name of bank or bonding company

1939 Amount of guarantee (including 25% overhead) \$

1940 Projected completion date

1941 Are cost estimates attached (with quantities and unit costs)? yes

1942 no

1943 Have engineering and design work been completed? complete partially

1944 complete incomplete

1945 I have read and understand all requirements stated in Article V of the Town of Mills

1946 River Subdivision Ordinance regarding subdivision improvement guarantees.

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1947 Owner's Signature Date

1948 Submitted By

1949 Date

1950 *****

1951 TOWN USE ONLY

1952 Received by: Date:

1953 Comments:

1954

1955 **APPENDIX 9: SUMMARY OF G.S. 136-102.6**

1956 **COMPLIANCE OF SUBDIVISION STREETS WITH MINIMUM STANDARDS OF**
1957 **THE [NORTH CAROLINA] BOARD OF TRANSPORTATION REQUIRED OF SELLERS**
1958 *(Includes Street Disclosure Statement Requirements)*

1959 (a) Requires that subdivision plats be recorded where new streets are dedicated.

1960 (b) On such plats, right-of-way must be designated either “public” or “private.”
1961 Streets designated “public” shall be considered as an offer of dedication.

1962 (c) Public streets shall meet minimum NCDOT construction standards. A plat
1963 for subdivision with such streets [public] must have both Town approval and NCDOT
1964 District Engineer approval on the plat itself before it may be recorded.

1965 (d) Public streets shall have right-of-way, construction plans (including street
1966 drainage) reviewed by NCDOT prior to recording the subdivision plat. Such
1967 approval by the State (plat certification) shall not be deemed acceptance of the roads
1968 by the State.

1969 (e) Written approval (enforcement agreement) is required for public utilities
1970 proposed to be located in NCDOT right-of-way.

1971 (f) Requires a Street Disclosure Statement be executed by both buyer and seller
1972 at closing anytime a subdivision lot is sold. Such statement shall fully disclose
1973 whether the abutting street right-of-way is public or private. If the street is public,
1974 the seller shall certify that the right-of-way and design is NCDOT approved. If the
1975 street is private, the seller shall disclose how the street shall be constructed and
1976 maintained, who will be responsible for such maintenance and that the street is not
1977 constructed to NCDOT minimum standards.

1978 (g) States that these provisions apply to all subdivisions outside municipal limits.

1979 (h) Exempts certain subdivision in Catawba County.

1980 (i) States the purpose of the State rules.

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1981 (j) States that subdivisions located in roadway corridors approved by NCDOT are
1982 affected by these rules.

1983 (k) A violation of these rules is a Class 1 misdemeanor.

1984 Note: This summary is for general information only. It reflects changes made to
1985 the law through 1997.

1986

1987 **APPENDIX 10: A STATEMENT OF UNDERSTANDING - REGARDING**
1988 **FAMILY SUBDIVISIONS**

1989 1. I understand that all subdivisions of land are regulated and must comply with the
1990 Town of Mills River Subdivision Ordinance.

1991 2. I have read and understand the definition of a Family Subdivision as stated in §
1992 153.026 of the Town of Mills River County Subdivision Ordinance and is as
1993 follows:

1994 **The division of land into two or more parcels or lots for the purpose of**
1995 **conveying the resulting parcels or lots to a grantee or grantees who are**
1996 **in any degree of lineal kinship to the grantor, or to a grantee or grantees**
1997 **who are within four (4) degrees of collateral kinship to the grantor,**
1998 **such division to be referred to herein as a “family subdivision.” Degrees**
1999 **of kin-ship shall be computed in accordance with G. S. 104A-1.**

2000 3. I understand the procedure for review of a Family Subdivision as stated in §
2001 153.047 of the Town of Mills River Subdivision Ordinance.

2002 4. I understand that to meet the requirements of § 153.047 that any and all lots
2003 subdivided must be conveyed to a bonafide family member as defined in North
2004 Carolina General Statute 104A-1. Examples are as follows:

2005 **An example of lineal kinship for a man would include: his parents,**
2006 **children, grandparents, and grandchildren. An example of four**
2007 **degrees collateral kinship would include brothers/sisters,**
2008 **aunts/uncles, first cousins, and their respective spouses.**

2009 5. I understand that any further subdivision of this property shall be reviewed in
2010 accordance with the provisions set forth in the Town of Mills River Subdivision
2011 Ordinance.

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2012 6. I have read and understand § 153.99 of the Town of Mills River Subdivision
2013 Ordinance regarding penalties for violations.

2014 (Signature of Property Owner / Agent)

2015 (Date)

2016

2017

2018 Witness

2019 (Date)

2020 *****

2021 TOWN USE ONLY

2022 Received by:

2023 Date:

2024 Comments:

2025

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2026 **APPENDIX 11: AFFIDAVIT OF UNDERSTANDING OF FARMLAND**
2027 **PRESERVATION DISTRICT**

2028 I hereby certify that I acknowledge that the Henderson /County Board of
2029 Commissioners on December 18, 1991, did adopt the HENDERSON COUNTY
2030 VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE whose purpose is
2031 to establish and identify designated agricultural districts to encourage the economic
2032 and financial well being of farming areas, to increase protection from nuisance suits,
2033 undesirable non-farm development and other negative impacts on participating
2034 farms, and to increase the identity and pride in the agricultural community and its
2035 way of life.

2036 I further certify that the property I intend to develop is within _____ feet of
2037 Farmland listed in the Farmland Preservation Program and is identified as the
2038 _____ district on maps provided
2039 by the Henderson County Office of the Natural Resources Conservation Service.

2040

2041

2042 Name of Owner

2043 _____ Date

2044 STATE OF NORTH CAROLINA

2045 COUNTY OF HENDERSON

2046 I, _____, a

2047 Notary Public for said County and State, do hereby certify that

2048 _____ personally appeared

2049 before me this date and acknowledged the due execution of the foregoing instrument.

2050 Witness by hand and official seal, this the _____ day of

2051 _____, 19____.

2052 Notary Public

2053 My Commission Expires:

2054 *****

2055 TOWN USE ONLY

2056 Received by:

2057 Date:

2058 Comments:

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

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154.050	(Reserved)
154.051	(Reserved)
154.052	(Reserved)
154.053	(Reserved)
154.054	(Reserved)
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154.059	(Reserved)
154.060	(Reserved)
154.061	(Reserved)
154.062	(Reserved)
154.063	(Reserved)

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- 154.064 (Reserved)
- 154.065 (Reserved)
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accessory uses
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154.253 Sign permit required
154.254 Determination of sign copy area and sign height
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154.258 Signs permitted in the MR- GB, MR-NC, MR-LI, and MR-MU zoning districts
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154.261	Signs exempt from obtaining a sign permit
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154.268	Enforcement

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154.999	Penalty

GENERAL PROVISIONS

1

2 **§ 154.001 TITLE.**

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

7 **§ 154.002 STATUTORY AUTHORITY.**

8 In pursuance of the authority conferred by the G.S. Chapter 160A [and 160D](#),
9 ~~Article 19, Part 3~~, the Town Council of Mills River, North Carolina, hereby ordain and
10 enact into law the following subchapters and sections.
11 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
12 Ord. 00038, passed 11-21-2006)

13 **§ 154.003 PURPOSE.**

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

17 (A) An adequate highway system will be facilitated by regulating building
18 setbacks from existing and proposed roads.

19 (B) Adequate light and air will be ensured by regulating the width and
20 depth of yards.

21 (C) Healthful sanitary conditions will be maintained by regulating lot sizes
22 in accordance with soil characteristics in the town.

23 (D) Certain specialized developments, such as planned unit developments
24 and manufactured home parks, may be permitted under specific conditions. These

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25 developments must be constructed in full accordance with an approved site plan and
26 general development criteria which are intended to give latitude and flexibility in
27 design and, at the same time, ensure the protection of surrounding properties.

28 (E) By regulating the uses permitted in an established zoning district, areas
29 can be developed to their full potential without fear of nearby incompatible
30 development within zoned areas.

31 (F) The neighborhood impact from certain uses will be mitigated through
32 the use of minimum specific site standards combined with general standards which
33 provide the flexibility to impose a higher level of specific site standards, dependent
34 upon the degree of neighborhood impact ~~in the MR – Mixed Use District.~~

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

37 **§ 154.004 JURISDICTION.**

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

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

42 **§ 154.005 FARM EXEMPTION.**

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

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

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48 **§ 154.006 WATERSHED BUFFER REQUIREMENTS.**

49 All uses within watersheds, as designated by Chapter 192, Article I of the
50 Henderson County Code, Water Supply Watershed Protection, shall be required to
51 maintain a minimum 30 foot vegetated buffer from perennial stream banks; provided,
52 however, that where development is proposed as a high-density development as
53 allowed by Chapter 192, Article I of the Henderson County Code, Water Supply
54 Watershed Protection, the setback from perennial streams shall be 100 feet. Water-
55 dependent structures and public projects, such as road crossings and greenways, may
56 be allowed where no practical alternative exists. The activities shall minimize built-
57 upon surface area and maximize the use of stormwater best management practices.
58 Where provisions contained in this Chapter 154, Zoning, conflict with those
59 provisions contained in Chapter 192, Article I of the Henderson County Code, Water
60 Supply Watershed Protection, the most restrictive provisions shall be deemed to
61 govern.

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

64 **§ 154.007 WORD USAGE AND DEFINITIONS.**

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

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

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

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

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

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

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

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

81 ~~(8) The word **LOT** includes the word **PLOT** or **PARCEL**.~~

82 (98) The word **BUILDING** includes the word **STRUCTURE**.

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

84 (1110) The word **PERSON** or **APPLICANT** includes a firm, association,
85 organization, partnership, corporation, company, trust and individual or
86 governmental unit.

87 (1211) The words **ZONING MAP** or **MILLS RIVER ZONING MAP** shall
88 mean the Official Zoning Map of the Town of Mills River, North Carolina.

89 (1312) Provisions contained within the MR - Mixed Use District, §
90 154.066, shall not be used to interpret the meaning of the remainder of the provisions
91 of this chapter unless the other provisions of this chapter specifically reference §
92 154.066.

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

95 **ACCESSORY USE.** A use customarily incidental and subordinate [use](#)
96 to a principal use or building and located on the same lot with the principal use or
97 building.

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

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

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

110 **ADULT DAY CARE HOME.** A non--residential facility certified by the
111 State of North Carolina which provides an organized program of services for adults
112 during the day in a community group setting for the purpose of supporting adults'
113 personal independence out of the provider's home. There may be between 4 and
114 16 unrelated participants in an adult day care home. Care is provided for more than
115 6 but less than 24 hours per day.

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

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

120 **ADULT ESTABLISHMENTS.** Any establishment which would be
121 considered an adult bookstore, adult motion-picture theater, adult mini-motion-
122 picture theater or adult live entertainment business as each is defined in G.S. § 14-
123 202.10. This definition does not include bona-fide massage parlors.

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

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

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

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

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

149 **APARTMENT.** The same as **ACCOMMODATION**.

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

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

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

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

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

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

180 **BUILDING.** Any structure having a roof supported by columns or by
181 walls and intended for shelter, housing or enclosure of persons, animals or chattels.
182 Two buildings connected by a common roof shall be considered as [one \(1\)](#) building,
183 provided that the width of the connecting roof shall be at least 20% of the principal
184 building width, but in no case less than [six \(6\)](#) feet in width. The connection of [two](#)
185 [\(2\)](#) buildings by means of an open porch, breeze way or passageway without a roof,
186 or with a roof less than [six \(6\)](#) feet in width, shall not be deemed to make them [one](#)
187 [\(1\)](#) building.

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

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

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

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

199 **BUILDING SETBACK LINE.** A line measured horizontally delineating
200 the minimum allowable distance between the property line and a building on a lot,
201 within which no building or other structure shall be placed except as otherwise

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202 provided. If the property line extends into a roadway or highway itself, then the
203 setback line shall be measured from the outside edge of pavement ~~centerline~~ of the
204 traveled way when computing setback requirements on lots abutting highways. For
205 purposes of measuring setback lines, lines extended vertically from overhanging
206 roofs which do not extend beyond 30 inches from the foundation wall of a building
207 shall not be used for establishing building location. This definition shall not be
208 applicable in the MR - Mixed Use District.

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

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

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

223 **CHIP MILLS.** Any non-portable wood-chipping facility that stands
224 alone and apart from a sawmill or a pulpmill, and whose purpose is to provide wood
225 chips to an off-site fabricating facility including but not limited to a papermill or
226 oriented strand board (OSB) mill. For purposes of the MR Mixed-Use District,

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227 specifically excluded from this definition are those facilities that produce less than
228 50,000 tons of wood chips or other materials per year.

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

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

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

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

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

248 **CONDITIONAL USE.** Conditional uses are those approved under a
249 specific procedure that was removed from the Mills River Town Code following the
250 adoption of 160D updates in 2021. Approved conditional uses remain in effect.
251 Updates, expansions or revocations of conditional uses shall be handled under the
252 Special Use process as defined in this chapter. ~~A use that would not adversely affect~~

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253 ~~the health or safety of persons residing or working in the neighborhood of the~~
254 ~~proposed use and will not be detrimental to the public welfare or injurious to~~
255 ~~property or public improvements in the neighborhood. The uses may be permitted in~~
256 ~~a zoning district as a conditional use if specific provision for the conditional use is~~
257 ~~made in this chapter. Conditional uses and their accessory uses may be permitted in~~
258 ~~specified districts after review, public hearing and approval by the Board of~~
259 ~~Adjustment in accordance with procedures and standards established in § 154.179 of~~
260 ~~this chapter.~~

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

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

270 **DENSITY.** The number of dwellings units ~~or principal buildings or~~
271 ~~uses~~ permitted per acre of land.

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

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

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

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

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

289 ~~***DWELLING, 2-FAMILY.***~~ ~~A building arranged or designed to be~~
290 ~~occupied by 2 families living independently of each other.~~

291 ***DWELLING UNIT.*** ~~A building, or portion thereof,~~single unit providing
292 complete, independent ~~and permanent~~ living facilities for ~~1 family~~ one or more
293 persons, including permanent provisions for living, sleeping, eating, cooking and
294 sanitation.

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

297 ***ELECTRONIC GAMING OPERATIONS.*** Any business enterprise,
298 whether as a principal or accessory use, where persons utilize electronic machines,
299 including but not limited to computers and gaming terminals, to conduct games of
300 chance, including sweepstakes, and where cash redeemed or otherwise distributed,
301 whether or not the value of such distribution is determined by electronic games
302 played or by predetermined odds. ***ELECTRONIC GAMING OPERATIONS*** may include,
303 but are not limited to, internet cafes, internet sweepstakes, electronic gaming
304 machines/operations, or cybercafés. This does not include any lottery approved by

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305 the State of North Carolina or any nonprofit operation that is otherwise lawful under
306 state law (for example, church or civic organization fundraisers).

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

309 (a) This term shall include the following:

310 1. **COMBINATION HOME.** A nursing home
311 offering [one \(1\)](#) or more levels of care, including any combination of skilled nursing,
312 intermediate care and domiciliary home.

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

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

328 4. **HOSPITAL.** Any facility which has an organized
329 medical staff and which is designed, used and operated to provide health care,
330 diagnostic and therapeutic services and continuous nursing care primarily to

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331 inpatients where the care and services are rendered under the supervision and
332 direction of physicians licensed under G.S. Chapter 90, Article 1, to 2 or more persons
333 over a period in excess of 24 hours. The term includes facilities for the diagnosis and
334 treatment of disorders within the scope of specific health specialties. The term does
335 not include private mental facilities licensed under G.S. Chapter 122C, Article 2,
336 nursing homes licensed under G.S. § 131E-102 and domiciliary homes licensed under
337 state law.

338 5. **NURSING HOME.** A facility, however named,
339 which is advertised, announced or maintained for the express or implied purpose of
340 providing nursing or convalescent care for 3 or more persons unrelated to the
341 licensee or operator. A **NURSING HOME** is a home for chronic or convalescent patients
342 who, on admission, are not as a rule acutely ill and who do not usually require special
343 facilities, such as an operating room, X-ray facilities, laboratory facilities and
344 obstetrical facilities. A **NURSING HOME** provides care for persons who have remedial
345 ailments or other ailments for which medical and nursing care are indicated, who,
346 however, are not sick enough to require general hospital care. Nursing care is their
347 primary need, but they will require continuing medical supervision.

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

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

355 **FAMILY.** One or more persons living ~~independently~~ as a single
356 housekeeping unit and using cooking facilities and certain rooms in common. A

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357 **FAMILY** shall not include a group occupying a boardinghouse, lodging house, club or
358 fraternity house or similar dwelling.

359 **FAMILY CARE HOME.** An adult care home with support and
360 supervisory personnel that provides room and board, personal care and habilitation
361 services in a family environment for not more than 6 resident handicapped persons
362 and licensed by the state of North Carolina as a family care home. For zoning
363 purposes, a **FAMILY CARE HOME** shall be deemed a residential use of property and
364 shall be a permitted use in all residential districts.

365 **FAMILY CHILD CARE HOME.** A child-care provider licensed by the
366 state to provide child care for five or fewer preschool aged children, and an additional
367 three school age children. Care is provided at the licensed care provider's
368 residence.

369 **FARM, BONA FIDE.** All land on which agricultural operations are
370 conducted.

371 **FENCING.** The use of a translucent, opaque or perforated barrier
372 extending from the surface of the ground to a uniform height at all points around the
373 portions of the property containing the regulated principal use, including but not
374 limited to storage or use of inventory, materials or equipment associated with the
375 principal use, if the use(s) is unenclosed. The fencing must be constructed of wood,
376 wire, steel or of any substance of a similar nature and strength, but which
377 perforations or openings are not larger than 16 square inches.

378 **FIRE PROTECTION.** The design, construction and installation of
379 buildings and facilities, equipment, appliances and infrastructure or the protection of
380 the facilities and buildings, and the occupants thereof, from the effects or potential
381 effects of fire. All uses requiring fire protection in this chapter shall be required to
382 comply with the standards of the National Fire Protection Association.

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383 **GARBAGE.** All putrescible wastes, including animal offal and
384 carcasses, and recognizable industrial by-products, but excluding sewage and human
385 waste.

386 **GOLF COURSE.** A tract of land laid out, landscaped and used
387 primarily for the playing of golf but may additionally include swimming pools, tennis
388 courts and other facilities for outdoor recreation normally associated with
389 tournament-type 18 hole golf courses. The term shall include buildings and structures
390 located on a golf course tract which are incidental to outdoor recreation, such as rain
391 shelters, maintenance and storage sheds, swimming pool shower and dressing rooms
392 and also clubhouses and/or other buildings having facilities for the sale, rental and
393 storage of sports equipment, serving of food and beverages and accommodations
394 (including lodging) for members of private golf clubs and their guests, which
395 buildings and structures are normally associated with tournament-type 18 hole golf
396 courses, provided that no single 18 hole course shall have more than 20 units of
397 lodging; and provided, further, that any commercial activity permitted by this
398 sentence shall terminate if the golf course served by it shall cease to operate as a golf
399 course as defined in the preceding sentence. Public commercial hotels, motels,
400 restaurants, stores, snack bars and beverage service bars and lounges are not
401 permitted. This definition does not include illuminated golf facilities.

402 **GRAVEYARD.** Any vehicle graveyard or mobile/manufactured home
403 graveyard; this definition specifically excludes all cemeteries, including public human
404 cemeteries, church cemeteries, family cemeteries and pet cemeteries.

405 **GROSS FLOOR AREA.** The total floor area of all buildings in a project,
406 including basements, mezzanines and upper floors, exclusive of stairways and
407 elevator shafts. It excludes separate service facilities outside the main building, such
408 as boiler rooms and maintenance shops.

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409 **GROUP DEVELOPMENT.** A group of 2 or more principal structures
410 built on a single lot, tract or parcel of land not subdivided into the customary streets
411 and lots and which may not be subdivided, and designed for occupancy by separate
412 families, businesses or other enterprises. Examples would be ~~cluster-type~~
413 ~~subdivisions~~, school campuses and hospitals, shopping centers and industrial parks.

414 **HANDICAPPED PERSON.** A person with a temporary or permanent
415 physical, emotional, or mental disability including, but not limited to, mental
416 retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments,
417 emotional disturbances and orthopedic impairments, but not including mentally ill
418 persons who are dangerous to others as defined in G.S. § 122C-3(11)b.

419 **HAZARDOUS WASTE DISPOSAL FACILITY.** Any hazardous waste
420 disposal facility whose operations or facility must be permitted by or is regulated by
421 the federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, or the North Carolina
422 Solid Waste Management Act (G.S. §§ 130A-290 *et seq.*), as they may be amended or
423 replaced.

424 **HEALTHCARE FACILITY.** Any residential or in-patient medical
425 facility, whether public or private, including but not limited to the following: general
426 hospitals; chronic disease, maternity, mental, tuberculosis and other specialized
427 hospitals; facilities for intensive care and self-care; nursing homes, including skilled
428 nursing facilities and intermediate care facilities; and facilities for continuing care of
429 the elderly and infirm.

430 **HOURS OF OPERATION.** The times of day during which an
431 establishment may conduct its principal operations.

432 **INCIDENTAL HOME OCCUPATION.** Any use conducted entirely
433 within a dwelling and carried on by the occupants thereof, which use is clearly
434 incidental and secondary to the use of the dwelling for residential purposes and does

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435 not change the character thereof; provided, further, that no mechanical equipment is
436 installed or used except such as is normally used for domestic or professional
437 purposes and that not over 25% of the total floor space of any structure is used for a
438 home occupation. No home occupation shall be conducted in any accessory building.
439 Incidental home occupations permitted as accessory uses in a residence include, but
440 are not limited to, dressmaking, cooking, baking, music instruction, woodworking,
441 arts and crafts, personal care services, family child care homes, internet retail sales
442 and the practice of the professions as insurance, medicine, artistry, architecture and
443 accounting. This definition shall not be used to regulate home schools in any way.
444 There shall be no change in the outside appearance of the building or premises, or
445 other visible evidence of the conduct of such home occupation other than one sign,
446 not exceeding one square foot in area, non-illuminated, and mounted flat against the
447 wall of the principal building.

448 ***INCINERATOR.***

449 (a) Any enclosed device that burns more than 250 pounds of
450 any material per hour other than the classic boiler fossil fuels, such as natural gas,
451 coal or fuel oil, is a principal use on any lot or parcel, and:

452 1. Uses controlled flame combustion and neither
453 meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration
454 unit, nor is listed as an industrial furnace; or

455 2. Meets the definition of ***INFRARED INCINERATOR***
456 or ***PLASMA ARC INCINERATOR.***

457 (b) This definition does not apply to afterburners, flares,
458 fume incinerators and other similar devices used to reduce process emissions of air
459 pollutants. Specifically excluded from this definition and any regulation under this
460 chapter are those incinerators that are constructed and/or operated by or on behalf

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461 of any federal, state or local governmental entity; provided, however, that this
462 exclusion from regulation only applies to those incinerators not operating as a
463 hazardous waste disposal facility or radioactive waste disposal facility (which are
464 prohibited in all zoning districts).

465 **INDUSTRIAL USE.** Entails manufacturing, assembling, processing,
466 fabricating, machining and/or warehousing. **INDUSTRIAL USE** includes
467 establishments engaged in the mechanical or chemical transformation of materials or
468 substances into new products. These establishments are usually described as plants,
469 factories or mills and characteristically use power-driven machines and materials
470 handling equipment. Establishments engaged in assembling component parts of
471 manufactured products are also considered industrial if the new product is neither a
472 structure nor other fixed improvement. Also included is the blending of materials,
473 such as lubricating oils, plastics, resins or liquors. The materials processed by
474 industrial establishments include products of agriculture, forestry, fishing, mining
475 and quarrying as well as products of other industrial establishments. [This definition
476 is based upon excerpts from the Standard Industrial Classification Manual (SIC),
477 1987. Specific examples of industrial uses as listed in the SIC are not considered to be
478 a limitation on this definition.]

479 **JUNK.** Any discarded or scrapped copper, brass, metal, rope, rags,
480 batteries, appliances, paper or rubber; discarded, dismantled or wrecked
481 automobiles or other vehicles or parts thereof; dismantled or abandoned
482 mobile/manufactured homes or RV's or travel trailers or parts thereof; discarded,
483 dismantled or wrecked motorized or non-motorized equipment or parts thereof;
484 discarded or scrapped iron, steel or other scrapped ferrous material; or any other
485 materials, items or equipment similar to those listed herein. This definition
486 specifically excludes solid waste.

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487 **JUNKYARD.** Any land parcel having a principal use consisting of the
488 storing, keeping, buying or selling of junk. This definition excludes any vehicle
489 graveyard or any mobile/manufactured home graveyard.

490 **LANDFILL.** A disposal facility or part of a disposal facility where solid
491 waste is placed in or on land and which is not a land treatment facility, a surface
492 impoundment, an injection well, a hazardous waste long-term storage facility or a
493 surface storage facility.

494 **LANDOWNER, OR OWNER.** The holder of the title of a property in fee
495 simple. Absent evidence to the contrary, the county tax records are used to determine
496 who is a landowner. A landowner may authorize a person holding a valid option,
497 lease, or contract to purchase to act as his or her agent or representative for the
498 purpose of making applications for development approvals.

499 **LARGE WIND ENERGY SYSTEM.** A wind energy conversion system
500 consisting of one or more wind turbine(s), a tower(s), and associated control or
501 conversion electronics, which has a rated capacity of more than 20 kW.

502 **LEGISLATIVE HEARING.** A hearing to solicit public comment on a
503 proposed legislative decision.

504 **LIGHT INDUSTRY.** Any use which is listed as permitted by right in
505 the MR - Light Industrial District, § 154.055 of this chapter.

506 **LIGHTING.** Outdoor lighting fixtures installed and operated in such a
507 manner as to provide for the safety of those persons residing or working on the
508 property and which protect the streets and neighboring properties from direct glare
509 or hazardous interference of any kind.

510 **LOT.** A parcel of land occupied or capable of being occupied by a
511 building or group of buildings as regulated by the Town of Mills River Code ~~devoted~~

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512 ~~to a common use~~, together with the customary accessories and open spaces belonging
513 to same. ~~This definition shall not be applicable in the MR – Mixed Use District.~~

514 **LOT DEPTH.** The mean horizontal distance between front and rear
515 lot lines. ~~This definition shall not be applicable in the MR – Mixed Use District.~~

516 **LOT OF RECORD.** A lot which is part of a subdivision, a plat of which
517 has been recorded in the Register of Deeds office of Henderson County, or a lot
518 described by metes and bounds, the description of which has been so recorded. ~~This~~
519 ~~definition shall not be applicable in the MR – Mixed Use District.~~

520 **LOT WIDTH.** The distance between side lot lines measured at the
521 building setback line. ~~This definition shall not be applicable in the MR – Mixed Use~~
522 ~~District.~~

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

525 **MAJOR STREET.** The following are classified major streets in the
526 Town of Mills River for purposes of this chapter: Boylston Highway (NC 280),
527 Haywood Road (NC 191).

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

532 **MANUFACTURED HOME PARK (PARK).** A tract of land designed to
533 accommodate 3 or more manufactured or mobile home spaces, 3 or more
534 manufactured or mobile homes or any combination of such for rent or lease. This
535 definition shall not apply to approved seasonal agricultural worker developments in
536 the MR - Mixed Use District. Notwithstanding the foregoing, manufactured home
537 parks which consist of no more than 10 manufactured or mobile homes and in which

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538 all of the units provide or are intended to provide migrant housing subject to and in
539 accordance with the Migrant Housing Act of North Carolina (G.S. § 95-222) are
540 specifically exempted from all provisions of § 154.080 of this chapter.

541 **MANUFACTURED HOME PARK, MAJOR.** Any manufactured home
542 park consisting of 11 or more manufactured homes and/or spaces; may be referred
543 to as **MAJOR PARK** in this and other ordinances duly adopted by the Mills River Town
544 Council.

545 **MANUFACTURED HOME PARK, MINOR.** Any manufactured home
546 park consisting of 10 or fewer manufactured homes and/or spaces; may be referred
547 to as **MINOR PARK** in this and other ordinances duly adopted by the Mills River Town
548 Council.

549 **MATERIALS RECOVERY FACILITY.** An establishment primarily
550 engaged in:

551 (a) Operating facilities for separating and sorting recyclable
552 materials from nonhazardous waste streams (i.e. garbage); and/or

553 (b) Operating facilities where commingled recyclable
554 materials such as paper, plastics, used beverage cans and metals are sorted into
555 distinct categories.

556 **MINING AND EXTRACTION OPERATION.** Any establishment or
557 business primarily engaged in dressing and beneficiating of ores; the breaking,
558 washing and grading of coal; the crushing and breaking of stone; and the crushing,
559 grinding or otherwise preparing of sand, gravel and nonmetallic chemical and
560 fertilizer minerals. Specifically excluded from this definition are:

561 (a) Those establishments or businesses with a principal use
562 of the extraction of sand if that operation is not required to obtain a mining permit
563 from the North Carolina Department of Environment and Natural Resources; and

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564 (b) Those establishments or businesses with a principal or
565 accessory use of the grading or extraction of soils.

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

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

572 **MOBILE HOME PARK.** See **MANUFACTURED HOME PARK.**

573 **MOBILE/MANUFACTURED HOME GRAVEYARD.** Any parcel of land
574 having an accessory use consisting of the storage or keeping of 3 or more wrecked,
575 dismantled, scrapped, ruined or dilapidated mobile/manufactured homes, RV's or
576 travel trailers, which are not occupied by humans.

577 **MODULAR HOME.** A dwelling unit constructed in accordance with
578 the standards set forth in the North Carolina State Building Code (NCSBC) and
579 composed of components substantially assembled in a manufacturing plant and
580 transported to the building site for final assembly on a permanent foundation. Among
581 other possibilities, a modular home may consist of 2 or more sections transported to
582 the site in a manner similar to a manufactured home (except that the modular home
583 meets the NCSBC) or may consist of a series of panels or room sections transported
584 on a truck and erected or joined together on the site.

585 **MOTOR SPORTS FACILITY.** Any facility, track or course upon which
586 racing events are conducted.

587 **MOTOR SPORTS FACILITY, MAJOR.** A motor sports facility having a
588 seating or standing capacity of 1,000 or more persons. For purposes of this definition,

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589 standing capacity shall be computed based on 3 persons for each 200 square feet of
590 space directed to patron use.

591 **MOTOR SPORTS FACILITY, MINOR.** A motor sports facility having a
592 seating or standing capacity of less than 1,000 persons. For purposes of this definition
593 standing capacity shall be computed based on 3 persons for each 200 square feet of
594 space directed to patron use.

595 **MOTOR VEHICLE.** Any vehicle which is, or is designed to be, self-
596 propelled or is designed or used for transporting persons or property. This definition
597 includes watercraft, but excludes airplanes or aircraft.

598 **NEIGHBORHOOD.** Any area impacted by a principal use.

599 **NOISE MITIGATION.** A good-faith effort to reduce the noise effects, if
600 any, that the principal use may have on the neighborhood.

601 **NONCONFORMING USE.** Any ~~lot, parcel of land,~~ use of land, building,
602 ~~or~~ structure, or sign lawfully existing at the time of adoption of this chapter, or any
603 amendment thereto, that does not conform to the use requirements, dimensional or
604 other requirements of the district in which it is located.

605 **OCCUPIED BUILDING.** Any residential dwelling or other building
606 which is inhabited on a regular basis by one (1) or more persons. The buildings
607 include, but are not limited to, residences, schools, churches, other buildings for
608 public assembly, hospitals and clinics, commercial and industrial entities, and the like.
609 The buildings must have been in existence, or otherwise be under a validly issued
610 building permit, at least 30 days prior to the date of a tower permit application in
611 order to be considered an occupied building as defined in this chapter.

612 **OFFAL.** The waste or by-product of a process, especially the viscera
613 and trimmings of a butchered animal removed in dressing.

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614 **OPEN SPACE, ACTIVE.** Any park and recreational area that is not
615 dependent upon a specific environmental or natural resource, which is developed
616 with recreation and support facilities that can be provided anywhere for the
617 convenience of the user. Areas include, but are not limited to, playgrounds, golf
618 courses, baseball or softball fields, football or soccer fields, basketball courts,
619 swimming pools, clubhouses, equestrian facilities, and tennis courts.

620 **OPEN SPACE, PASSIVE.** Area in and located due to the presence of a
621 particular natural or environmental setting. Area include, but are not limited to,
622 boating, fishing, camping, nature trails, and nature study. Farms [and land](#)
623 [designated for agricultural use](#) may be considered as passive open space.

624 ~~**ORDINANCE ADMINISTRATOR.** The Town of Mills River official~~
625 ~~assigned by the Town Manager or Town Council to enforce this chapter.~~

626 **PARK.** Those areas developed for both passive and active
627 recreational activities. The development may include, but shall not be limited to,
628 walkways, benches, open fields, multiuse courts, swimming and wading pools,
629 amphitheaters, and the like. The term **PARK** shall not include zoos, recreational
630 vehicle parks, manufactured home parks, amusement parks or vehicle, equestrian or
631 dog racing facilities.

632 **PARK MODEL HOME.** A recreational vehicle consisting of [one \(1\)](#) or
633 more sections, typically built in accordance with the construction requirements of the
634 HUD Housing Code but not in accordance with the standards set forth in the NCSBC;
635 the vehicles have 480 square feet or less of living space and are used as temporary
636 dwelling units designed to be easily transported.

637 **PERENNIAL STREAM.** A constantly flowing, drought-resistant
638 stream that is typically depicted by a thin continuous blue line on the most recent

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639 version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined
640 by local government studies), unless other provisions have been made.

641 **PERMIT.** The permit issued by the ~~Ordinance~~ [Zoning](#) Administrator
642 as designated by this chapter, to an individual, corporation, partnership or other
643 entity to construct a communications tower, to collocate an antenna on an existing
644 tower, to locate an antenna on an alternative structure or to replace an existing tower
645 as required by this chapter.

646 **PLANNED UNIT DEVELOPMENT.** A land use designed to provide for
647 developments incorporating a single type or a variety of residential and accessory
648 uses which are planned and developed as a unit. The development may consist of
649 individual lots and common building sites. Common land and facilities may be an
650 element of the plan related to affecting the long-term value of the entire development.
651 A planned unit development must conform to the requirements of §§ 154.080 and
652 154.180.

653 **POULTRY/SMALL GAME.** All chicken, waterfowl and rabbits and
654 other similar species raised domestically for meat or eggs. This definition specifically
655 includes, but is not limited to, quail, turkey, chicken, ducks and geese.

656 **PRINCIPAL USE.** A primary purpose for which land or a building is
657 arranged, designed, intended or used, including the storage or use of inventory,
658 materials or equipment associated therewith.

659 **PROPERTY.** [All real property subject to regulation under the Mills
660 River Town Code, including land and improvements or structures thereon.](#)

661 **PROTECTED MOUNTAIN RIDGE.** A ridge with an elevation of 500
662 feet or more above the elevation of an adjacent valley floor.

663 **PUBLIC LIBRARY.** Any library established by the state; a county, city,
664 township, village, school district or other local unit of government or authority or

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665 combination of local units of governments and authorities; community college or
666 university; or any private library open to the public.

667 ***PUTRESCIBLE WASTES.*** Solid waste capable of being decomposed
668 by microorganisms with sufficient rapidity as to cause nuisance from odors and gases,
669 such as kitchen wastes, offal and carcasses.

670 ***QUASI-JUDICIAL DECISION.*** A decision involving the finding of facts
671 regarding a specific development approval that requires the exercise of discretion
672 when applying the standards of the regulation. The term includes, but is not limited
673 to, decisions involving variances, special use permits, and appeals of administrative
674 determinations.

675 ***RACING EVENT.*** Any time, speed or distance competition using
676 motor vehicles, whether or not conducted under the auspices of a recognized
677 sanctioning body, including but not limited to events on the surface of land and water.
678 ***RACING EVENTS*** shall be deemed to include any practice sessions, time trials,
679 qualification rounds or any other similar activity.

680 ***RADIOACTIVE WASTE DISPOSAL FACILITY.*** Any disposal facility for
681 low-level radioactive materials, high-level radioactive materials or special nuclear
682 materials. Specifically included, but without limitation, are any disposal facilities
683 whose operations or facility must be permitted by or are regulated by [one \(1\)](#) or more
684 of the following (as they may be amended or replaced): United States Nuclear
685 Regulatory Commission, or its successors; the Atomic Energy Act of 1954; the Low-
686 Level Radioactive Waste Policy Amendment Act of 1985 (42 U.S.C. §§2021b *et seq.*);
687 or the North Carolina Radiation Protection Act (G.S. §§ 104E-1 *et seq.*).

688 ***RECREATIONAL VEHICLE (RV).*** A vehicular-type unit primarily
689 designed as temporary and mobile living quarters for recreational, camping or travel
690 use, which either has its own motive power or is mounted on and drawn by another

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691 vehicle. The units do not satisfy the dimensional requirements of a manufactured
692 home.

693 **RECREATIONAL VEHICLE PARK.** Any grouping of no fewer than 2
694 units on a tract of land in single ownership, catering to temporary parking of park
695 model homes or recreational vehicles. Recreational vehicle parks may include
696 buildings and structures ancillary to such use.

697 **RECYCLING.** The collection, separation and/or processing and reuse
698 or return to use in the form of raw materials or products of those materials which
699 would otherwise become solid waste.

700 **RECYCLING CENTER, DROP-OFF.** A facility designed to be a
701 collection point where only recyclable materials are collected and/or temporarily
702 stored prior to delivery to a permanent disposal site or shipment to others for reuse
703 or processing.

704 **RECYCLING FACILITY.** A facility having a principal use consisting of
705 recycling.

706 **REFUSE.** All non-putrescible waste.

707 **RELIGIOUS INSTITUTION.** Any church, ecclesiastical or
708 denominational organization, or any established physical place for worship at which
709 nonprofit religious services and activities are regularly conducted.

710 **REPLACEMENT TOWER.** A new communications tower intended to
711 replace an existing tower where the new tower is sited as close to the existing tower
712 as is reasonably feasible, but in no event more than 100 hundred feet from the base
713 of the existing tower, and no higher than the height of the original tower.

714 ~~—————**RESIDENTIAL DENSITY.**~~
715 ~~—————(a)————The number of residential dwelling units per acre within~~
716 ~~a specified radius measured from the approximate center (centroid as determined by~~

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717 ~~the Henderson County Assessor's office) of the property on which a regulated use is~~
718 ~~proposed and extending to the external property lines of the properties falling within~~
719 ~~the specified radius. Where the actual residential density exceeds (is more dense~~
720 ~~than) the specified maximum residential density, the use will be prohibited. For uses~~
721 ~~specifying a residential density, the following information must be listed: maximum~~
722 ~~number of units per acreage (acreage must be specified as 1 acre, 2 acres, and the~~
723 ~~like) and the radius in which the units and acreage should be calculated (i.e., 1/2 mile,~~
724 ~~1 mile, and the like). The following formula will be used to calculate residential~~
725 ~~density:~~

726 ~~_____ 1. *First:* Determine the number of dwelling units~~
727 ~~within the specified radius by consulting the Henderson County Assessor's office or~~
728 ~~by field verification; this number = A units~~

729 ~~Example: _____ Assessor's office finds 250 dwelling units.~~
730 ~~_____ A = 250 units~~

731 ~~_____ 2. *Second:* Determine the total area in acres within~~
732 ~~the radius specified for the use [501.48 acres in a 1/2 mile radius; 2,009.6 acres in a 1~~
733 ~~mile radius]; this number = B acres~~

734 ~~Example: _____ The use has a specified radius of 1/2 mile.~~
735 ~~_____ B = 501.48 acres~~

736 ~~_____ 3. *Third:* _____ Compose a fraction by placing number A~~
737 ~~over number B; this fraction represents the total number of units over the total acres,~~
738 ~~A/B~~

739 ~~Example:~~
~~_____~~
~~250 units~~
~~_____~~

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~~501.48—~~

~~acres~~

740

741

~~————— 4. *Fourth:* Determine the residential density by
reducing the fraction composed above by dividing both the numerator and
denominator by the numerical value of A.~~

742

743

744

~~Example:~~

~~250 units~~

$$\frac{250}{250} = 1 \text{ unit} = \text{residential density}$$

745

746

~~————— 501.48 acres/250 ——— 2 acres~~

747

748

749

~~————— (b) For purposes of calculating residential density, the data
available from the Henderson County Assessor's office must be provided and shall be
presumed correct; however, the presumption can be rebutted by competent and
material testimony and documentary evidence submitted to the Mills River Town
Council during the quasi-judicial public hearing on the regulated use.~~

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~~**RESIDENTIAL DWELLING UNIT.** Any separately owned residence,
including mobile homes or mobile home spaces, for use of 1 or more persons as a
housekeeping unit with space for eating, living and permanent provisions for cooking
and sanitation, whether or not attached to other such residences, and the structure
and facilities and appurtenances therein and grounds, areas and facilities normally
held out for the use of residents who are using the dwelling unit as their primary
residence.~~

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~~**RETAIL BUSINESS.** Includes establishments engaged in selling
merchandise directly to ~~the~~ residential, business or institutional consumer customers
and rendering services incidental to the sale of the goods. The establishment is~~

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762 usually a place of business which is engaged in activities to attract the general public
763 to buy. Processing incidental or subordinate to selling often is conducted at retail
764 businesses. Buying of goods for resale to ~~the consumer~~[customers on site](#) is a
765 characteristic of retail trade establishments that particularly distinguishes them
766 from, [wholesaling operations, industrial production, and](#) the agricultural and
767 extractive industries. Specifically excluded from this definition are adult
768 establishments. [This definition is based upon excerpts from the Standard Industrial
769 Classification Manual (SIC), 1987. Specific examples of retail uses as listed in the SIC
770 are not considered to be a limitation on this definition.]

771 **RETAIL SERVICES.** Includes establishments primarily engaged in
772 providing a wide variety of services for individuals, business and government
773 establishments and other organizations. Includes establishments providing personal,
774 business, repair, health, legal, engineering and other professional services;
775 membership organizations; and other miscellaneous services. Specifically excluded
776 from this definition are adult establishments. [This definition is based upon excerpts
777 from the Standard Industrial Classification Manual (SIC), 1987. Specific examples of
778 services as listed in the SIC are not considered to be a limitation on this definition.]

779 **RUBBISH.** Solid or liquid waste from residences, commercial
780 establishments or institutions.

781 **RURAL ACCESSORY BUSINESS.** A business which is traditionally
782 found in rural settings and which is established as follows:

783 (a) A building containing a rural accessory business shall be
784 located according to the dimensional requirements specified for the zoning district.

785 (b) A rural accessory business shall be contained entirely
786 within [one \(1\)](#) building separate from a residential dwelling with a maximum floor
787 area of 2,500 feet. Outside storage of materials and equipment shall be restricted to

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788 areas adjacent to the building with the areas under shed-roof cover and not exceeding
789 20% of the floor area of the business.

790 (c) One rural accessory business shall be permitted per lot.

791 (d) The operator of the rural accessory business must reside
792 on the same lot or on an adjoining parcel of land in the same ownership upon which
793 the rural accessory business is located.

794 (e) The rural accessory business shall not create smoke,
795 odor, dust or noise which would cause a health hazard or a nuisance to surrounding
796 property.

797 (f) Rural accessory businesses shall include those uses
798 typically defined as **INCIDENTAL HOME OCCUPATIONS**.

799 (g) This definition shall not be used to regulate home schools
800 in any way.

801 **SCHOOL.** Any elementary or secondary school, whether public or
802 private, established under Chapter 115C of the North Carolina General Statutes, and
803 any community college established under the provisions of G.S. Chapter 115D.

804 **SCHOOL, CHARTER.** Any school authorized and operating under G.S.
805 Chapter 115C, Article 16, Part 6A.

806 **SCHOOL, HOME.** A nonpublic school in which 1 or more children of
807 not more than 2 families or households receive academic instruction from parents or
808 legal guardians or a member of either household. The schools must be qualified in
809 accordance with G.S. Chapter 115C, Article 39, Part 3. **HOME SCHOOLS** shall be
810 considered a permitted use of property in all zoning districts listed in § 154.025.

811 **SCHOOL, PUBLIC.** A school operated under the jurisdiction of the
812 Henderson County Board of Education and supported by tax revenue, or any charter
813 school.

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814 **SCREENING.** The use of any device or natural growth, including but
815 not limited to fencing, walls, berms, vegetation, or any combination thereof, that
816 serves as a barrier of vision between adjoining properties. Screening may be partial
817 or full as may be required by this chapter.

818 **SEPARATION.** Where separation restrictions are required no
819 portions of the property containing the regulated principal use, including but not
820 limited to storage or use of inventory, materials or equipment associated with the
821 principal use, shall be situated within the stated distance from the approximate
822 center (centroid as determined by the Henderson County Assessor's office) of the
823 property on which a protected use is located, whether the protected use(s) is (are)
824 located within the municipal boundaries of the Town of Mills River

825 **SHOPPING CENTER.** A group of commercial establishments located
826 on a tract of land that is planned, developed, owned ~~and~~ managed as a unit, with
827 off-street parking provided on the property, and related in its location, size, and type
828 of shops to the trade area which the unit serves.

829 **SIGN, BUSINESS.** An attached or freestanding structure on which are
830 announced the business use or uses of the premises and/or the name of the operator
831 of the ~~business~~premises.

832 **SIGN, OUTDOOR ADVERTISING.** An attached or freestanding
833 structure conveying some information, knowledge or idea to the public.

834 ~~**SIGN, PRINCIPAL USE.** An attached or freestanding structure~~
835 ~~advertising a product or conveying some general information, knowledge or idea,~~
836 ~~relating to the use of or products produced by the principal user of the premises.~~

837 **SITE PLAN.** A scaled drawing and supporting text showing the
838 relationship between lot lines and the existing or proposed uses, buildings, or
839 structures on the lot. A site plan shall include site-specific details that are depicted to

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840 [show compliance with all legally required development regulations that are](#)
841 [applicable to the project and the applicable compliance or development decision](#)
842 [review.](#)

843 **SLAUGHTERING PLANT.** An establishment primarily engaged in
844 slaughtering animals or poultry/small game. For the purpose of the MR - Mixed Use
845 District, this definition includes slaughtering plants that conduct processing of
846 animals or poultry/small game, including dressing, packing, freezing, canning,
847 cooking and/or curing animals or poultry/small game or their by-products or
848 processing or manufacturing products from the animals or poultry/small game or
849 their by-products; and establishments primarily engaged in the collection and/or
850 processing of the inedible portion(s) of animals or poultry/small game or their
851 carcasses. This definition specifically excludes: slaughtering and processing activities
852 performed for personal use only; and those plants slaughtering less than 450 animals
853 per month for other than personal use and those plants slaughtering less than 500
854 poultry/small game per day for other than personal use.

855 **SOLAR ENERGY GENERATION FACILITY.** Any nonresidential solar
856 collection applications designed to facilitate the capture and conversion of solar
857 energy for the purpose of supplying electricity to utility companies. This definition
858 does not include solar panels accessory to a principal use.

859 **SOLAR PANEL HEIGHT.** The measurement of a solar panel from the
860 pivot point of the panel to the ground.

861 **SOLAR PANELS.** A solar collection application designed to facilitative
862 the capture and conversion of solar energy for the purpose of supplying power to a
863 specific site or set of equipment.

864 **SOLID WASTE.** Any hazardous or nonhazardous garbage or other
865 refuse, rubbish, litter, trash, tires and other discarded solid materials and solid or

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866 semisolid waste materials resulting from industrial, commercial and agricultural
867 operations and from community activities, but does not include solids or dissolved
868 materials in domestic sewage or other significant pollutants in water resources, such
869 as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved
870 materials in irrigation return flows or other common water pollutants. As used
871 herein, **SOLID WASTE** shall refer collectively to any or all of the aforementioned waste
872 materials, unless otherwise specified.

873 ***SOLID WASTE MANAGEMENT FACILITIES.***

874 (a) Land, personnel and equipment used in the management
875 of solid waste. Incinerators and drop-off recycling centers are specifically excluded
876 from this definition. Solid waste management facilities include the following:

- 877 1. Transfer station;
878 2. Landfill; or
879 3. Materials recovery facility.

880 (b) Specifically excluded from this definition and any
881 regulation under this chapter are those solid waste management facilities that are
882 constructed and/or operated by or on behalf of any federal, state, or local
883 governmental entity; provided, however, that this exclusion from regulation only
884 applies to those solid waste management facilities not operating as a hazardous waste
885 disposal facility or radioactive waste disposal facility (which are prohibited in all
886 zoning districts).

887 ***SPECIAL USE.*** A use that is not permitted by right, but is permitted
888 after an [evidentiary hearing](#), ~~review and~~ finding by the Town Council [for a Major](#)
889 [Special Use Permit and by the Board of Adjustment for a Minor Special Use Permit](#)
890 that the use will meet all of the required general standards (see § 154.138) and the

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891 applicable specific site standards or site conditions, and issuance of a Special Use
892 Permit by the Town.

893 **SPECIAL USE PERMIT.** A permit issued to authorize structures or uses
894 in a particular zoning district upon presentation of competent, material, and
895 substantial evidence establishing compliance with one or more general standards
896 requiring that judgment and discretion be exercised as well as compliance with
897 specific standards. The term includes permits previously referred to as conditional
898 use permits.

899 **STREET.** A dedicated public or private right-of-way, either by
900 easement or ownership, for vehicular traffic which affords the principal means of
901 access to abutting properties.

902 **STRUCTURE.** Anything constructed or erected, the use of which
903 requires permanent location on the ground or which is attached to something having
904 permanent location on the ground; however, anything constructed or erected solely
905 to provide ingress and egress to the site, ornamental enhancement of the property
906 (exclusive of buildings), site stabilization, on-site utilities and lighting or property
907 fencing shall not be considered a structure for the purposes of this chapter. Solar
908 panels and wind turbines shall be considered a structure for the purpose of this
909 zoning code.

910 **STRUCTURED ENVIRONMENT HOMES.** A residential setting within
911 which persons, progressing from relatively intensive treatment for crime,
912 delinquency, mental or emotional illness, alcoholism, drug addiction or similar
913 conditions to full participation in community life, are provided professional staff
914 services, as well as board, lodging, supervision, medication and other treatment.

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915 **SMALL WIND ENERGY SYSTEM.** A wind energy conversion system
916 consisting of a single wind turbine, a tower and associated control or conversion
917 electronics, which has a rated capacity of not more than 20 kW.

918 **TINY HOME.** A vehicular-type unit primarily designed as temporary
919 and mobile living quarters for recreational, camping or travel use, which is mounted
920 on or drawn by another vehicle. These type units are not required to meet standards
921 set forth in the NCSBC.

922 **TINY HOME PARK, PARK MODEL PARK, RECREATIONAL VEHICLE**
923 **PARK.** Any group of 2 or more units on a tract of land in single ownership, catering
924 to temporary parking of tiny homes, park model homes, or recreational vehicles. Said
925 parks may include buildings and structures ancillary to such use.

926 **TOWER.** See **COMMUNICATIONS TOWER.**

927 **TOWER BASE.** The foundation, usually concrete, on which the tower
928 and other support equipment is situated. For measurement calculations, the tower
929 base is that point on the foundation reached by dropping a perpendicular from the
930 geometric center of the tower.

931 **TOWER HEIGHT.** The vertical distance measured from the bottom of
932 the tower base at ground elevation to the highest point of the tower, including any
933 antenna, lighting or other equipment affixed thereto.

934 **TOWER, REPLACEMENT.** See **REPLACEMENT TOWER.**

935 **TOWER SITE.** The land area which contains or will contain a
936 proposed tower, support structures and other related buildings and improvements.

937 **TRANSFER STATION.** A permanent structure with mechanical
938 equipment used for the collection or compaction of solid waste prior to the
939 transportation of solid waste for final disposal.

940 **TRAVEL TRAILER.** See **RECREATIONAL VEHICLE.**

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941 **TRAVEL TRAILER PARK.** See **RECREATIONAL VEHICLE PARK.**

942 **TRAVELWAY.** The portion of a road, street, highway, driveway,
943 access road corridor, right-of-way, and the like, that is designed and maintained for
944 the purpose of accommodating vehicular passage. Specifically excluded are
945 [sidewalks, multi-use side paths,](#) road shoulders, ditches, curb and gutter systems,
946 other drainage facilities and unimproved road rights-of-way not intended to be
947 driven on by vehicles.

948 **UNIQUE NATURAL AREA.** An area that meets the criteria for
949 qualification as a natural heritage area as prescribed in Chapter 15A-12H, Section
950 .0202 of the North Carolina Administrative Code.

951 **VEHICLE GRAVEYARD.** Any parcel of land having an accessory use
952 consisting of the storage or keeping of 5 or more wrecked, scrapped, ruined,
953 dismantled or inoperable unlicensed motor vehicles, including but not limited to cars,
954 trucks, tractor trailers, boats, motorcycles or jet skis, or other motorized equipment
955 located on a land parcel or adjacent land parcels under the same ownership or
956 control, if the storage or keeping is not enclosed within a structure(s) or building(s).

957 **WATER SYSTEM, PUBLIC.** A public water supply is a system which
958 provides piped water for human consumption to 15 or more connections or at least
959 25 people for at least 60 days per year. A community public water supply is defined
960 as [one](#) which serves 15 or more year-round residences or at least 25 year-round
961 residents. A non-community public water supply is any system that fits the definition
962 of a public water supply but is not a community system. Restaurants, motels, schools,
963 parks and industries are examples of non-community supplies.

964 **WIND TURBINE HEIGHT.** The height above grade to the top of the
965 turbine blade when it reaches its highest elevation.

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966 **YARD.** A space on the same lot with a principal building, open,
967 unoccupied and unobstructed by buildings or structures from ground to sky, except
968 where encroachments and accessory buildings are expressly permitted. ~~This~~
969 ~~definition shall not apply in the MR—Mixed Use District.~~

970 **YARD, FRONT.** An open, ~~unoccupied~~ space on the same lot with a
971 principal building, extending the full width of the lot and situated between the ~~street~~
972 ~~or street-adjacent~~ property line, [or edge of pavement of travelway of adjacent street](#)
973 [where applicable](#), and the front line of the building, projected to the side lines of the
974 lot. In no case shall the front yard be less than side yard requirements. ~~This definition~~
975 ~~shall not apply in the MR—Mixed Use District.~~

976 **YARD, REAR.** An open, unoccupied space on the same lot with a
977 principal building, ~~extending the full width of the lot and~~ situated between the rear
978 line of the lot and the rear line of the building [and](#) projected to the side lines of the lot.
979 ~~This definition shall not apply in the MR—Mixed Use District.~~

980 **YARD SALES.** Includes garage sales, porch sales, carport sales and
981 estate auctions and are informal sales held by occupants of private households at
982 their dwelling premises. Items sold are household articles and clothing used and
983 accumulated over several years as part of everyday living. Minor, obsolete or worn
984 small business items may be included. **YARD SALES** may be conducted no more than
985 4 times per year but not more than a total of 12 days in [one](#)~~1~~ calendar year. Yard sales
986 which continue over a longer period of time shall be considered as a commercial use.
987 **YARD SALES** are an incidental use in all residential districts.

988 **YARD, SIDE.** An open, unoccupied space on the same lot with a
989 principal building situated between the building and the side lot line and extending
990 from the rear line of the front yard to the front line of the rear yard. ~~This definition~~
991 ~~shall not apply in the MR—Mixed Use District.~~

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992 **ZONING ADMINISTRATOR.** The official charged with enforcing this
993 chapter.

994 **ZONING DETERMINATION.** A written determination prepared by the
995 Zoning Administrator, the Zoning Administrator’s designee or the Mills River Town
996 Council’s designee that clarifies the intent, nature or applicability of this chapter or
997 other chapters in Title XV of the Mills River Town Code. A zoning determination is
998 made in conjunction with a permit, legislative process, quasi-judicial process and/or
999 at the request of a property owner or affected party seeking determination. Zoning
1000 determinations are delivered by personal delivery, electronic mail, or first-class mail.
1001 Zoning determinations may be appealed to the Zoning Board of Adjustment, unless
1002 otherwise provided by state law or the Mills River Town Code, within thirty days of
1003 their receipt by the affected party.

1004 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
1005 Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00067,
1006 passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-
1007 2012; Am. Ord. 00079, passed 4-25-2013; Am. Ord. 00080, passed 5-23-2013; Am.
1008 Ord. 2018-03, passed 3-8-2018)

1009 **ESTABLISHMENT OF DISTRICTS**

1010 **§ 154.025 USE DISTRICTS.**

1011 For the purpose of this chapter, the zoning districts of the Town of Mills River,
1012 as delineated on the Official Zoning Map of the Town of Mills River, North Carolina,
1013 which shall include all maps designated and adopted by the Town Council, may be
1014 divided into the following designated use districts:

- 1015 (A) MR-30 Low-Density Residential District.
- 1016 (B) MR-LI Light Industrial.

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1017 ~~(C) I-1 Light Industrial District.~~

1018 (D) MR-GB General Business.

1019 (E) MR-NC Neighborhood Commercial.

1020 (F) MR-MU Mixed Use.

1021 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1022 **§ 154.026 DISTRICTS BOUNDARIES.**

1023 The boundaries of these districts are hereby established as shown on the
1024 Official Zoning Map of the Town of Mills River, North Carolina, dated March 1, 2004,
1025 and subsequent amendments thereto.

1026 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1027 **§ 154.027 ZONING MAP.**

1028 A zoning map entitled the "Official Zoning Map of the Town of Mills River,
1029 North Carolina," dated March 1, 2004, and subsequent amendments thereto, clearly
1030 setting forth all approved use districts and their respective boundaries is hereby
1031 made a part of this chapter and shall be maintained by the Zoning Administrator of
1032 the Town of Mills River. This map shall be available for inspection by interested
1033 persons during normal business hours of the Mills River Town Hall. It shall be the
1034 duty of the Zoning Administrator of the Town of Mills River to maintain the map and
1035 post any changes thereto as they may be made.

1036 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1037 **§ 154.028 INTERPRETATION OF DISTRICT BOUNDARIES.**

1038 Where uncertainty exists with respect to the boundaries of any of the
1039 aforesaid districts as shown on the Zoning Map of the Town of Mills River, the
1040 following shall apply:

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1041 (A) Boundaries indicated as approximately following the center lines of
1042 streets, highways, alleys, streams, rivers or other bodies of water shall be construed
1043 to follow the lines.

1044 (B) Boundaries indicated as approximately following platted lot lines shall
1045 be construed as following the lot lines.

1046 (C) Where district boundaries are so indicated that they are approximately
1047 parallel or perpendicular to the center lines of streets, highways, railroads or rights-
1048 of-way of same, the district boundaries shall be construed as being parallel or
1049 perpendicular thereto and at the distance therefrom as indicated on the Zoning Map
1050 of the Town of Mills River. If no distance is given, the dimension shall be
1051 determined by the use of the scale shown on the Zoning Map of the Town of Mills
1052 River.

1053 (D) Where a district boundary line divides a lot of single ownership, the
1054 district requirements for the least restricted portion of the lot shall be deemed to
1055 apply to the whole thereof, provided that the extensions shall not include any part of
1056 the lot more than 35 feet beyond the district boundary line.

1057 (E) Where physical features existing on the ground are at variance with
1058 those shown on the Official Zoning Map of the Town of Mills River, or in other
1059 circumstances not covered by Subsections A through D, the Board of Adjustment shall
1060 interpret the district boundaries.

1061 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

1062 **USE DISTRICTS**

1063 **§ 154.045 USE REQUIREMENTS.**

1064 Within the districts indicated on the Official Zoning Map of the Town of Mills
1065 River, no building or land shall be used and no building shall be erected or altered

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1066 which is intended or designed to be used in whole or in part for any use other than
1067 those listed as permitted for that district in this article. The [Zoning](#) Administrator or
1068 his or her designee shall make a determination if a use not mentioned can be
1069 reasonably interpreted to fit into a use category where similar uses are described.
1070 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1071 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2015-07, passed 12-10-2015)

1072 **§ 154.046 CORRIDOR OVERLAY DISTRICT.**

1073 (A) *Purpose.* The purpose of the Town of Mills River Corridor Overlay
1074 District is to preserve the aesthetic rural character of the community. Prior to
1075 incorporation, the Mills River community was predominately agricultural and rural
1076 in nature. These guidelines attempt to incorporate design elements that preserve that
1077 heritage even as the town continues to grow and develop.

1078 (B) *Development standards and uses.* Dimensional requirements and all
1079 other development standards shall be the same as for underlying zoning district(s)
1080 except as modified herein.

1081 (1) *Pre-existing structures.* Any structures already permitted at the
1082 time of this section adoption shall not be required to comply; however, any additions
1083 made to those buildings must meet the design criteria listed herein.

1084 (2) *Permitted uses.* The following are the permitted uses within the
1085 Corridor Overlay District.

1086 (a) *Permitted uses.* Same as for underlying zoning district(s).

1087 (b) *Conditional uses.* Same as for underlying zoning
1088 district(s).

1089 (c) *Prohibited uses.* Same as for underlying zoning district(s).

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1090 (3) *Frontage.* Facade visibility requirements will be assessed from
1091 the right-of-way of the following roads:

- 1092 (a) NC-191;
- 1093 (b) NC-280;
- 1094 (c) Ray Hill Rd.;
- 1095 (d) School House Rd.;
- 1096 (e) Banner Farm Rd.;
- 1097 (f) Butler Bridge Rd.;
- 1098 (g) Old Fanning Bridge Rd.;
- 1099 (h) North Mills River Rd.;
- 1100 (i) Jeffress Rd.;
- 1101 (j) South Mills River Rd.;
- 1102 (k) Old Turnpike Rd.; and
- 1103 (l) Turnpike Rd.

1104 (C) *Design requirements.* Only non-residential structures and multi-family
1105 dwellings shall be required to comply with these design requirements. Each
1106 applicable structure shall meet the following design criteria and show compliance on
1107 elevation drawings submitted to scale:

- 1108 (1) *Materials.*
 - 1109 (a) Walls visible from the right-of-way of any of the roads
1110 listed in § 154.270(B)(3) shall use at least 75% acceptable materials. Walls not visible
1111 from the right-of-way of any of the roads listed in § 154.270(B)(3) shall use at least
1112 40% acceptable materials.
 - 1113 (b) Acceptable materials, rock, artificial natural looking
1114 rock, timber, artificial wood grain look, brick, natural stone, artificial natural stone
1115 look, wood shingle or artificial shingle look, or other material as approved by the

1116 Zoning Administrator that has the appearance of a natural material. Unfaced concrete
1117 block is not acceptable as a natural material.

1118 (2) Elements to be included. Every 20 feet of the building shall
1119 include one of the following design elements: window, porches, awnings, cupolas,
1120 material change or door.

1121 (D) *Parking requirements.* All development within this district shall be
1122 required to comply with §§ 154.106 and 154.107 of the Zoning Ordinance.

1123 (E) *Landscaping requirements.* All development within this district shall be
1124 required to comply with the applicable landscaping requirements beginning at §
1125 154.230 of the Zoning Ordinance.

1126 (Ord. 2020-07, passed 3-13-2020)

1127 **§ 154.047 MR-30 RESIDENTIAL DISTRICT.**

1128 This district is intended to be a quiet neighborhood consisting of single-family
1129 residences.

1130 (A) MR-30 Residential District. Within the MR-30 Residential District,
1131 the following uses are permitted:

1132 (1) Single-family dwellings.

1133 (2) Churches, provided that:

1134 (a) The structures are placed not less than 50 feet from any
1135 property line.

1136 (b) They are located with access to a street, as shall be
1137 determined by the Zoning Administrator.

1138 (c) There is a planted buffer strip along the side and rear
1139 property lines, except where the lines run parallel and contiguous with streets,
1140 streambeds, lakes and railroad tracks.

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1141 (3) Church cemeteries on property contiguous to or adjacent to the
1142 principal church assembly building, provided that all plots shall be set back at least
1143 20 feet from any property line.

1144 (4) Church bulletin boards not exceeding 12 square feet in area.

1145 (5) Signs not more than 4 feet square in area advertising the sale or
1146 rental of property on which they are located.

1147 (6) Customary accessory buildings, including private garages,
1148 noncommercial greenhouses and workshops.

1149 (7) Family care homes.

1150 (8) Family Child Care Homes.

1151 (9) Child Care unregulated by the State of North Carolina.

1152 (10) Incidental Home Occupations.

1153 (11) Solar panels shall be allowed as a secondary use as defined in
1154 this chapter. They shall not be allowed in front yards except by ~~conditional~~[Minor](#)

1155 [Special Use](#) ~~Use~~ [Permit](#) as approved by the Board of Adjustment. Application for a

1156 ~~conditional-special~~ use [permit](#) shall include justification for why the panels must be
1157 placed in the front yard and show that there is no practical alternative. Solar panels

1158 shall be subject to the setback requirements for structures in each district. Stand-

1159 alone solar panels shall be limited to 10 feet in height. Solar panels attached to

1160 buildings shall be extend more than 5 feet above the building. Stand-alone solar

1161 panels that are secondary uses to residential uses shall not be required to buffer.

1162 Stand-alone solar panels that are secondary uses to commercial uses shall be required

1163 to plant a buffer strip along side and rear property lines as defined in the zoning

1164 definitions. Residential panels shall not produce ~~t~~ more than 150% of the power

1165 required for the site.

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1166 (12) Wind turbines shall be allowed in all districts under a Major
1167 ~~s~~Special u~~Use p~~Permit under § 154.138. Wind turbines shall be required to have
1168 a setback from all property lines of 2 times the fall radius of the wind turbine.

1169 (B) Uses allowed under a Major Special Use Permit~~uses~~. The following
1170 uses shall be permitted, subject to a finding by the Mills River Town Council that both
1171 the conditions in the definition of **SPECIAL USE** in § 154.007(B) and those conditions
1172 listed below will be met:

1173 (1) Planned unit developments, subject to the conditions listed
1174 under § 154.080 of this chapter.

1175 (2) Residential duplexes, subject to meeting the lot size and
1176 dimensional requirements for lot area and dwelling unit area:

1177 (a) A duplex, as defined in §154.007, is a structure consisting of
1178 two families living independently (emphasis added) of each
1179 other.

1180 (b) A dwelling unit, as defined in §154.007, is a single unit
1181 providing complete, independent (emphasis added), living
1182 facilities for one or more persons, including permanent
1183 provisions for living, sleeping, eating, cooking, and sanitation.

1184 Example: A duplex is planned for construction in a
1185 district requiring a 30,000 square foot minimum lot size
1186 and 30,000 square feet for each dwelling unit. Since a
1187 duplex consists of two dwelling units the minimum lot
1188 area applies to each unit. Therefore, a duplex consisting
1189 of two dwelling units requires a total of 60,000 square
1190 feet of lot size.

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1191 ~~of single family dwellings, R-O Residential Open Spaces~~
1192 ~~Development, subject to the conditions listed under § 154.082 of this~~
1193 ~~chapter.~~

1194 (3) ~~R-A Residential Apartment~~ [Multi-family D](#)development, subject
1195 to the conditions listed under § 154.082 of this chapter.

1196 (4) Medical, institutional care development, subject to conditions
1197 listed under § 154.084 of this chapter.

1198 (5) Group 1 communications towers and tower activities as defined
1199 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1200 Zoning Ordinance.

1201 (6) Group 2 communications towers and tower activities as defined
1202 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1203 Zoning Ordinance.

1204 (7) Group 6 communications towers and tower activities as defined
1205 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1206 Zoning Ordinance.

1207 (8) Transformer and public stations, provided that:

1208 (a) Transformer stations:

1209 1. The structures are placed not less than 75 feet
1210 from any property line.

1211 2. The structures are enclosed by a woven-wire
1212 fence at least 8 feet high.

1213 3. No vehicle or equipment is stored on the
1214 premises.

1215 4. There is an evergreen planted buffer strip along
1216 the side and rear property lines of residential zoned property.

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1217

(b) Public utility stations:

1218

1. The structures are located on sufficient land to

1219

meet all setback requirements of this chapter.

1220

2. The stations are completely enclosed, either by a

1221

building or a wire fence at least 8 feet high.

1222

3. There is an evergreen planted buffer strip along

1223

the side and rear property lines of residential zoned property.

1224

(9) Structured Home Environments, subject to the conditions listed

1225

under § 154.085.

1226

(C) [Uses allowed under a Minor Special Use Permit.](#) ~~Conditional uses.~~

1227

The following uses shall be permitted, subject to a finding by the Board of Adjustment

1228

that both the conditions in the definition of ~~CONDITIONAL~~ [SPECIAL USE](#) in §

1229

154.007(B) and those conditions listed below will be met:

1230

(1) Parks, camps, tennis and racquet clubs and golf courses.

1231

(Miniature golf courses and practice driving tees and illuminated golf courses

1232

operated for commercial purposes are not allowed.)

1233

(2) Libraries.

1234

(3) Bed-and-breakfast inns.

1235

(4) Civic and cultural buildings, including auditoriums, theaters for

1236

the performing arts, museums, art galleries, symphony and concert halls and

1237

historical societies, provided that:

1238

(a) The structures are placed not less than 50 feet from any

1239

property line.

1240

(b) They are located with access to a street, as shall be

1241

determined by the Zoning Administrator.

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1242 (c) There is a planted buffer strip along the side and rear
1243 property lines, except where the lines run parallel and contiguous with streets,
1244 streambeds, lakes and railroad tracks.

1245 (d) The facility is operated not for profit and satisfactory
1246 proof of the tax-exempt status of the organization is exhibited to the Zoning
1247 Administrator.

1248 (e) One parking space is provided for each 2 seats in
1249 auditoriums, theaters and symphony and concert halls.

1250 (f) One parking space for each 100 feet of gross floor space
1251 directed to patron use shall be provided for museums, art galleries and historical
1252 societies.

1253 (5) Child Care Centers, public schools having multiple curricula and
1254 private schools having curricula approximately the same as ordinarily given in public
1255 schools provided that:

1256 (a) The structures are placed not less than 50 feet from any
1257 property line.

1258 (b) Play areas shall be placed not less than 20 feet from any
1259 property line.

1260 (c) There is a planted buffer strip along the side and rear
1261 property lines, except where the lines run parallel and contiguous with streets,
1262 streambeds, lakes and railroad tracks.

1263 (d) The property has at least 45 feet of frontage on a publicly
1264 owned and maintained road.

1265 (6) Adult Day Care Centers and Adult Day Health Centers provided
1266 that:

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1267 (a) The structures are placed not less than 50 feet from any
1268 property line.

1269 (b) There is a planted buffer strip along the side and rear
1270 property lines, except where the lines run parallel and contiguous with streets,
1271 streambeds, lakes and railroad tracks.

1272 (c) The property has at least 45 feet of frontage on a publicly
1273 owned and maintained road.

1274 (7) Adult Day Care Homes and Adult Day Health Homes provided
1275 that:

1276 (a) There is a limit of 10 clients per day.

1277 (D) *Dimensional requirements.* Within the MR-30 Residential District, as
1278 shown on the Zoning Map of the Town of Mills River, the following dimensional
1279 requirements shall be met:

1280 (1) Minimum lot area: 30,000 square feet¹.

1281 (2) Minimum lot area per dwelling: 30,000 square feet¹.

1282 (3) Maximum building size: N/A.

1283 (4) Maximum building height: 50 feet.

1284 (5) Minimum front yard setback from major street: 75 feet².

1285 (6) Minimum front yard setback from all other streets: 60 feet

1286 (7) Minimum rear yard setback: 30 feet.

1287 (8) Minimum side yard setback for every principal building: 30
1288 feet.

1289 NOTE:

1290 ¹This minimum lot size shall not apply to existing residential lots nor lots
1291 which have been platted and recorded as residential lots with the Henderson County

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1292 Register of Deeds as of 31 July 2004; ~~nor shall the lots be considered as~~
1293 ~~nonconforming under this designation.~~ In cases where the Watershed Protection
1294 Ordinance requires a larger lot size, the Henderson County Water Supply Watershed
1295 Ordinance shall prevail

1296 ²Where the major street is more than 2 lanes, including parking lanes, setback
1297 requirements shall be measured and begin at a point on the pavement 12 feet from
1298 the edge of the paved street abutting the subject property.

1299 (E) *Buffer/Screening Requirements.*

1300 (1) Whenever any MR30 - Residential District non-residential rear
1301 and/or side property line abuts upon a residential use with no intervening street or
1302 highway or natural buffer, any buildings or parking area used for non-residential
1303 purposes shall be screened with a buffer strip along the property line(s) as defined
1304 in § 154.007(B).

1305 (2) In all other cases, uses in the MR-30 Residential District shall
1306 comply with applicable landscaping and screening requirements in the Town of Mills
1307 River Landscape Ordinance.

1308 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1309 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1310 Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013)

1311 **§ 154.048 [RESERVED].**

1312 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1313 2005; Am. Ord. 00038, passed 11-21-2006)

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1314 **§ 154.049 [RESERVED].**

1315 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1316 2005; Am. Ord. 00038, passed 11-21-2006)

1317 **§ 154.050 [RESERVED].**

1318 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1319 2005; Am. Ord. 00038, passed 11-21-2006)

1320 **§ 154.051 [RESERVED].**

1321 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1322 2005; Am. Ord. 00038, passed 11-21-2006)

1323 **§ 154.052 [RESERVED].**

1324 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1325 2005; Am. Ord. 00038, passed 11-21-2006)

1326 **§ 154.053 [RESERVED].**

1327 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1328 2005; Am. Ord. 00038, passed 11-21-2006)

1329 **§ 154.054 [RESERVED].**

1330 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1331 2005; Am. Ord. 00038, passed 11-21-2006)

1332 **§ 154.055 MR-LIGHT INDUSTRIAL DISTRICT.**

1333 The MR - Light Industrial District provides a place for the location of industrial
1334 and other uses that would be incompatible with general business areas. It is
1335 intended to permit, in this district, any use that is not inherently obnoxious to urban

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1336 and rural areas because of noise, odor, smoke, light, vibration, dust or the use or
1337 storage of dangerous chemicals and/or materials.

1338 (A) *MR-LI Light Industrial District.* Within the MR - Light Industrial
1339 District, the following uses are permitted:

1340 (1) Farm machinery assembly.

1341 (2) Automotive components and parts manufacturing.

1342 (3) Industrial equipment, sales and repairs.

1343 (4) Machine and welding shops.

1344 (5) Milk distribution facilities.

1345 (6) Pharmaceutical manufacturing.

1346 (7) Printing, publishing, reproducing establishments.

1347 (8) Warehouses.

1348 (9) Trucking terminals.

1349 (10) Child care centers.

1350 (11) Family child care homes and incidental home occupations per §
1351 154.105(G).

1352 (12) Manufacture, processing, distribution or fabrication of the
1353 following products:

1354 (a) Animal feeds;

1355 (b) Bedding, carpets and pillows;

1356 (c) Clothing, including hosiery;

1357 (d) Electrical and electronic products;

1358 (e) Fiber-optic cable;

1359 (f) Foods, food products, beverages and beverage products,
1360 including bottling of beverages and beverage products;

1361 (g) Furniture industries;

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- 1362 (h) Glass;
- 1363 (i) Household appliances;
- 1364 (j) Ice;
- 1365 (k) Leather goods, not to include processing or storage of
- 1366 raw hides;
- 1367 (l) Machine tools;
- 1368 (m) Metals and metal products;
- 1369 (n) Paints;
- 1370 (o) Paper products, not including the manufacturing or
- 1371 processing of paper;
- 1372 (p) Plastics;
- 1373 (q) Pottery, porcelain and vitreous china;
- 1374 (r) Rubber products, not to include the processing or
- 1375 manufacture of rubber;
- 1376 (s) Soap, detergent and washing compounds;
- 1377 (t) Textiles.
- 1378 (13) Group 1 communications towers and tower activities (as
- 1379 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1380 (14) Group 2 communications towers and tower activities (as
- 1381 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1382 (15) Group 3 communications towers and tower activities (as
- 1383 defined in and subject to the requirements in §§ 154.090 through 154.101).
- 1384 (16) Solar energy generation facilities subject to the list of uses
- 1385 permitted with standards to § 154.066(E)(1) including subject to § 154.089.
- 1386 (B) *Secondary uses*. For purposes of this § 154.055, a **SECONDARY USE** is
- 1387 defined as a use which is incidental, supplemental or accessory to the principal use of

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1388 the property and may include a structure or structures at any location upon the
1389 property, which structure is utilized for a secondary use. Within the MR-Light
1390 Industrial District, the following secondary uses are permitted:

1391 (1) Cafeterias, restaurants and pubs, including catering activities.

1392 (2) The promotion, sale and tasting of products manufactured or
1393 processed on site.

1394 (3) Recreation facilities (indoor and outdoor).

1395 (4) Assembly, including venues for entertainment and other special
1396 events and conferences.

1397 (5) Facilities for alternative energy sources, including but not
1398 limited to solar panels, wind turbines, and converters or processors to recycle
1399 materials into usable energy to be used on site.

1400 (6) Retail facilities (gift shop, sundry shop).

1401 (7) Sales training and meeting facilities related to the principal use,
1402 including overnight lodging.

1403 (8) Agriculture for production of goods to be used in connection
1404 with any permitted principal or secondary use.

1405 (9) Adult Day Care Centers and Adult Day Health Centers, provided
1406 that the structures comply with the District's setbacks.

1407 (10) Solar panels shall be allowed as a secondary use as defined in
1408 this chapter. They shall not be allowed in front yards except by ~~conditional~~ [Minor](#)

1409 [Special Use Permit](#) as approved by the Board of Adjustment. Application for a
1410 ~~conditional~~ [special](#) use [permit](#) shall include justification for why the panels must be

1411 placed in the front yard and show that there is no practical alternative. Solar panels
1412 shall be subject to the setback requirements for structures in each district. Stand-

1413 alone solar panels shall be limited to 10 feet in height. Solar panels attached to

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1414 buildings shall be extend more than 5 feet above the building. Stand-alone solar
1415 panels that are secondary uses to residential uses shall not be required to buffer.
1416 Stand-alone solar panels that are secondary uses to commercial uses shall be required
1417 to plant a buffer strip along side and rear property lines as defined in the zoning
1418 definitions. Residential panels shall not produce more than 150% of the power
1419 required for the site.

1420 (11) Wind turbines shall be allowed in all districts under a [Major](#)
1421 ~~s~~[Special](#) ~~u~~[Use](#) ~~p~~[Permit](#) under § 154.138. Wind turbines shall be required to have a
1422 setback from all property lines of 2 times the fall radius of the wind turbine.

1423 (C) ~~Conditional uses~~[Uses requiring a Minor Special Use Permit](#).

1424 (1) Gasoline, oil or fuel products. Wholesale storage (including
1425 bottled gas and oxygen) above ground, provided permit is obtained from the fire
1426 marshal as required by the fire prevention code and all activity complies with
1427 applicable federal, state and local laws, rules and regulations.

1428 (2) Uses not otherwise named herein which come within the spirit
1429 and intent of this district; subject to a finding by the Board of Adjustment that both
1430 the conditions and the definition of ~~CONDITIONAL~~ [SPECIAL USE](#) in § 154.007(B) and
1431 those listed below are met.

1432 (a) The proposed use would not involve the manufacture,
1433 use in manufacture, storage on, in, or above ground on the premises; any type of
1434 chemical, in any form, which due to its nature, is known to be hazardous to human
1435 health due to radiation or toxicity or known to be a carcinogen.

1436 (b) The proposed use must meet all dimensional signage,
1437 buffer and parking requirements of this chapter.

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1438 (D) *Dimensional requirements.* Within the MR-Light Industrial District, as
1439 shown on the Zoning Map of the Town of Mills River, the following dimensional
1440 requirements shall be met:

1441 (1) Minimum lot size is 1 acre, and building(s) footprint shall cover
1442 no more than 50% of the total lot area.

1443 (2) Minimum mean lot width: 200 feet.

1444 (3) Minimum front yard setback from major street: 75 feet¹.

1445 (4) Minimum front yard setback from all other streets: 60 feet.

1446 (5) Minimum rear yard setback: 20 feet.

1447 (6) Minimum side yard setback for every principal building: 15
1448 feet.

1449 (7) Maximum height of building: 80 feet.

1450 NOTE:

1451 1 Where the major street is more than 2 lanes, including parking lanes,
1452 setback requirements shall be measured and begin at a point on the pavement 12 feet
1453 from the edge of the paved street abutting the subject property.

1454 (E) *Accessory structures.*

1455 (1) Location of a guard house or security structure(s) may be in any
1456 front or side yard, but must be at least 20 feet from any street or highway line, and
1457 not within 10 feet of any lot line not a street or highway line. An accessory building
1458 or use shall be located in the rear yard provided it is located not less than 10 feet from
1459 the property line. In the case of a corner lot with reversed frontage, no accessory
1460 building shall extend beyond the front yard line of the lots in the rear.

1461 (2) Whenever the location of an accessory building abuts upon a
1462 residential use with no intervening street or highway or natural buffer, any buildings

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1463 or parking areas used for non-residential purposes shall be screened with a buffer
1464 strip along the property line(s) as defined in § 154.007(B).

1465 (F) *Off-street parking and loading requirement.* Off-street parking as
1466 required by this chapter may be permitted in required yards and within the required
1467 setback, but shall not be closer than 10 feet from the front property line or any
1468 dedicated street right-of-way.

1469 (G) *Buffer/screening requirements.*

1470 (1) Whenever any non-residential MR - Light Industrial District
1471 rear and/or side property line abuts upon a residential use with no intervening street
1472 or highway or natural buffer, any buildings or parking area used for non-residential
1473 purposes shall be screened with a buffer strip along the property line(s) as defined in
1474 § 154.007(B).

1475 (2) In all other cases, uses in the MR-Light Industrial District shall
1476 comply with applicable landscaping and screening requirements in the Town of Mills
1477 River Landscape Ordinance.

1478 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1479 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1480 Ord. 00066, passed 4-28-2011; Am. Ord. 00071, passed 3-22-2012; Am. Ord. 00080,
1481 passed 5-23-2013)

1482 **§ 154.056 [RESERVED].**

1483 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1484 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011)

1485 **§ 154.057 MR-GENERAL BUSINESS DISTRICT.**

1486 The MR - General Business District provides a place for offices, personal
1487 services, and the retailing of durable and convenience goods for the community.
1488 Districts are located on major thoroughfares and collector streets. Because these
1489 commercial uses are subject to public view and are important to the economy of the
1490 community, they shall have ample parking, controlled traffic movement and suitable
1491 landscaping.

1492 (A) *Uses.* Within the MR - General Business District, the following uses
1493 are permitted:

- 1494 (1) Adult Day Care Centers and Adult Day Health Centers.
1495 (2) Animal hospitals or kennels.
1496 (3) Automobile parts and suppliers, repair garages, excluding open
1497 storage of wrecked [or inoperable](#) vehicles.
1498 (4) Automobile sales, new and used.
1499 (5) Automobile washing establishments.
1500 (6) Bakeries and retail.
1501 (7) Banks, loan offices and agencies.
1502 (8) Barbershops and beauty shops.
1503 (9) Building supply and equipment sales.
1504 (10) Business, professional, government, religious, charitable offices
1505 or agencies.
1506 (11) Child Care Centers.
1507 (12) Churches.
1508 (13) Computer, sales and services.
1509 (14) Convenience stores with gas pumps, provided the pumps are
1510 located at least 15 feet from all property lines.

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- 1511 (15) Customary accessory uses and structures when located on the
1512 same zoning lot as the principal structure, excluding open storage.
- 1513 (16) Dairy bars and ice cream manufacturing for retail sales on the
1514 premises only.
- 1515 (17) Dry cleaning or laundry pickup stations.
- 1516 (18) Drug stores.
- 1517 (19) Electrical and electronic products, retail.
- 1518 (20) Electric repair shops.
- 1519 (21) Family Child Care Homes and Incidental Home Occupations per
1520 § 154.105(G).
- 1521 (22) Florists.
- 1522 (23) Funeral homes or mortuaries.
- 1523 (24) Furniture and household appliance stores.
- 1524 (25) Gift shops.
- 1525 (26) Greenhouses or horticultural nurseries.
- 1526 (27) Grocery, food, fruit and meat stores.
- 1527 (28) Hardware stores.
- 1528 (29) Jewelry shops.
- 1529 (30) Kindergartens and day nurseries, provided that outdoor play
1530 area is enclosed by a sturdy fence at least 5 feet in height.
- 1531 (31) Laundromats and similar automatic laundries.
- 1532 (32) Libraries, art galleries, museums, music or dancing institutions
1533 or schools.
- 1534 (33) Locksmiths and gunsmiths.
- 1535 (34) Newspaper offices.
- 1536 (35) Extended care facilities.

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- 1537 (36) Office supplies and equipment, sales and services.
- 1538 (37) Opticians.
- 1539 (38) Photographic studios and camera supply stores.
- 1540 (39) Physical fitness centers.
- 1541 (40) Plumbing supply, retail.
- 1542 (41) Printing, publishing and reproducing establishments.
- 1543 (42) Public or privately owned medical and dental clinics, and offices
- 1544 where medical or dental services are rendered.
- 1545 (43) Radio and television repair shops.
- 1546 (44) Restaurants.
- 1547 (45) Retail establishments such as a department, clothing, fabric,
- 1548 variety, floor covering, paint, antique, art goods, gift, music, toy, sporting goods, book
- 1549 and stationery, magazine, candy, tobacco, pet, hobby and craft stores, but not
- 1550 excluding similar retail outlets.
- 1551 (46) Service stations, provided that all gasoline pumps and other
- 1552 stationary equipment shall be located at least 15 feet behind the property line.
- 1553 Furthermore, all sides where the stations abut residential districts, a fence 6 feet in
- 1554 height and suitable landscaping shall be provided.
- 1555 (47) Shoe repair shops.
- 1556 (48) Sign making and painting shops.
- 1557 (49) Tailor and dressmaking shops.
- 1558 (50) Wholesale and warehouse establishments except for the storage
- 1559 of uncured hides, explosives, oil products, gasoline, harmful or dangerous chemicals
- 1560 or materials, and the like.
- 1561 (51) Group 1 communications towers and tower activities (as
- 1562 defined in and subject to the requirements in §§ 154.090 through 154.101).

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1563 (52) Group 2 communications towers and tower activities (as
1564 defined in and subject to the requirements in §§ 154.090 through 154.101).

1565 (53) Group 3 communications towers and tower activities (as
1566 defined in and subject to the requirements in §§ 154.090 through 154.101).

1567 (54) Electronic gaming operations as a secondary use by right to the
1568 primary use of indoor retail businesses in the Mills River General Business (MR-GB)
1569 District. A maximum of 2 machines shall be allowed per establishment.

1570 (55) Solar panels shall be allowed as a secondary use as defined in
1571 this chapter. They shall not be allowed in front yards except by ~~conditional~~ [a Minor](#)
1572 [Special Use Permit](#) as approved by the Board of Adjustment. Application for a
1573 ~~conditional~~ [special](#) use [permit](#) shall include justification for why the panels must be
1574 placed in the front yard and show that there is no practical alternative. Solar panels
1575 shall be subject to the setback requirements for structures in each district. Stand-
1576 alone solar panels shall be limited to 10 feet in height. Solar panels attached to
1577 buildings shall extend more than 5 feet above the building. Stand-alone solar
1578 panels that are secondary uses to residential uses shall not be required to buffer.
1579 Stand-alone solar panels that are secondary uses to commercial uses shall be required
1580 to plant a buffer strip along side and rear property lines as defined in the zoning
1581 definitions. Residential panels shall not produce more than 150% of the power
1582 required for the site.

1583 (56) Wind turbines shall be allowed in all districts under a special
1584 use permit under § 154.138. Wind turbines shall be required to have a setback from
1585 all property lines of 2 times the fall radius of the wind turbine.

1586 (B) ~~Conditional uses~~ [Uses requiring a Minor Special Use Permit](#).

1587 (1) Commercial uses not otherwise named herein which come
1588 within the spirit and intent of this district; subject to a finding by the Board of

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1589 Adjustment that both the conditions and the definition of ~~CONDITIONAL~~ [SPECIAL](#)
1590 **USE** in § 154.007(B) are met.

1591 (2) Shopping centers.

1592 (3) Hotels, inns, and motels.

1593 (4) Bowling alleys, skating rinks, miniature golf courses,
1594 gymnasiums and other private or publicly owned and operated recreational facilities.

1595 (5) Drive-in restaurants.

1596 (6) Assembly halls, auditoriums and similar structures.

1597 (7) Mixed uses, where buildings are erected for both dwelling and
1598 business purposes, provided the buildings shall be furnished with side yards on each
1599 side of the building measuring not less than 8 feet in width. This regulation shall
1600 not apply to the street side of a corner lot.

1601 (8) Retail and wholesale sales and storage of propane, provided
1602 permit is obtained from appropriate fire marshal and the conditions and the
1603 definition of ~~CONDITIONAL~~ [SPECIAL](#) **USE** in § 154.007(B) are met.

1604 (9) Structured Home Environments, subject to the conditions listed
1605 under § 154.085.

1606 (C) *Dimensional requirements.* Within the MR- General Business
1607 District, as shown on the Zoning Map of the Town of Mills River, the following
1608 dimensional requirements shall be met:

1609 (1) There is no minimum lot size, however the building(s) footprint
1610 shall cover no more than 50% of the total lot area.

1611 (2) Minimum mean lot width: 75 feet.

1612 (3) Minimum front yard setback from major street: 50 feet¹.

1613 (4) Minimum front yard setback from all other streets: 40 feet.

1614 (5) Minimum rear yard setback: 30 feet.

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1615 (6) Minimum side yard setback for every principal building: 15
1616 feet.

1617 (7) Maximum height of building: 50 feet.

1618 NOTE:

1619 1 Where the major street is more than 2 lanes, including parking lanes,
1620 setback requirements shall be measured and begin at a point on the pavement 12 feet
1621 from the edge of the paved street abutting the subject property.

1622 (D) *Accessory structures.*

1623 (1) An accessory building or use shall be located in the rear yard
1624 provided it is located not less than 10 feet from the property line. In the case of a
1625 corner lot with reversed frontage, no accessory building shall extend beyond the front
1626 yard line of the lots in the rear.

1627 (2) Whenever the location of an accessory building abuts upon a
1628 residential use with no intervening street or highway or natural buffer, any buildings
1629 or parking area used for non-residential purposes shall be screened with a buffer
1630 strip along the property line(s) as defined in § 154.007(B).

1631 (E) *Off-street parking and loading requirement.* Off-street parking as
1632 required by this [chapter section](#) may be permitted in required yards, but shall not be
1633 closer than 10 feet from the front property line or any dedicated street right-of-way.

1634 (F) *Buffer/screening requirements.*

1635 (1) Whenever any non-residential MR-General Business rear
1636 and/or side property line abuts upon a residential use with no intervening street or
1637 highway or natural buffer, any buildings or parking area used for non-residential
1638 purposes shall be screened with a buffer strip along the property line(s) as defined in
1639 § 154.007(B).

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1640 (2) In all other cases, uses in the MR-General Business District
1641 shall comply with applicable Landscaping and screening requirements in the Town of
1642 Mills River Landscape Ordinances.

1643 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1644 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1645 Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080,
1646 5-23-2013)

1647 **§ 154.058 MR-NEIGHBORHOOD COMMERCIAL.**

1648 The purpose of this district is to provide for compatible residential and
1649 commercial uses, which protect and enhance the rural characteristic of Mills River.

1650 (A) *Uses.* Within the MR Neighborhood Commercial district, the
1651 following uses are permitted:

1652 (1) Retail business or service conducted within an enclosed
1653 building.

1654 (2) Retail business making products sold primarily at retail on the
1655 premises.

1656 (3) Other public utilities, public facilities and public buildings.

1657 (4) Offices: business, professional, medical and public.

1658 (5) Single-family dwellings.

1659 (6) Family care homes.

1660 (7) Adult Day Health Homes, Adult Day Health Centers, Adult Day
1661 Care Homes and Adult Day Care Centers.

1662 (8) Child Care Centers.

1663 (9) Family Child Care Homes and Incidental Home Occupations per
1664 § 154.105(G).

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1665 (10) Customary accessory buildings.

1666 (11) Group 1 communications towers and tower activities as defined
1667 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1668 Zoning Ordinance.

1669 (12) Group 2 communications towers and tower activities as defined
1670 in and subject to the requirements in §§ 154.090 through 154.101 of Mills River
1671 Zoning Ordinance.

1672 (13) Solar panels shall be allowed as a secondary use as defined in
1673 this chapter. They shall not be allowed in front yards except by ~~conditional~~ a Minor
1674 Special Use Permit as approved by the Board of Adjustment. Application for a
1675 ~~conditional~~ special use shall include justification for why the panels must be placed in
1676 the front yard and show that there is no practical alternative. Solar panels shall be
1677 subject to the setback requirements for structures in each district. Stand-alone
1678 solar panels shall be limited to 10 feet in height. Solar panels attached to buildings
1679 shall extend more than 5 feet above the building. Stand-alone solar panels that are
1680 secondary uses to residential uses shall not be required to buffer. Stand-alone solar
1681 panels that are secondary uses to commercial uses shall be required to plant a buffer
1682 strip along side and rear property lines as defined in the zoning definitions.
1683 Residential panels shall not produce more than 150% of the power required for the
1684 site.

1685 (14) Wind turbines shall be allowed in all districts under a Major
1686 Special Use Permit under § 154.138. Wind turbines shall be required to have a
1687 setback from all property lines of 2 times the fall radius of the wind turbine.

1688 (B) Uses allowed under a Minor Special Use Permit ~~Conditional uses~~. The
1689 following uses shall be permitted, subject to a finding by the Board of Adjustment that

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1690 both the conditions in the definition of ~~CONDITIONAL~~ SPECIAL USES in § 154.007(B)
1691 and those conditions listed below will be met:

1692 (1) Hospitals, clinics, veterinary clinics, libraries, schools and
1693 churches, excluding cemeteries.

1694 (2) Restaurants, bed-and-breakfast establishments.

1695 (3) Home occupations.

1696 (4) Civic and cultural buildings, including auditoriums, theaters for
1697 the performing arts, museums, art galleries, symphony and concert halls and
1698 historical societies. The uses must meet the same site requirements stated in §
1699 154.047(A)(9).

1700 (5) Structured Home Environments, subject to the conditions listed
1701 under § 154.085.

1702 (C) *Dimensional requirements-Residential.* Within the MR-
1703 Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills
1704 River, the following dimensional requirements shall be met:

1705 (1) Minimum lot area: 30,000 square feet.¹

1706 (2) Minimum lot area per dwelling: 30,000 square feet¹.

1707 (3) Maximum building size: N/A.

1708 (4) Maximum building height: 50 feet.

1709 (5) Minimum front yard setback from major street: 75 feet².

1710 (6) Minimum front yard setback from all other streets: 60 feet.

1711 (7) Minimum rear yard setback: 30 feet.

1712 (8) Minimum side yard setback for every principal building: 30
1713 feet.

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1714 (D) *Dimensional requirements–non-residential.* Within the MR–
1715 Neighborhood Commercial District, as shown on the Zoning Map of the Town of Mills
1716 River, the following dimensional requirements shall be met:

- 1717 (1) Minimum lot area: 30,000 square feet.¹
1718 (2) Maximum building size: 10,000 square feet.
1719 (3) Maximum building height: 30 feet.
1720 (4) Minimum front yard setback from major street: 75 feet².
1721 (5) Minimum front yard setback from all other streets: 60 feet.
1722 (6) Minimum rear yard setback: 30 feet.
1723 (7) Minimum side yard setback for every principal building: 30
1724 feet.

1725 NOTE:

1726 1 This minimum lot size shall not apply to existing residential lots nor
1727 lots which have been platted and recorded with the Henderson County Register of
1728 Deeds as of 31 July 2004; ~~nor shall the lots be considered as nonconforming under~~
1729 ~~this designation.~~ In cases where the Watershed Protection Ordinance requires a
1730 larger lot size, the Henderson County Water Supply Watershed Ordinance shall
1731 prevail.

1732 2 Where the major street is more than 2 lanes, including parking lanes,
1733 setback requirements shall be measured and begin at a point on the pavement 12 feet
1734 from the edge of the paved street abutting the subject property.

1735 (E) *Maximum permissible lot coverage.* The total ground area covered by
1736 the building in this district shall not exceed 50% of the total lot area.

1737 (F) *Buffer/Screening Requirements.*

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1738 (1) Whenever any non-residential MR-Neighborhood Commercial
1739 District rear and/or side property line abuts upon a residential use with no
1740 intervening street or highway or natural buffer, any buildings or parking area used
1741 for non-residential purposes shall be screened with a buffer strip along the property
1742 line(s) as defined in § 154.007(B).

1743 (2) In all other cases, uses in the MR-Neighborhood Commercial
1744 District shall comply with applicable landscaping and screening requirements in the
1745 Town of Mills River Landscape Ordinance.

1746 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1747 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am.
1748 Ord. 00067, passed 7-22-2010; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080,
1749 passed 5-23-2013)

1750 **§ 154.059 [RESERVED].**

1751 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1752 2005; Am. Ord. 00038, passed 11-21-2006)

1753 **§ 154.060 [RESERVED].**

1754 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1755 2005; Am. Ord. 00038, passed 11-21-2006)

1756 **§ 154.061 [RESERVED].**

1757 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1758 2005; Am. Ord. 00038, passed 11-21-2006)

1759 **§ 154.062 [RESERVED].**

1760 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1761 2005; Am. Ord. 00038, passed 11-21-2006)

1762 **§ 154.063 [RESERVED].**

1763 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1764 2005; Am. Ord. 00038, passed 11-21-2006)

1765 **§ 154.064 [RESERVED].**

1766 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1767 2005; Am. Ord. 00038, passed 11-21-2006)

1768 **§ 154.065 [RESERVED].**

1769 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1770 2005; Am. Ord. 00038, passed 11-21-2006)

1771 **§ 154.066 MR-MIXED USE DISTRICT.**

1772 The MR-Mixed Use District is established to allow all uses (excluding
1773 hazardous waste disposal facilities and radioactive waste disposal facilities and adult
1774 establishments) but to regulate certain uses so as to ensure that neighborhood impact
1775 is mitigated. The neighborhood impact from the uses listed below will be mitigated
1776 through the use of minimum specific site standards combined with general standards
1777 which provide the flexibility to impose a higher level of specific site standards
1778 dependent upon the degree of neighborhood impact.

1779 (A) *Minimum residential lot size.* In keeping with the intent to enhance
1780 and protect the rural character of Mills River, residential lot sizes shall be no less than
1781 30,000 square feet per single-family dwelling. This minimum lot size shall not

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1782 apply to existing residential lots nor [residential](#) lots which have been platted and
1783 recorded with the Henderson County Register of Deeds as of 31 July 2004; ~~nor shall~~
1784 ~~the lots be considered as nonconforming under this designation.~~ In cases where the
1785 Watershed Protection Ordinance requires a larger lot size, the Henderson County
1786 Water Supply Watershed Ordinance shall prevail.

1787 (B) *Definitions.* The following definitions are applicable in this § 154.066
1788 and in other sections of this chapter only as specifically stated in the other sections:

1789 **ACCESS ROAD CORRIDOR.** A private passageway containing a road,
1790 street, driveway, and the like, that provides the principal means of direct vehicular
1791 entry and/or exit between a regulated use and a paved, public road, street or highway.
1792 An access road corridor shall be located entirely on the subject property or on an
1793 easement appurtenant. An access road corridor shall contain a clear and
1794 unobstructed travelway, except for any necessary security gates, and shall have a
1795 minimum vertical clearance of a least 13 feet, 6 inches.

1796 **BUFFER.** A continuous strip of land, measured from the property
1797 lines or from any street bordering or traversing the property (whichever is closer to
1798 the principal use or building), in which no development or principal use may occur,
1799 but which may contain screening, fencing, interior service roads not intended for
1800 patron use, principal use signs, business signs and gate or security houses. Access
1801 road corridors may cross the buffer at entrance and exit points only.

1802 **EXTREMELY HAZARDOUS FACILITY.** Any industrial facility that
1803 stores, handles, processes or manufactures any material, substance or product that is
1804 considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by
1805 inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive
1806 substance or material, all as classified by the United States Department of
1807 Transportation Hazard Classification System.

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1808 **EXTREMELY HAZARDOUS SUBSTANCE.** Any material, substance or
1809 product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases
1810 toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7
1811 radioactive substance or material, all as classified by the United States Department of
1812 Transportation Hazard Classification System.

1813 **HEAVY INDUSTRY.** Any industrial use establishment that is an
1814 extremely hazardous facility as defined in § 154.066(A) of this chapter, or is a large
1815 quantity generator of hazardous waste as that term is defined by the North Carolina
1816 Department of Environment and Natural Resources. Specifically excluded from this
1817 definition are those establishments that are not extremely hazardous facilities that
1818 operate in an enclosed building(s) or structure(s) having a total gross floor area of
1819 less than 30,000 square feet; and those uses listed in § 154.066(G)(1)(a) through (k).

1820 **SETBACK.** A continuous strip of land, measured from the property
1821 lines or from any street bordering or traversing the property (whichever is closer to
1822 the principal use or building) in which no principal ~~structure~~use is permitted. Limited
1823 development, including buffers and related development, parking lots and accessory
1824 structures and buildings, access road corridors, and interior service roads, may occur
1825 within the setback.

1826 (C) *Uses allowed by right.* All uses are allowed by right in the MR-Mixed Use
1827 District unless otherwise regulated by this section or other parts of the Mills River
1828 Town Code. ~~Unless otherwise stated herein below:~~

1829 ~~—————(1)———— All uses are allowed by right in the MR-Mixed Use District unless~~
1830 ~~stated below;~~

1831 (21) Accessory structures and buildings of all uses allowed by right
1832 in the MR-Mixed Use District are exempted from those regulations contained in §
1833 154.1132.

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1834 (D) *Uses governed by other ordinances.* Within the MR-Mixed Use District
1835 the following uses will be allowed but will be entirely governed by the specified
1836 ordinances adopted by the Mills River Town Council:

1837 (1) Manufactured home parks: subject to compliance with Chapter
1838 151 of the Mills River Town Code, as may be amended.

1839 (2) Communication towers: subject to compliance with Chapter 152
1840 of the Mills River Town Code, as may be amended.

1841 (E) *Uses permitted with standards.*

1842 (1) The following uses shall be permitted with standards:

1843 (a) Vehicle graveyards (See § 154.087).

1844 (b) Mobile/manufactured home graveyards (See § 154.087).

1845 (2) Uses permitted with standards shall require a zoning permit
1846 from the Zoning Administrator.

1847 (3) Solar panels shall be allowed as a secondary use as defined in
1848 this chapter. They shall not be allowed in front yards except by ~~conditional~~ [Minor](#)

1849 [Special Use](#) ~~Permit~~ as approved by the Board of Adjustment. Application for a
1850 ~~conditional~~ [special](#) use [permit](#) shall include justification for why the panels must be

1851 placed in the front yard and show that there is no practical alternative. Solar panels
1852 shall be subject to the setback requirements for structures in each district. Stand-

1853 alone solar panels shall be limited to 10 feet in height. Solar panels attached to
1854 buildings shall be extend more than 5 feet above the building. Stand-alone solar

1855 panels that are secondary uses to residential uses shall not be required to buffer.
1856 Stand-alone solar panels that are secondary uses to commercial uses shall be required

1857 to plant a buffer strip along side and rear property lines as defined in the zoning
1858 definitions. Residential panels shall not produce more than 150% of the power

1859 required for the site.

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1860 (4) Wind turbines shall be allowed in all districts under a Major
1861 ~~s~~Special ~~u~~Use ~~p~~Permit under § 154.138. Wind turbines shall be required to have a
1862 setback from all property lines of 2 times the fall radius of the wind turbine.

1863 (F) *(Reserved)*

1864 (G) Special uses.

1865 (1) The following special uses shall be permitted in the MR-Mixed
1866 Use District under a Major Special Use Permit, subject to the Mills River Town Council
1867 finding that both the general site standards stated in § 154.138 and those specific site
1868 standards listed in § 154.087, if any, will be met:

1869 (a) Incinerators.

1870 (b) Solid waste management facilities.

1871 (c) Mining and extraction operations.

1872 (d) Concrete plants.

1873 (e) Asphalt plants.

1874 (f) Junkyards.

1875 (g) Motor sports facilities.

1876 (h) Slaughtering plants.

1877 (i) Amusement parks.

1878 (j) Chip mills.

1879 (k) Heavy industry.

1880 (l) Tiny home parks, park model parks, recreational vehicle
1881 parks.

1882 (2) It is expressly acknowledged that the above-referenced uses
1883 will not adversely affect the health or safety of persons residing or working in the
1884 neighborhood of the proposed use and will not be detrimental to the public welfare
1885 or injurious to property or public improvements in the neighborhood as long as the

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1886 site standards as specified in § 154.087 and the general site standards as specified in
1887 § 154.138(D) are met.

1888 (H) *Prohibited uses.* The following uses shall be prohibited in the MR-
1889 Mixed Use District:

1890 (1) Hazardous waste disposal facilities, unless preempted pursuant
1891 to G.S. § 130A-293.

1892 (2) Radioactive Waste Disposal Facilities, unless preempted
1893 pursuant to G.S. § 104E-6.2.

1894 (3) Adult establishments.

1895 (I) *Expansion and alteration of certain uses in the MR-Mixed Use District.*

1896 (1) *Uses having a special use permit.* The following requirements
1897 apply to those uses listed in § 154.066(G) which receive a special use permit after the
1898 effective date of a Zoning Map of the Town of Mills River amendment applying the
1899 MR-Mixed Use District in the applicable area:

1900 (a) *Alteration of a use (without physical expansion).*

1901 Alterations of the operations of a use shall be allowed as long as the alterations do not
1902 violate any specific standards of this chapter (see § 154.087), general standards of
1903 this chapter (see § 154.138) or conditions of the special use permit. If an alteration
1904 would result in the violation of any specific standards of this chapter (see § 154.087),
1905 general standards of this chapter (see § 154.138) or conditions of the special use
1906 permit, an amendment to the special use permit shall be required, otherwise the
1907 alteration will be deemed a violation of this chapter. This subsection shall not be
1908 deemed to allow a use to change to another use listed in § 154.066(G) without
1909 applying for a new special use permit. Alterations of operations shall include, but not
1910 be limited to, increases in productivity arising from the addition of equipment, the
1911 addition of employee shifts or the change of means and methods.

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1912 (b) *Physical expansion of a use.* A use may expand its facilities
1913 without any additional restrictions and without securing an amendment to the
1914 special use permit if the specific standards of this chapter (see § 154.087), general
1915 standards of this chapter (see § 154.138), or the conditions of the permit, if any, will
1916 not be violated and if the total size of the structures or areas devoted to the principal
1917 uses after the proposed expansion would not be increased by more than 10%.
1918 Notwithstanding the foregoing, no use may expand in accordance with the terms of
1919 this exception on more than 2 occasions without securing an amendment to the
1920 special use permit. All other expansions will require an amendment to the special use
1921 permit. If any condition of the special use permit will be violated by a proposed
1922 expansion to facilities, or the proposed expansion will result in more than 2
1923 expansions to facilities pursuant to the exception contained herein above, or the
1924 expansion results in the total size of the structures or areas devoted to the principal
1925 use being expanded by more than 10%, then the expansion will be deemed a violation
1926 of this chapter.

1927 (2) *Uses for which a special use permit was not required when*
1928 *established.* For those uses of the same type as those listed in § 154.066(G)
1929 constructed or established after the effective date of a Zoning Map of the Town of
1930 Mills River amendment applying the MR-Mixed Use District in the applicable area,
1931 which did not require a special use permit when the use was constructed or
1932 established, any expansion or alteration to the operations, or any expansion or
1933 alteration to the structures or areas devoted to the principal use, which bring the use
1934 within the definition for those uses listed in § 154.066(G) shall require a special use
1935 permit. The entire use, including but not limited to the expansion or alteration, shall
1936 be required to comply with all applicable standards in the MR-Mixed Use District.

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1937 (3) *Preexisting uses.* For those uses of the same type as those listed
1938 in § 154.066(G) constructed or established before the effective date of a Zoning Map
1939 of the Town of Mills River amendment applying the MR-Mixed Use District in the
1940 applicable area the following requirements shall apply:

1941 (a) *Alteration of a use (without physical expansion).*
1942 Alterations of the operations of a use of the type listed in § 154.066(G) shall be
1943 allowed without a special use permit if the use did not meet the definition of 1 of the
1944 uses listed in § 154.066(G) when constructed or established, and the alteration does
1945 not bring the use within the definition for 1 of the uses listed in § 154.066(G). If,
1946 however, the alteration will bring the use within the definition of 1 of the uses listed
1947 in § 154.066(G), then a special use permit shall be required. Once a special use permit
1948 is obtained for a preexisting use, however, further alterations shall be governed by §
1949 154.066(I)(1)(a) above.

1950 (b) *Physical expansion of a use.* Expansions of the facilities for
1951 uses of the type listed in § 154.066(G) shall be allowed without a special use permit
1952 if the use would not have met the definition of ~~1 of one of~~ the uses listed in §
1953 154.066(G) when constructed or established, and the expansion does not bring the
1954 use within the definition for ~~one~~ of the uses listed in § 154.066(G). If, however, the
1955 expansion will bring the use within the definition of ~~one~~ of the uses listed in §
1956 154.066(G) or the use would have met the definition of ~~one~~ of the uses listed in §
1957 154.066(G) when constructed or established, then a special use permit shall be
1958 required. Once a special use is obtained for a preexisting use, however, further
1959 expansions shall be governed by § 154.066(I)(1)(b) above.

1960 (c) *Applicable standards.* Notwithstanding any provisions of
1961 this chapter, alterations or expansions to uses required to obtain a special use permit
1962 pursuant to this § 154.066(I)(3) [whether or not they are later governed by §

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1963 154.066(I)(1)(a) or § 154.066(I)(1)(b) above] shall be required to meet the specific
1964 site standards listed in § 154.087 to the extent possible for the expanded or altered
1965 portion of the facility or operation only. Any the alteration or expansion shall be
1966 required to meet the general standards listed in § 154.138 with or without conditions
1967 imposed by the Mills River Town Council as allowed by this chapter. The conditions
1968 may include, but not be limited to, imposition of specific site standards of the types
1969 listed in § 154.087. Notwithstanding anything herein to the contrary, development
1970 occurring around a preexisting use will not affect the ability of the use to alter or
1971 expand its facilities or operations.

1972 (J) *Subsequent events.* Events occurring subsequent to the date of an
1973 application for a special use permit for those uses in the MR-Mixed Use District
1974 requiring the permit, including but not limited to the location of a health-care facility
1975 or school within the stated separation or a change in the residential density, shall not
1976 operate to invalidate the permit or affect the ability of the use to alter or expand its
1977 facilities or operations. In addition, development occurring around a preexisting use
1978 or a use for which a special use permit was not required when established will not
1979 affect the ability of the use to alter or expand its facilities or operations.

1980 (K) *Dimensional requirements - nonresidential.* Within the MR-Mixed Use
1981 District, as shown on the Zoning Map of the Town of Mills River, the following
1982 dimensional requirements shall be met:

1983 (1) Maximum building size: 15,000 square feet. Public Schools as
1984 defined in § 154.007(B) are exempt from this provision for building ~~size~~ maximum.

1985 (2) Maximum building height: 40 feet.

1986 (3) Minimum front yard setback from major street: 75 feet.²

1987 (4) Minimum front yard setback from all other streets: 60 feet.

1988 (5) Minimum rear and side yard setback: 30 feet.

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1989 (L) Buffer/screening *requirements*.

1990 (1) Whenever any non-residential MR-Mixed Use rear and/or side
1991 property line abuts upon a residential use with no intervening street or highway or
1992 natural buffer, any buildings or parking area used for non-residential shall be
1993 screened with a buffer strip along the property line(s) as defined in § 154.007(B).

1994 (2) In all other cases, uses in the MR-Mixed Use District shall comply
1995 with applicable landscaping and screening requirements in the Town of Mills River
1996 Landscape Ordinance.

1997 (Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-
1998 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00066, passed 4-28-2011; Am.
1999 Ord. 00080, passed 5-23- 2013; Am. Ord. 2018-03, passed 3-8-2018; Am. Ord. 2018-
2000 10, passed 11-8-2017)

2001 **SPECIAL PROVISIONS**

2002 **§ 154.080 SINGLE-FAMILY RESIDENTIAL CLUSTER**
2003 **DEVELOPMENT.**

2004 A single-family residential cluster development (SFRCD) may be located in the
2005 MR-30, MR-MU, and MR-NC districts as a special use under a Major Special Use
2006 Permit, subject to a finding by the Mills River Town Council on the advice and
2007 recommendation of the Town of Mills River Planning Board that certain conditions
2008 be met. The purpose of this section is to afford substantial advantages for greater
2009 flexibility and improved marketability through the benefits of efficiency which permit
2010 flexibility in building lot size. Densities are calculated on a project basis, thus allowing
2011 the clustering of single-family residential homes in order to create efficient use of land
2012 resulting in land conservation.

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2013 (A) Land development standards. The following land development
2014 standards shall apply for a single-family residential cluster development. Single-
2015 family residential cluster developments may be located in the MR-30 , MR-MU, and
2016 MR-NC districts as a special use, subject to a finding by the Mills River Town Council
2017 on the advice and recommendation of the Planning Board that certain conditions shall
2018 be met.

2019 (1) Ownership control. The land in a single-family residential
2020 cluster development shall be under single ownership or management by the applicant
2021 before final approval and/or construction, or proper assurances (legal title or
2022 execution of a binding sales agreement) shall be provided that the development can
2023 be successfully completed by the applicant.

2024 (2) Density requirements. The overall density (dwelling units per
2025 acre) of any proposed SFRCD ~~development~~ shall be ~~1~~one (1) dwelling unit per 40,000
2026 square feet.

2027 (a) The minimum lot size requirement for a detached single-
2028 family dwelling shall be no less than 20,000 square feet.

2029 (b) Streets, street right-of-way, utility station sites, lakes,
2030 ponds and other impervious structures, such as club houses, swimming pools and
2031 tennis courts may not be included when calculating the total acreage available for a
2032 SFRCD.

2033 (c) Open space within an SFRCD must be identified on the
2034 plat with the following language: “Natural Area – Not Subject to Development”.
2035 The plat shall be recorded in the office of the Register of Deed of Henderson County.
2036 Open space within a SFRCD shall remain in a vegetated or natural site.

2037 (3) Frontage requirements. Single-family residential cluster
2038 developments shall have the main entrance on a paved, public, state-maintained road

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2039 or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth
2040 of 200 feet.

2041 (4) Minimum size. The minimum area for a SFRCD development
2042 shall be 1-1/2 contiguous acres.

2043 (5) Residential uses. Only single-family detached homes shall be
2044 allowed in a SFRCD.

2045 (6) Minimum requirements.

2046 (a) The normal 30,000 square feet lot size, setbacks and
2047 frontage requirements are hereby waived for the SFRCD ~~development~~, provided that
2048 the spirit and intent of this section are complied with in the total development plan
2049 as determined by the Town Council. The Town Council shall exercise ultimate
2050 discretion as to whether the total development plan does comply with the spirit and
2051 intent of this section.

2052 1. Height limitations. No building or structure shall
2053 exceed 35 feet in height as measured from the highest ground elevation of the
2054 building or structure to the highest point of the roof or facade whichever is greater.

2055 2. Required distance between buildings. The
2056 minimum distance between buildings in a planned unit development shall be as
2057 follows:

2058 a. All buildings located or situated end to end
2059 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2060 of 20 feet between buildings. When ~~one~~ or both buildings exceed 20 feet in height,
2061 the building separation shall be increased an additional one (1) foot for every foot of
2062 increased height to a maximum of 30 feet.

2063 b. All buildings located or situated side to
2064 side or end to end (longest sides) and are less than 20 feet in height shall have a

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2065 minimum separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent
2066 buildings exceed 20 feet in height, the building separation shall be increased an
2067 additional [one \(1\)](#) foot for every foot of increased height to a maximum of 40 feet
2068 separation.

2069 (b) Publicly-owned and maintained water and sewer shall
2070 be required for a SFRC[D-development](#).

2071 (c) Streets within a SFRC[D-development](#) shall be built to
2072 meeting NCDOT standards.

2073 (d) Every dwelling unit shall have direct access to an interior
2074 road and there shall be provision for adequate vehicular circulation to all
2075 development properties in order to insure acceptable levels of access for emergency
2076 vehicles.

2077 (e) The location of structures, shown on the development
2078 plan, shall be so arranged as not to be detrimental to existing or other proposed
2079 structures or to the development of the neighborhood.

2080 (7) Privacy. Each development shall provide reasonable visual
2081 and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and
2082 landscaping shall be used as appropriate for the protection and aesthetic
2083 enhancement of property and the privacy of its occupants, screening of objectionable
2084 views or uses, and reduction of noise.

2085 (8) Perimeter requirements. If topographical or other barriers
2086 within 200 feet of the perimeter of the development do not provide reasonable
2087 privacy for existing uses adjacent to the development, the Town Council may impose
2088 any of the following requirements:

2089 (a) Structures located on the perimeter of the development
2090 must be set back from property lines and rights-of-way of abutting streets in

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2091 accordance with the provision of this chapter controlling the district within which the
2092 property is situated.

2093 (b) The location of the structures on the perimeter of the
2094 development, as shown on the development plan, shall be so arranged as not to be
2095 detrimental to existing structures or to the adjacent neighborhood.

2096 (9) SFRCD ~~development~~ in more than one~~1~~ district. If the SFRCD
2097 ~~development~~ lies in more than ~~1~~one (1) zoning district, the ~~number of~~ allowable
2098 dwelling unit ~~density s must~~ shall be one (1) dwelling unit per 40,000 square feet.

2099 (10) Plans and documentation. Plans and accompanying
2100 documentation to ensure that the water and sewer systems proposed for the SFRCD
2101 ~~development~~ have been designed by a professional engineer, and have been approved
2102 by the appropriate local and state agencies, shall be submitted as a part of the
2103 application.

2104 (11) Paths and walkways. Any pedestrian and bicycle path
2105 circulation system and its related walkways shall be insulated as reasonably as
2106 possible in order to provide separation of pedestrian and motorized vehicular traffic.

2107 (12) Areas. Layout of parking areas, service areas, entrance, exits,
2108 yards, courts and landscaping and control of signs, lighting, noise or other potentially
2109 adverse influences shall be such as to protect the residential character within the
2110 SFRCD and the desirable character in any adjoining property.

2111 (B) Timing. If no development has occurred pursuant to the issuance of
2112 a special use permit 1 year after the date of the special use permit for the SFRCD or
2113 upon the expiration of one 90 day extension of time for starting development granted
2114 by the Town Council, the special use permit shall become null and void and the
2115 procedures for application and review as outlined in this section shall be required for
2116 any development on the subject property.

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2117 (C) Staged development (phasing). After general construction
2118 commences, the Zoning Administrator shall review at least once every 6 months all
2119 permits issued and compare them to the overall development phasing program. If he
2120 or she determines that the rate of construction of residential units substantially
2121 differs from the approved phasing program, he or she shall so notify the developer,
2122 and the Town Council may issue the appropriate orders to the developer as it sees fit
2123 and, upon continued violation of this division, may order the Zoning Administrator to
2124 refuse any further permits until the project is in general accordance with the
2125 approved phasing program.

2126 (D) Conveyance of open space, recreational areas and communally owned
2127 facilities.

2128 (1) Common open space, recreational areas and communally
2129 owned facilities shall be guaranteed by a restrictive covenant describing the areas
2130 and facilities and their maintenance and improvement, running with the land for the
2131 benefit of residents of the SFRC development or adjoining property owners or both.

2132 (2) The applicant must submit to the Town Council the legal
2133 documents which will produce the aforesaid guaranties and, in particular, will
2134 provide for restricting the use of common areas and facilities for the designated
2135 purposes.

2136 (E) Maintenance. ~~SFRC~~DS ~~developments~~ shall be approved subject to the
2137 submission of an instrument or instruments setting forth a plan for permanent care
2138 and maintenance of permanent open spaces, recreational areas, easements, rights-of-
2139 way and communally owned facilities which would be legally enforceable. The
2140 developer shall create a homeowners' association and submit bylaws and rules and
2141 regulations governing the association. The developer shall be required to include in
2142 every deed he or she makes that membership be mandatory for each home buyer.

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2143 (1) The provisions shall include, but not be limited to, the following:

2144 (a) The homeowners' association must be set up before the
2145 homes are sold.

2146 (b) The open space restrictions must be permanent not just
2147 for a period of years.

2148 (c) The association must be responsible for liability
2149 insurance, local taxes and the maintenance of recreational and other designated
2150 facilities.

2151 (d) Homeowners must pay their pro rata share of the cost;
2152 the assessment levied by the association can become a lien on the property.

2153 (e) The association must be able to adjust the assessment to
2154 meet changed needs.

2155 (2) No instrument shall be acceptable until approved by the Town
2156 Attorney as to legal form and effect and the Town Council as to suitability for the
2157 proposed uses.

2158 (F) Procedures for application and review. An applicant desiring to
2159 develop a SFRC development shall adhere to the following procedures:

2160 (1) Pre-application conference. Prior to submission of an
2161 application for a special use permit to the Town Council, the applicant shall arrange a
2162 pre- application conference with the Planning Board and its staff.

2163 (a) The applicant shall submit to the Planning Board a sketch
2164 development plan and a brief description of the proposed development strategy. The
2165 sketch plan and development strategy shall show and describe the layout of the
2166 SFRC ~~development~~, depicting proposed areas and types of residential development,
2167 open spaces and recreation areas and streets.

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2168 (b) The pre-application conference is designed to inform the
2169 developer of the local government's regulations and policies concerning development
2170 alternatives and to inform the local government of the developer's intentions, enough
2171 to be able to give him or her some informal, non-binding feedback on the acceptability
2172 of his or her ideas. The greater the level of common understanding between the
2173 developer and the local government that can be achieved at the pre-application
2174 conference stage, the smoother the remaining steps of the review process will be.

2175 (2) Special use permit. Upon completion of the pre-application
2176 conference with the Planning Board, the applicant shall submit to the Town Council a
2177 written application for a special use permit in accordance with § 154.180.

2178 (3) Development plan. After the pre- application conference and
2179 upon submission of a written application for a special use permit, the applicant shall
2180 submit a development plan to the Town Council. A second copy of the development
2181 plan shall be submitted to the Planning Board for review and recommendations. The
2182 Town Council shall not issue a special use permit until it has received
2183 recommendations from the Planning Board. If no action is taken by the Planning
2184 Board within 45 days of the meeting at which the Planning Board first considers the
2185 development plan, it shall be deemed to have recommended approval of the
2186 development plan, and the Town Council may proceed to act upon the application.

2187 (4) The Planning Board shall review the development plan for
2188 conformance with the land development standards of this section, the sketch plan and
2189 development strategy presented in the pre- application conference and the
2190 requirements of the development plan which shall include the following information
2191 and supporting documentation:

2192 (a) Written documents.

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- 2193 1. A legal description of the total site proposed for
2194 development, including a statement of present and proposed ownership.
- 2195 2. The zoning district or districts in which the
2196 project is located.
- 2197 3. A general statement of objectives to be achieved
2198 by the SFRC development through the particular approach proposed by the applicant.
- 2199 4. A development schedule indicating approximate
2200 beginning and completion dates of the development, including any proposed stages.
- 2201 5. A statement of the applicant's intentions with
2202 regard to the future selling and/or leasing of all or portions of the SFRCD
2203 development.
- 2204 6. Quantitative data for the following: proposed
2205 total number of residential dwelling units, parcel sizes, gross residential densities and
2206 total amount of open space.
- 2207 7. Plan for maintenance of common areas,
2208 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.
- 2209 (b) Site plan and supporting maps. A map or maps drawn to
2210 an appropriate scale, with the date of preparation and North point, shall include the
2211 following information:
- 2212 1. Existing site conditions, including contours,
2213 watercourses, identified flood hazard areas and any unique natural or man-made
2214 features.
- 2215 2. Boundary lines of the proposed development,
2216 proposed lot lines and plot designs.
- 2217 3. Proposed location and use of all existing and
2218 proposed structures.

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2219 4. Location and size of all areas to be conveyed,
2220 dedicated or reserved as common open space, parks, recreational areas, school sites
2221 and similar public and semipublic uses.

2222 5. The existing and proposed street and/or
2223 vehicular circulation facilities, including off-street parking areas, service areas,
2224 loading areas and major points of access to public rights-of-way, notations of
2225 proposed ownership of street and/or vehicular circulation facilities (public or
2226 private); documentation from Henderson County Emergency Medical Services and
2227 the Mills River Fire Chief of the adequacy of the development's facilities for
2228 emergency medical and fire services.

2229 6. Approximate location of proposed utility systems,
2230 including documentation approving the proposed water and sewer systems from the
2231 appropriate local and state agencies. Water and sewer documentation must reflect
2232 the current development name and densities, be issued within the past 6 months and
2233 state that the public entity intends to accept both flow and maintenance.
2234 Documentation of an approved sedimentation and erosion control plan shall also be
2235 submitted.

2236 7. Location and/or notation of existing and
2237 proposed easements and rights-of-way.

2238 8. The proposed treatment of the perimeter of the
2239 development, including materials and/or techniques, such as screens, fences and
2240 walls.

2241 9. Information on adjacent land areas, including
2242 land use, zoning classifications, public facilities and any unique natural features.

2243 (c) Additional information. Any additional information
2244 required by the Mills River Town Council in order to evaluate the impact of the

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2245 proposed SFRCD~~—development~~. The Town Council may waive a particular
2246 requirement if, in its opinion, the inclusion is not essential to a proper decision on the
2247 project. The advice and recommendation of the Planning Board is 1 of an advisory
2248 capacity, and the Town Council has final authority on granting or denying a special
2249 use permit.

2250 (5) The Town Council shall submit a copy of its decision on a
2251 specific SFRC development to the Planning Board.

2252 (6) Amendments to the development plan. Minor changes in the
2253 location, siting or character of buildings and structures may be authorized by the
2254 Zoning Administrator, if required by engineering or other circumstances not foreseen
2255 at the time the final development program was approved; provided, however, that no
2256 change authorized by the Zoning Administrator under this section may increase the
2257 size of any building or structure by more than 10%, nor change the location of any
2258 building or structure by more than 10 feet in any direction, nor make any changes
2259 beyond the minimum or maximum requirements set forth in this chapter. All other
2260 changes in the SFRCD~~development~~, including changes listed below, shall not be made
2261 without re-submission of the SFRCD~~development~~ according to the procedures, in this
2262 section:

- 2263 (a) A change in the use or character of the development.
- 2264 (b) An increase in overall density.
- 2265 (c) An increase in intensity of use.
- 2266 (d) Alteration of the traffic circulation system.
- 2267 (e) A reduction in approved open space.
- 2268 (f) A reduction of off-street parking and loading space.

2269 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2270 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2271 **§ 154.081 PLANNED RESIDENTIAL DEVELOPMENT.**

2272 A planned residential development (PRD) may be located in the MR-30, MR-
2273 MU, and MR-NC district as a special use [under a Major Special Use Permit](#), subject to
2274 a finding by the Mills River Town Council on the advice and recommendation of the
2275 Town of Mills River Planning Board that certain conditions ~~be~~[are](#) met. The purpose
2276 of this section is to afford substantial advantages for greater flexibility and improved
2277 marketability through the benefits of efficiency which permit flexibility in building lot
2278 siting, mixtures of housing types and land use. Densities are calculated on a project
2279 basis, thus allowing the clustering of residential uses in order to create useful open
2280 spaces and to preserve natural site features.

2281 (A) Land development standards. The following land development
2282 standards shall apply for all planned residential developments. ~~Planned residential~~
2283 ~~developments may be located in the MR-30, MR-MU, and MR-NC districts as a special~~
2284 ~~use, subject to a finding by the Mills River Town Council on the advice and~~
2285 ~~recommendation of the Planning Board that certain conditions shall be met.~~

2286 (1) Ownership control. The land in a planned residential
2287 development shall be under single ownership or management by the applicant before
2288 final approval and/or construction, or proper assurances (legal title or execution of a
2289 binding sales agreement) shall be provided that the development can be successfully
2290 completed by the applicant.

2291 (2) Density requirements. The overall density (dwelling units per
2292 acre) of any proposed planned residential development shall be [one \(1\)](#) dwelling unit
2293 per 40,000 square feet.

2294 (a) The minimum lot size requirement for a detached single-
2295 family dwelling shall be no less than 20,000 square feet.

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2296 (b) Streets, street right-of-way, utility station sites, lakes,
2297 ponds and other impervious structures, may not be included when determining the
2298 total number of units available within a PRD.

2299 (c) Planned residential development in more than ~~1~~one (1)
2300 zoning district. If the planned residential development lies in more than one (1)
2301 district, the ~~number of allowable dwelling units must be 1~~allowable density shall be
2302 one (1) dwelling unit per 40,000 square feet.

2303 (3) Frontage requirements. Planned residential developments shall
2304 have the main entrance on a paved, public, state-maintained road or highway with a
2305 minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.
2306 Minimum size. The minimum area for a PRD development shall be 1½ contiguous
2307 acres.

2308 (4) Residential uses. The land uses normally permitted in the
2309 district within which a planned residential development is locates shall be permitted
2310 in the planned residential development with the following modifications:
2311 Permitted types of dwelling units shall include townhouses and garden apartments.

2312 (5) Minimum requirements. The normal 30,000 square foot lot
2313 size, setbacks and frontage requirements are hereby waived for the planned
2314 residential development, provided that the spirit and intent of this section are
2315 complied with in the total development plan as determined by the Town Council. The
2316 Town Council shall exercise ultimate discretion as to whether the total development
2317 plan does comply with the spirit and intent of this section.

2318 (a) Height limitations. No building or structure shall exceed
2319 35 feet in height as measured from the highest ground elevation of the building or
2320 structure to the highest point of the roof or facade whichever is greater.

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2321 (b) Required distance between buildings. The minimum
2322 distance between buildings in a planned residential development shall be as follows:

2323 1. All buildings located or situated end to end
2324 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2325 of 20 feet between buildings. When ~~1 or~~[one or](#) both buildings exceed 20 feet in height,
2326 the building separation shall be increased an additional [one \(1\)](#) foot for every foot of
2327 increased height to a maximum of 30 feet separation.

2328 2. All buildings located or situated side to side or
2329 end to end (longest sides) and are less than 20 feet in height shall have a minimum
2330 separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent buildings
2331 exceed 20 feet in height, the building separation shall be increased an additional [one](#)
2332 [\(1\)](#) foot for every foot of increased height to a maximum of 40 feet separation.

2333 (c) Landscaping. The proposed development shall be
2334 designed as a single architectural scheme with appropriate common landscaping.

2335 (d) Publicly-owned and maintained water and sewer shall
2336 be required for a PRD.

2337 (e) Streets within a planned residential development shall
2338 be built to meet NCDOT Standards.

2339 (7) Privacy. Each development shall provide reasonable visual and
2340 acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and
2341 landscaping shall be used as appropriate for the protection and aesthetic
2342 enhancement of property and the privacy of its occupants, screening of objectionable
2343 views or uses, and reduction of noise. Multi-family buildings shall be located within a
2344 planned residential development in a way as to dissipate any adverse impact on
2345 adjoining low-rise buildings and shall not invade the privacy of the occupants of such
2346 low-rise buildings.

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2347 (8) Perimeter requirements. A 10-foot evergreen planted buffer
2348 strip shall be provided where ever the development adjoins the boundary or property
2349 line of a residential use.

2350 (a) If topographical or other barriers within 200 feet of the
2351 perimeter of the development do not provide reasonable privacy for existing uses
2352 adjacent to the development, the Town Council may impose any of the following
2353 requirements:

2354 (b) Structures located on the perimeter of the development
2355 must be set back from property lines and rights-of-way of abutting streets in
2356 accordance with the provision of this chapter controlling the district within which the
2357 property is situated.

2358 1. Structures other than single-family detached
2359 units located on the perimeter of the development may require screening in a manner
2360 which is approved by the Town Council.

2361 2. The location of the structures on the perimeter of
2362 the development, as shown on the development plan, shall be so arranged as not to
2363 be detrimental to existing structures or to the adjacent neighborhood.

2364 (9) Plans and accompanying documentation to ensure that the
2365 water and sewer systems proposed for the planned residential development have
2366 been designed by a professional engineer, and have been approved by the
2367 appropriate local and state agencies, shall be submitted as a part of the application.

2368 (10) Preliminary plans shall include parking provisions for all
2369 proposed uses within the planned residential development in accordance with §
2370 154.105.

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2371 (11) Any pedestrian and bicycle path circulation system and its
2372 related walkways shall be insulated as reasonably as possible in order to provide
2373 separation of pedestrian and motorized vehicular traffic.

2374 (12) Layout of parking areas, service areas, entrance, exits, yards,
2375 courts and landscaping and control of signs, lighting, noise or other potentially
2376 adverse influences shall be such as to protect the residential character within the PRD
2377 and the desirable character in any adjoining property.

2378 (B) Timing. If no development has occurred pursuant to the issuance of a
2379 special use permit [one \(1\)](#) year after the date of the special use permit for the PRD or
2380 upon the expiration of one 90-day extension of time for starting development granted
2381 by the Town Council, the special use permit shall become null and void and the
2382 procedures for application and review as outlined in this section shall be required for
2383 any development on the subject property.

2384 (C) Staged development (phasing). After general construction commences,
2385 the Zoning Administrator shall review at least once every 6 months all permits issued
2386 and compare them to the overall development phasing program. If he or she
2387 determines that the rate of construction of residential units substantially differs from
2388 the approved phasing program, he or she shall so notify the developer, and the Town
2389 Council may issue such appropriate orders to the developer as it sees fit and, upon
2390 continued violation of this division, may order the Zoning Administrator to refuse any
2391 further permits until the project is in general accordance with the approved phasing
2392 program.

2393 (D) Conveyance of open space, recreational areas and communally owned
2394 facilities.

2395 (1) Common open space, recreational areas and communally
2396 owned facilities shall be guaranteed by a restrictive covenant describing the areas

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2397 and facilities and their maintenance and improvement, running with the land for the
2398 benefit of residents of the planned residential development or adjoining property
2399 owners or both.

2400 (2) The applicant must submit to the Town Council the legal
2401 documents which will produce the aforesaid guaranties and, in particular, will
2402 provide for restricting the use of common areas and facilities for the designated
2403 purposes.

2404 (E) Maintenance. Planned residential developments shall be approved
2405 subject to the submission of an instrument or instruments setting forth a plan for
2406 permanent care and maintenance of permanent open spaces, recreational areas,
2407 easements, rights-of-way and communally owned facilities which would be legally
2408 enforceable. The developer shall create a homeowners' association and submit
2409 bylaws and rules and regulations governing the association. The developer shall be
2410 required to include in every deed he or she makes that membership be mandatory for
2411 each home buyer.

2412 (1) The provisions shall include, but not be limited to, the following:

2413 (a) The homeowners' association must be set up before the
2414 homes are sold.

2415 (b) The open space restrictions must be permanent not just
2416 for a period of years.

2417 (c) The association must be responsible for liability
2418 insurance, local taxes and the maintenance of recreational and other designated
2419 facilities.

2420 (d) Homeowners must pay their pro rata share of the cost;
2421 the assessment levied by the association can become a lien on the property.

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2422 (e) The association must be able to adjust the assessment to
2423 meet changed needs.

2424 (2) No such instrument shall be acceptable until approved by the
2425 Town Attorney as to legal form and effect and the Town Council as to suitability for
2426 the proposed uses.

2427 (F) Procedures for application and review. An applicant desiring to
2428 develop a planned residential development shall adhere to the following procedures:

2429 (1) Preapplication conference. Prior to submission of an application
2430 for a special use permit to the Town Council, the applicant shall arrange a
2431 preapplication conference with the Planning Board and its staff.

2432 (a) The applicant shall submit to the Planning Board a sketch
2433 development plan and a brief description of the proposed development strategy. The
2434 sketch plan and development strategy shall show and describe the layout of the
2435 planned residential development, depicting proposed areas and types of residential
2436 development, open spaces and recreation areas and streets.

2437 (b) The preapplication conference is designed to inform the
2438 developer of the local government's regulations and policies concerning development
2439 alternatives and to inform the local government of the developer's intentions, enough
2440 to be able to give him or her some informal, nonbinding feedback on the acceptability
2441 of his or her ideas. The greater the level of common understanding between the
2442 developer and the local government that can be achieved at the preapplication
2443 conference stage, the smoother the remaining steps of the review process will be.

2444 (2) Major Special ~~u~~Use ~~p~~Permit. Upon completion of the
2445 preapplication conference with the Planning Board, the applicant shall submit to the
2446 Town Council a written application for a special use permit in accordance with §
2447 154.180.

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2448 (3) Development plan. After the preapplication conference and
2449 upon submission of a written application for a special use permit, the applicant shall
2450 submit a development plan to the Town Council. A second copy of the development
2451 plan shall be submitted to the Planning Board for review and recommendations. The
2452 Town Council shall not issue a special use permit until it has received
2453 recommendations from the Planning Board. If no action is taken by the Planning
2454 Board within 45 days of the meeting at which the Planning Board first considers the
2455 development plan, it shall be deemed to have recommended approval of the
2456 development plan, and the Town Council may proceed to act upon the application.

2457 (4) The Planning Board shall review the development plan for
2458 conformance with the land development standards of this section, the sketch plan and
2459 development strategy presented in the preapplication conference and the
2460 requirements of the development plan which shall include the following information
2461 and supporting documentation:

2462 (a) Written documents.

2463 1. A legal description of the total site proposed for
2464 development, including a statement of present and proposed ownership.

2465 2. The zoning district or districts in which the
2466 project is located.

2467 3. A general statement of objectives to be achieved
2468 by the planned residential development through the particular approach proposed
2469 by the applicant.

2470 4. A development schedule indicating approximate
2471 beginning and completion dates of the development, including any proposed stages.

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2472 5. A statement of the applicant's intentions with
2473 regard to the future selling and/or leasing of all or portions of the planned residential
2474 development.

2475 6. Quantitative data for the following: proposed
2476 total number of residential dwelling units, parcel sizes, gross residential densities and
2477 total amount of open space.

2478 7. Plan for maintenance of common areas,
2479 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

2480 (b) Site plan and supporting maps. A map or maps drawn to
2481 an appropriate scale, with the date of preparation and North point, shall include the
2482 following information:

2483 1. Existing site conditions, including contours at 5-
2484 foot vertical intervals, watercourses, identified flood hazard areas and any unique
2485 natural or man-made features.

2486 2. Boundary lines of the proposed development,
2487 proposed lot lines and plot designs.

2488 3. The locations, dimensions and arrangements of
2489 all open spaces and areas devoted to planting, lawns, trees or similar purposes, with
2490 a description including the height and density of all trees or planting to be used for
2491 screening.

2492 4. Proposed location and use of all existing
2493 structures.

2494 5. The location, use, plan and dimension of each
2495 building or structure to be constructed.

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2496 6. Location and size of all areas to be conveyed,
2497 dedicated or reserved as common open space, parks, recreational areas, school sites
2498 and similar public and semipublic uses.

2499 7. The existing and proposed street and/or
2500 vehicular circulation facilities, including off-street parking areas, service areas,
2501 loading areas and major points of access to public rights-of-way, notations of
2502 proposed ownership of street and/or vehicular circulation facilities (public or
2503 private) and sidewalks; documentation from Henderson County Emergency Medical
2504 Services and the Mills River Fire Chief of the adequacy of the development's facilities
2505 for emergency medical and fire services.

2506 8. Approximate location of proposed utility systems,
2507 including documentation approving the proposed water and sewer systems from the
2508 appropriate local and state agencies. Water and sewer documentation must reflect
2509 the current development name and densities, be issued within the past 6 months and
2510 state that the public entity intends to accept both flow and maintenance.
2511 Documentation of an approved sedimentation and erosion control plan shall also be
2512 submitted.

2513 9. Location and/or notation of existing and
2514 proposed easements and rights-of-way.

2515 10. Information on adjacent land areas, including
2516 land use, zoning classifications, public facilities and any unique natural features.

2517 (c) Additional information. Any additional information
2518 required by the Mills River Town Council in order to evaluate the impact of the
2519 proposed PRD development. The Town Council may waive a particular requirement
2520 if, in its opinion, the inclusion is not essential to a proper decision on the project. The

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2521 advice and recommendation of the Planning Board is one of an advisory capacity, and
2522 the Town Council has final authority on granting or denying a special use permit.

2523 (5) The Town Council shall submit a copy of its decision on a
2524 specific planned residential development to the Planning Board.

2525 (6) Amendments to the development plan. Minor changes in the
2526 location, siting or character of buildings and structures may be authorized by the
2527 Zoning Administrator, if required by engineering or other circumstances not foreseen
2528 at the time the final development program was approved; provided, however, that no
2529 change authorized by the Zoning Administrator under this section may increase the
2530 size of any building or structure by more than 10%, nor change the location of any
2531 building or structure by more than 10 feet in any direction, nor make any changes
2532 beyond the minimum or maximum requirements set forth in this chapter. All other
2533 changes in the planned residential development, including changes listed below, shall
2534 not be made without resubmission of the planned residential development according
2535 to the procedures, in this section:

- 2536 (a) A change in the use or character of the development.
- 2537 (b) An increase in overall density.
- 2538 (c) An increase in intensity of use.
- 2539 (d) Alteration of the traffic circulation system.
- 2540 (e) A reduction in approved open space.
- 2541 (f) A reduction of off-street parking and loading space.

2542 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2543 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2544 **§ 154.082 MULTI-FAMILY DEVELOPMENT.**

2545 A multi-family development may be located in the MR-30, MR-MU, and MR-NC
2546 district as a special use [under a Major Special Use Permit](#), subject to a finding by the
2547 Mills River Town Council on the advice and recommendation of the Town of Mills
2548 River Planning Board that certain conditions be met. The purpose of this section is to
2549 provide reasonable design standards for multi-family developments for greater
2550 design flexibility and accommodate housing for current and future residents of the
2551 town. The Town Council shall exercise ultimate discretion as to whether the total
2552 development plan does comply with the spirit and intent of this section.

2553 (A) Land development standards. The following land development
2554 standards shall apply for all multi-family developments. Single-family dwelling
2555 detached homes and duplexes on individual lots are exempt from this section.

2556 (1) Ownership control. The land in a multi-family development
2557 shall be under single ownership or management by the applicant before final
2558 approval and/or construction, or proper assurances (legal title or execution of a
2559 binding sales agreement) shall be provided that the development can be successfully
2560 completed by the applicant.

2561 (2) Density requirements. The maximum density for multi-family
2562 developments (dwelling units per acre) shall be 4 units per acre.

2563 (3) Streets, street right-of-way, utility station sites, lakes, ponds and
2564 other impervious structures, may not be included when determining the total number
2565 of units available within a multi-family development.

2566 (4) Frontage requirements. Multi-family developments shall have
2567 the main entrance on a paved, public, state-maintained road or highway with a
2568 minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.

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2569 (5) Minimum size. The minimum area for a multi-family
2570 development shall be 1½ contiguous acres.

2571 (6) Minimum requirements.

2572 (a) The normal 30,000 square feet lot size, setbacks and
2573 frontage requirements are hereby waived for multi-family developments.

2574 (b) Height limitations. No building or structure shall exceed
2575 35 feet in height as measured from the highest ground elevation of the building or
2576 structure to the highest point of the roof or facade whichever is greater.

2577 (c) Required distance between buildings. The minimum
2578 distance between buildings shall be as follows:

2579 1. All buildings located or situated end to end
2580 (shortest sides) and are less than 20 feet in height shall have a minimum separation
2581 of 20 feet between buildings. When [one \(1\)](#) or both buildings exceed 20 feet in height,
2582 the building separation shall be increased an additional [one \(1\)](#) foot for every foot of
2583 increased height to a maximum of 30 feet separation.

2584 2. All buildings located or situated side to side or
2585 end to end (longest sides) and are less than 20 feet in height shall have a minimum
2586 separation of 30 feet between buildings. When [one \(1\)](#) or more adjacent buildings
2587 exceed 20 feet in height, the building separation shall be increased an additional [one](#)
2588 [\(1\)](#) foot for every foot of increased height to a maximum of 40 feet separation.

2589 (d) Each building shall be no more than 150 feet in length.

2590 (e) Landscaping. The proposed development shall be
2591 designed as a single architectural scheme with appropriate common landscaping.
2592 Landscaping shall meet the requirements of §§ 154.230 through 154.237.

2593 (f) Publicly-owned and maintained water and sewer shall
2594 be required for a multi-family development.

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2595 (g) A minimum of 15% of the parcel must be common open
2596 space. Of the required open space, a minimum of 20% and a maximum of 50% is
2597 required to be active use open space.

2598 (7) Multi-family developments considered in accordance with an
2599 overall plan shall include provisions for:

2600 (a) Parking. Parking spaces shall be provided within the
2601 development at a ratio of 1½ spaces for each unit. No parking space shall be closer
2602 than 10 feet to any residential building wall.

2603 (b) Area regulations. No building shall be erected at a
2604 distance of less than 60 feet from the center line of any minor street on which the
2605 development abuts, nor less than the required side or rear lot line setback of the
2606 adjacent district; however, in no instance shall the minimum side and rear lot line
2607 setback be less than 10 feet.

2608 (c) Every dwelling unit shall have direct access to an interior
2609 road and there shall be provision for adequate vehicular circulation to all
2610 development properties in order to insure acceptable levels of access for emergency
2611 vehicles.

2612 (d) The location of structures, shown on the development
2613 plan, shall be so arranged as not to be detrimental to existing or other proposed
2614 structures or to the development of the neighborhood.

2615 (e) All utilities shall conform to the following requirements:

2616 1. Water systems. Water system. Adequate water
2617 volume and pressure for domestic use and fire protection shall be available to the
2618 proposed project. The water system shall be designed by a registered engineer and
2619 approved by the appropriate state and local agencies.

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2646 enhancement of property and the privacy of its occupants, screening of objectionable
2647 views or uses, and reduction of noise. Multi-family buildings shall be located in a way
2648 as to dissipate any adverse impact on adjoining low-rise buildings and shall not
2649 invade the privacy of the occupants of such low-rise buildings.

2650 (a) Perimeter requirements. A 10-foot evergreen planted
2651 buffer strip shall be provided where ever the development adjoins the boundary or
2652 property line of a residential use meeting the requirements of § 154.007.

2653 (b) If topographical or other barriers within 200 feet of the
2654 perimeter of the development do not provide reasonable privacy for existing uses
2655 adjacent to the development, the Town Council may impose any of the following
2656 requirements:

2657 1. Structures located on the perimeter of the
2658 development must be set back from property lines and rights-of-way of abutting
2659 streets in accordance with the provision of this chapter controlling the district within
2660 which the property is situated.

2661 2. Structures other than single-family detached
2662 units located on the perimeter of the development may require screening in a manner
2663 which is approved by the Town Council.

2664 3. The location of the structures on the perimeter of
2665 the development, as shown on the development plan, shall be so arranged as not to
2666 be detrimental to existing structures or to the adjacent neighborhood.

2667 (9) Plans and accompanying documentation to ensure that the
2668 water and sewer systems proposed for the multi-family development have been
2669 designed by a professional engineer, and have been approved by the appropriate local
2670 and state agencies, shall be submitted as a part of the application.

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2671 (10) Preliminary plans shall ~~be~~ include parking provisions for all
2672 proposed uses within the multi-family development in accordance with § 154.105.

2673 (11) Any pedestrian and bicycle path circulation system and its
2674 related walkways shall be insulated as reasonably as possible in order to provide
2675 separation of pedestrian and motorized vehicular traffic.

2676 (12) Layout of parking areas, service areas, entrance, exits, yards,
2677 courts and landscaping and control of signs, lighting, noise or other potentially
2678 adverse influences shall be such as to protect the residential character within the
2679 development and the desirable character in any adjoining property.

2680 (B) Timing. If no development has occurred pursuant to the issuance of a
2681 special use permit one (1) year after the date of the special use permit for the
2682 development or upon the expiration of one 90-day extension of time for starting
2683 development granted by the Town Council, the special use permit shall become null
2684 and void and the procedures for application and review as outlined in this section
2685 shall be required for any development on the subject property.

2686 (C) Staged development (phasing). After general construction commences,
2687 the Zoning Administrator shall review at least once every 6 months all permits issued
2688 and compare them to the overall development phasing program. If he or she
2689 determines that the rate of construction of residential units substantially differs from
2690 the approved phasing program, he or she shall so notify the developer, and the Town
2691 Council may issue such appropriate orders to the developer as it sees fit and, upon
2692 continued violation of this division, may order the Zoning Administrator to refuse any
2693 further permits until the project is in general accordance with the approved phasing
2694 program.

2695 (D) Conveyance of open space, recreational areas and communally owned
2696 facilities.

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2697 (1) Common open space, recreational areas and communally
2698 owned facilities shall be guaranteed by a restrictive covenant describing the areas
2699 and facilities and their maintenance and improvement, running with the land for the
2700 benefit of residents of the planned residential development or adjoining property
2701 owners or both.

2702 (2) The applicant must submit to the Town Council the legal
2703 documents which will produce the aforesaid guaranties and, in particular, will
2704 provide for restricting the use of common areas and facilities for the designated
2705 purposes.

2706 (E) Maintenance. Multi-family developments shall be approved subject to
2707 the submission of an instrument or instruments setting forth a plan for permanent
2708 care and maintenance of permanent open spaces, recreational areas, easements,
2709 rights-of-way and communally owned facilities which would be legally enforceable.
2710 The developer shall create a homeowners' association and submit bylaws and rules
2711 and regulations governing the association. The developer shall be required to include
2712 in every deed he or she makes that membership be mandatory for each home buyer.

2713 (1) The provisions shall include, but not be limited to, the following:

2714 (a) The homeowners' association must be set up before the
2715 homes are sold.

2716 (b) The open space restrictions must be permanent not just
2717 for a period of years.

2718 (c) The association must be responsible for liability
2719 insurance, local taxes and the maintenance of recreational and other designated
2720 facilities.

2721 (d) Homeowners must pay their pro rata share of the cost;
2722 the assessment levied by the association can become a lien on the property.

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2723 (e) The association must be able to adjust the assessment to
2724 meet changed needs.

2725 (2) No such instrument shall be acceptable until approved by the
2726 Town Attorney as to legal form and effect and the Town Council as to suitability for
2727 the proposed uses.

2728 (F) Procedures for application and review. An applicant desiring to
2729 develop a mulit-family development shall adhere to the following procedures:

2730 (1) Preapplication conference. Prior to submission of an application
2731 for a special use permit to the Town Council, the applicant shall arrange a
2732 preapplication conference with the Planning Board and its staff.

2733 (a) The applicant shall submit to the Planning Board a sketch
2734 development plan and a brief description of the proposed development strategy. The
2735 sketch plan and development strategy shall show and describe the layout of the
2736 development, depicting proposed areas and types of residential development, open
2737 spaces and recreation areas and streets.

2738 (b) The preapplication conference is designed to inform the
2739 developer of the local government's regulations and policies concerning development
2740 alternatives and to inform the local government of the developer's intentions, enough
2741 to be able to give him or her some informal, nonbinding feedback on the acceptability
2742 of his or her ideas. The greater the level of common understanding between the
2743 developer and the local government that can be achieved at the preapplication
2744 conference stage, the smoother the remaining steps of the review process will be.

2745 (2) Special use permit. Upon completion of the preapplication
2746 conference with the Planning Board, the applicant shall submit to the Town Council a
2747 written application for a Major sSpecial uUse pPermit in accordance with § 154.180.

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2748 (3) Development plan. After the preapplication conference and
2749 upon submission of a written application for a special use permit, the applicant shall
2750 submit a development plan to the Town Council. A second copy of the development
2751 plan shall be submitted to the Planning Board for review and recommendations. The
2752 Town Council shall not issue a special use permit until it has received
2753 recommendations from the Planning Board. If no action is taken by the Planning
2754 Board within 45 days of the meeting at which the Planning Board first considers the
2755 development plan, it shall be deemed to have recommended approval of the
2756 development plan, and the Town Council may proceed to act upon the application.

2757 (4) The Planning Board shall review the development plan for
2758 conformance with the land development standards of this section, the sketch plan and
2759 development strategy presented in the preapplication conference and the
2760 requirements of the development plan which shall include the following information
2761 and supporting documentation:

2762 (a) Written documents.

2763 1. A legal description of the total site proposed for
2764 development, including a statement of present and proposed ownership.

2765 2. The zoning district or districts in which the
2766 project is located.

2767 3. A general statement of objectives to be achieved
2768 by the planned residential development through the particular approach proposed
2769 by the applicant.

2770 4. A development schedule indicating approximate
2771 beginning and completion dates of the development, including any proposed stages.

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2772 5. A statement of the applicant's intentions with
2773 regard to the future selling and/or leasing of all or portions of the planned residential
2774 development.

2775 6. Quantitative data for the following: proposed
2776 total number of residential dwelling units, parcel sizes, gross residential densities and
2777 total amount of open space.

2778 7. Plan for maintenance of common areas,
2779 recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

2780 (b) Site plan and supporting maps. A map or maps drawn to
2781 an appropriate scale, with the date of preparation and north point, shall include the
2782 following information:

2783 1. Existing site conditions, including contours at 5-
2784 foot vertical intervals, watercourses, identified flood hazard areas and any unique
2785 natural or man-made features.

2786 2. Boundary lines of the proposed development,
2787 proposed lot lines and plot designs.

2788 3. The locations, dimensions and arrangements of
2789 all open spaces and areas devoted to planting, lawns, trees or similar purposes, with
2790 a description including the height and density of all trees or planting to be used for
2791 screening.

2792 4. Proposed location and use of all existing
2793 structures.

2794 5. The location, use, plan and dimension of each
2795 building or structure to be constructed.

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2796 6. Location and size of all areas to be conveyed,
2797 dedicated or reserved as common open space, parks, recreational areas, school sites
2798 and similar public and semipublic uses.

2799 7. The existing and proposed street and/or
2800 vehicular circulation facilities, including off-street parking areas, service areas,
2801 loading areas and major points of access to public rights-of-way, notations of
2802 proposed ownership of street and/or vehicular circulation facilities (public or
2803 private) and sidewalks; documentation from Henderson County Emergency Medical
2804 Services and the Mills River Fire Chief of the adequacy of the development's facilities
2805 for emergency medical and fire services.

2806 8. Approximate location of proposed utility systems,
2807 including documentation approving the proposed water and sewer systems from the
2808 appropriate local and state agencies. Water and sewer documentation must reflect
2809 the current development name and densities, be issued within the past 6 months and
2810 state that the public entity intends to accept both flow and maintenance.
2811 Documentation of an approved sedimentation and erosion control plan shall also be
2812 submitted.

2813 9. Location and/or notation of existing and
2814 proposed easements and rights-of-way.

2815 10. Information on adjacent land areas, including
2816 land use, zoning classifications, public facilities and any unique natural features.

2817 (c) Additional information. Any additional information
2818 required by the Mills River Town Council in order to evaluate the impact of the
2819 proposed multi-family development. The Town Council may waive a particular
2820 requirement if, in its opinion, the inclusion is not essential to a proper decision on the
2821 project. The advice and recommendation of the Planning Board is one of an advisory

2822 capacity, and the Town Council has final authority on granting or denying a special
2823 use permit.

2824 (5) The Town Council shall submit a copy of its decision on a multi-
2825 family development to the Planning Board.

2826 (6) Amendments to the development plan. Minor changes in the
2827 location, siting or character of buildings and structures may be authorized by the
2828 Zoning Administrator, if required by engineering or other circumstances not foreseen
2829 at the time the final development program was approved; provided, however, that no
2830 change authorized by the Zoning Administrator under this section may increase the
2831 size of any building or structure by more than 10%, nor change the location of any
2832 building or structure by more than 10 feet in any direction, nor make any changes
2833 beyond the minimum or maximum requirements set forth in this chapter. All other
2834 changes in the planned residential development, including changes listed below, shall
2835 not be made without resubmission of the planned residential development according
2836 to the procedures, in this section:

2837 (a) A change in the use or character of the development.

2838 (b) An increase in overall density.

2839 (c) An increase in intensity of use.

2840 (d) Alteration of the traffic circulation system.

2841 (e) A reduction in approved open space.

2842 (f) A reduction of off-street parking and loading space.

2843 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2844 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00083,
2845 passed 10-10-2013)

2846 **§ 154.083 [RESERVED]**

2847 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
2848 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

2849 **§ 154.084 MEDICAL, INSTITUTIONAL CARE DEVELOPMENT.**

2850 A Medical, Institutional Care Development (MICD) may be located in the MR-
2851 30, MR-MU, and MR-NC Districts as a special use, subject to a finding by the Mills River
2852 Town Council, on the advice and recommendation of the Town of Mills River Planning
2853 Board, that certain conditions be met. The purpose of this section is to permit the
2854 establishment of certain medical and institutional care facilities within individual
2855 residential districts and to minimize any detrimental effects of the facilities on
2856 existing or future land uses.

2857 (A) Land development standards. The following land development
2858 standards shall apply for all medical, institutional care developments:

2859 (1) Ownership control. The land in an MICD shall be under single
2860 ownership or management by the applicant before final approval and/or
2861 construction, or proper assurances (legal title or execution of a binding sales
2862 agreement) shall be provided that the development can be legally completed by the
2863 applicant.

2864 (2) Density requirements. The proposed density of the MICD
2865 shall be calculated using a combination of a persons per acre basis and a habitable
2866 structure per acre basis and shall conform to that permitted in the district in which
2867 the development is located as follows:

2868 (a) The number of persons served by any proposed MICD
2869 shall be calculated using the following criteria:

2870 1. One person per health care bed.

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2871

2. One person per studio or efficiency unit.

2872

3. One and a quarter persons per 1 bedroom unit.

2873

4. One and a half persons per 2 bedroom unit.

2874

5. Two persons per 3 bedroom unit.

2875

(b) The maximum density (persons per acre) for an MICD

2876 shall be 12.

2877

(c) The number of habitable structures per acre shall be

2878 1.45.

2879

(3) Frontage requirements. MICD shall be prohibited except on

2880 parcels of land having a minimum frontage of 200 feet on a paved, public, state-

2881 maintained road or highway.

2882

(4) Minimum size. The minimum lot area for an MICD shall be 10

2883 contiguous acres. The required 10 acres shall not be divided by, nor include, any

2884 portion of an existing public street or road right-of-way. Furthermore, no existing

2885 bodies of water shall qualify as a portion of the required minimum lot area.

2886

(5) Types of usage allowed. The following types of licensed

2887 medical and institutional care facilities are allowed within an MICD:

2888

(a) Hospitals.

2889

(b) Domiciliary homes for the aged and disabled.

2890

(c) Continuing care facilities.

2891

(d) Nursing homes.

2892

(e) Combination homes as defined by G.S. § 131E-101(1).

2893

(f) Customary accessory buildings, including garages,

2894 storage buildings and service utility structures.

2895

(g) Recreational facilities intended exclusively for use by the

2896 residents and guests of the facility and which are an integral part of the development.

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2897 (h) Administrative offices and non- dwelling support
2898 services for the facility and accessory commercial uses, subject to the following
2899 conditions:

2900 1. All sales shall be for the use and convenience of
2901 the residents or guests of the facility.

2902 2. All accessory uses shall not occupy more than
2903 15% of the total floor area of the facility, except that in no case shall the accessory
2904 uses exceed 12,000 square feet. No individual accessory use permitted in this
2905 subsection shall occupy more than 5% of the total floor area of the facility, except that
2906 in no case shall any individual accessory use exceed a minimum of 4,000 square feet.

2907 3. No external advertising or signs shall be allowed
2908 for any commercial activity permitted within or on any portion of the MICD.

2909 (6) Design requirements.

2910 (a) The normal minimum lot size, lot setbacks and lot
2911 frontage requirements of the respective district within which the MICD is located are
2912 hereby waived, provided that the spirit and intent of this section are complied with
2913 in the total development plan as determined by the Town Council. The Town Council
2914 shall exercise ultimate discretion as to whether the total development plan does
2915 comply with the spirit and intent of this section.

2916 1. Setbacks. The developer shall establish
2917 minimum lot setbacks as applicable. Non- dwelling accessory buildings, structures or
2918 facilities, such as, but not limited to, covered informational areas and private security
2919 booths, may be allowed within an adequate proximity to any adjacent street or road
2920 right-of-way within the MICD but shall be located no closer than 25 feet to any
2921 exterior property line of the MICD.

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2922 2. Height limitations. No building or structure
2923 containing dwelling units or bed facilities shall exceed 35 feet in height from the
2924 highest ground elevation.

2925 3. Required distance between buildings. The
2926 minimum distance between buildings in an MICD shall be as follows:

2927 a. All buildings located or situated end to end
2928 (shortest sides) and are less than 20 feet in height from the highest ground elevation
2929 shall have a minimum separation of 20 feet between buildings. When one (1) or both
2930 buildings exceed 20 feet in height from the highest ground elevation, the building
2931 separation shall be increased an additional one (1)~~4~~ foot for every foot of increased
2932 height to a maximum of 30 feet separation.

2933 b. All buildings located or situated side to
2934 side, or side to end (longest sides) and are less than 20 feet in height from the highest
2935 ground elevation shall have a minimum separation of 30 feet between buildings.
2936 When one (1) or more adjacent buildings exceed 20 feet in height from the highest
2937 ground elevation, the building separation shall be increased an additional one (1) foot
2938 for every foot of increased height to a maximum of 40 feet.

2939 c. The Planning Board may permit the
2940 minimum building separation for single-level building units to be reduced below the
2941 minimums stated above, provided that the construction of adjacent walls conforms
2942 with the North Carolina Building Codes, but in no case shall buildings be closer than
2943 15 feet. When the minimum separation is reduced, the area between buildings shall
2944 remain open and unobstructed.

2945 (b) Every building shall have direct access to a paved,
2946 dedicated street and walkways to other buildings and areas dedicated for common or
2947 recreational use. Provision shall be made for access for emergency vehicles to all sides

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2948 of buildings or structures containing dwelling units or bed facilities. All walkways
2949 shall be hard surface, all-weather materials. Any pedestrian and wheelchair
2950 circulation system shall be insulated as reasonably as possible to provide separation
2951 of pedestrian and motorized vehicular traffic.

2952 (c) Handicap accessibility. All portions of the development
2953 shall conform to the minimum applicable federal, state or local laws and regulations
2954 pertaining to handicap accessibility unless otherwise required in this section.

2955 (d) The location of structures shown on the development
2956 plan shall be so arranged as not to be detrimental to existing or other proposed
2957 structures or to the character of the surrounding neighborhood.

2958 (7) Privacy. Each development shall provide reasonable visual
2959 and acoustical privacy for all units. Fences, insulation, walls, barriers and landscaping
2960 shall be used as appropriate for the protection and aesthetic enhancement of
2961 property and the privacy of its occupants, screening of objectionable views or uses
2962 and reduction of noise. Multilevel buildings shall be located within a medical,
2963 institutional care development (MICD) in a way as to dissipate any adverse impact on
2964 adjoining low-rise buildings and shall not invade the privacy of the occupants of the
2965 low-rise buildings.

2966 (8) Perimeter requirements. If topographical or other barriers
2967 within 200 feet of the perimeter of the development do not provide reasonable
2968 privacy for existing uses adjacent to the development, the Town Council may impose
2969 any of the following requirements:

2970 (a) Structures located on the perimeter of the development
2971 must be set back from property lines and rights-of-way of abutting streets in
2972 accordance with the provision of this chapter controlling the district within which the
2973 property is situated.

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2974 (b) Structures other than single-level units, located on the
2975 perimeter of the development, shall require screening in a manner which is approved
2976 by the Town Council.

2977 (c) The location of the structures on the perimeter of the
2978 development, as shown on the development plan, shall be so arranged as not to be
2979 detrimental to existing structures or to the adjacent neighborhood.

2980 (d) Fencing compatible with the character of the
2981 development may be required to protect residents from dangerous conditions
2982 existing on or off site or to provide increased security for the residents of the facility.

2983 (9) Building coverage. The total building coverage area, including
2984 non-dwelling accessory buildings, structures or facilities, but excluding roads,
2985 parking or service areas and recreational facilities, shall not exceed 25% of the net lot
2986 area.

2987 (10) Parking. All parking must meet the requirements of §§
2988 154.105 through 154.114.

2989 (11) Utilities. All utilities shall conform to the following
2990 requirements:

2991 (a) Water system. Adequate water volume and pressure
2992 for domestic use and fire protection shall be available to the proposed project. The
2993 water system shall be designed by a registered engineer and approved by the
2994 appropriate state and local agencies.

2995 (b) Sewer system. The project shall have an approved
2996 waste disposal system designed by a registered engineer, if applicable, and approved
2997 by the appropriate state and local agencies.

2998 (c) Stormwater drainage. Stormwater runoff shall be
2999 collected, channeled or piped to discharge into natural drainageways in a manner

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3000 which will not cause erosion or adverse effects to adjacent property. The system shall
3001 be designed by a registered engineer or other competent professional. The design
3002 shall be for a 25-year storm and shall incorporate requirements of the erosion and
3003 sedimentation control plan, both temporary and permanent facilities.

3004 (12) Street design and access. All streets within the MICD shall
3005 conform to the North Carolina Department of Transportation standards for
3006 subdivision streets. The MICD shall have at least [one \(1\)](#) primary entrance/exit onto
3007 a public roadway and [one \(1\)](#) emergency entrance/exit. A turning or deceleration
3008 lane shall be provided.

3009 (13) Exterior lighting. An MICD shall provide an exterior lighting
3010 system for adequate resident safety along access drives, service areas, pedestrian
3011 walks and recreation areas. The lighting system shall be designed in keeping with the
3012 scale and architectural harmony of the project. Fixtures shall be oriented, to the
3013 degree possible, to reduce glare within the project and onto adjacent properties.

3014 (14) Building identification. All structures shall be identified in a
3015 manner that will provide immediate recognition when viewed from the street or
3016 access drive.

3017 (15) Landscaping and buffering. Within an MICD, a landscaping
3018 plan shall be considered a required element of the project. The landscaping must
3019 minimally meet the provisions of §§ 154.230 through 154.237.

3020 (a) The landscaping plan shall require that all exposed soils
3021 shall be covered with a permanent cover. Landscaping or natural vegetation shall
3022 cover at least 20% of the net project area.

3023 (b) Provisions for the permanent maintenance of all
3024 landscaping and screen planting areas and materials shall be provided.

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3025 (c) Where the Town Council deems necessary, a screen
3026 planting or other architectural features shall be provided to form a visual separation
3027 between the MICD and adjacent residential uses.

3028 (16) Design. The development shall be designed in such a manner
3029 that the layout of parking areas, service areas, entrances, exits, yards, courts,
3030 landscaping, signage, lighting, noise or other potentially adverse influences shall be
3031 such as to protect the medical residential character within the development and
3032 desirable character in any adjoining properties.

3033 (B) Timing. If no development has occurred pursuant to the issuance of
3034 a special use permit 2 years after the date of the special use permit for the MICD, or
3035 upon the expiration of one 90 day extension of time for starting development granted
3036 by the Town Council, the special use permit shall become null and void and the
3037 procedures for application and review as outlined in this section shall be required for
3038 any development on the subject property.

3039 (C) Staged development (phasing). After general construction
3040 commences, the Zoning Administrator shall review at least once every 6 months all
3041 permits issued and compare them to the overall development phasing program. If he
3042 or she determines that the rate of construction of residential units or nonresidential
3043 structures substantially differs from the approved phasing program, he or she shall
3044 so notify the developer, and the Town Council may issue the appropriate orders to
3045 the developer as it sees fit and, upon continued violation of this subsection, may order
3046 the Zoning Administrator to refuse any further permits until the project is in general
3047 accordance with the approved phasing program.

3048 (D) Open space required. A minimum of 20% of the total land area of the
3049 development shall be set aside as permanent commonly owned open space. The open
3050 space shall be exclusive of any required parking, street rights-of-way and roads or

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3051 service areas required for operation and maintenance of the MICD and shall be
3052 guaranteed as permanent in the site plan or other documents as may be required to
3053 be recorded.

3054 (E) Maintenance. MICD shall be approved subject to the submission of
3055 an instrument or instruments setting forth a plan for permanent care and
3056 maintenance of permanent open spaces, recreational areas, easements and rights-of-
3057 way which would be legally enforceable. No such instrument shall be acceptable until
3058 approved by the Town Attorney as to legal form and effect and the Town Council as
3059 to suitability for the proposed uses.

3060 (F) Procedures for application and review. An applicant desiring to
3061 develop an MICD shall adhere to the following procedures:

3062 (1) Pre-application conference. Prior to submission of an
3063 application for a special use permit to the Town Council, the applicant shall arrange a
3064 pre- application conference with the Planning Board and its staff.

3065 (a) The applicant shall submit to the Planning Board a sketch
3066 development plan and a brief description of the proposed development strategy. The
3067 sketch plan and development strategy shall show and describe the layout of the MICD,
3068 depicting proposed areas and types of development, open spaces and streets.

3069 (b) The pre-application conference is designed to inform the
3070 developer of the local government's regulations and policies concerning development
3071 alternatives and to inform the local government of the developer's intentions, enough
3072 to be able to give him or her some informal, non-binding feedback on the acceptability
3073 of his or her ideas. The greater the level of common understanding between the
3074 developer and the local government that can be achieved at the pre-application
3075 conference stage, the smoother the remaining steps of the review process will be.

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3076 (2) Application for a special use permit. Upon completion of the pre-
3077 application conference, the applicant shall submit to the Town Council a written
3078 application for a ~~Major s~~Special ~~u~~Use ~~p~~Permit in accordance with § 154.180. The
3079 applicant shall submit 11 copies of a preliminary development plan or final site plan
3080 and required documentation to the Zoning Administrator at least 30 days prior to the
3081 Planning Board's first scheduled consideration of the project.

3082 (3) Planning Board review. The Planning Board shall review the
3083 preliminary development plan and final site plan for conformance with the provisions
3084 of this chapter and forward its recommendations to the Town Council. If no action is
3085 taken by the Planning Board within 45 days of the meeting at which the Planning
3086 Board first considers the development plan, it shall be deemed to have recommended
3087 approval of the development plan, and the Town Council may proceed to act upon the
3088 application.

3089 (4) Town Council review. The Town Council shall not issue a
3090 special use permit until it has received recommendations from the Planning Board.
3091 The Town Council shall submit a copy of their decision on a specific MICD to the
3092 Planning Board and the applicant. The decision of the Town Council shall be to
3093 approve, disapprove or approve with conditions.

3094 (5) Issuance of permits. The Zoning Administrator for the Town
3095 of Mills River or the Henderson County Building Inspector shall not issue a certificate
3096 of zoning compliance or any building permit for any portion of the proposed project
3097 until the applicant is in compliance with the decision of the Town Council.

3098 (6) Waiver of preliminary development plan. An applicant may
3099 choose to omit the preliminary development plan, provided that the project is to be
3100 completed in a single phase and all required documentation is provided and
3101 submitted in accordance with this section.

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3102 (G) Preliminary development plan requirements. Upon application for
3103 an MICD and following the pre- application conference, an applicant shall submit a
3104 preliminary development plan for the entire MICD project, except where a waiver is
3105 permitted in accordance with division (F)(6) above. The preliminary development
3106 plan shall provide the following information on the plan and include accompanying
3107 documentation:

3108 (1) The proposed name of the development and the names of the
3109 developer, land owner, engineer, architect and landscape architect or other
3110 professionals.

3111 (2) A site plan to a scale of not less than [one \(1\)](#) inch equals 50 feet,
3112 a North arrow, a vicinity map and date; topographic mapping with contour intervals
3113 of not more than 5 feet.

3114 (3) A legal boundary description of the entire tract proposed for
3115 development, including a statement that the area shown on the preliminary site plan
3116 includes all the area and development currently under ownership, option or other
3117 consideration by the land owner or developer shown on this plan. The description
3118 shall include the location of all existing rights-of-way, easements, streams or
3119 waterways, adjacent property uses, the names of adjacent property owners and
3120 identified flood hazard areas.

3121 (4) Project layout including the location of all existing structures
3122 and the proposed general location and allocation of dwelling units, road locations,
3123 accessory structures and uses, setbacks, buffers and landscaping areas, natural areas,
3124 recreational facilities and areas and project phasing lines.

3125 (5) Preliminary utility layouts with preliminary approval from the
3126 appropriate local or state agencies; the location of all other utilities within or adjacent
3127 to the development site.

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3128 (6) Proposed typical site details for lighting; signage; walkways;
3129 fencing and walls; landscaping; parking layout; cross section for roads, access roads
3130 and traffic volume; and any other pertinent site details. The site details shall be
3131 accompanied by a written description of how services and improvements are to be
3132 provided.

3133 (7) Preliminary information on the proposed plans with regard to
3134 the ownership and maintenance of common areas and facilities, open space,
3135 landscaping and screening, roads and utilities.

3136 (8) Documentation from the Henderson County Emergency Medical
3137 Service and the Mills River Fire Chief of the adequacy of the project's facilities for
3138 emergency medical and fire services.

3139 (9) Documentation of submission of a preliminary or overall
3140 erosion control plan to the appropriate agency.

3141 (10) A designation and description of the proposed phasing plan for
3142 the project, including the approximate timing schedule and the type of guaranty of
3143 performance to be requested.

3144 (11) Summary of project data, including:

3145 (a) Total project area.

3146 (b) Approximate net project area.

3147 (c) Total density permitted, density requested and method
3148 of calculating density (persons per acre).

3149 (d) Approximate percent of building coverage.

3150 (e) Approximate percent of open space.

3151 (f) Approximate length of roads and designation as public or
3152 private.

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3153 (g) Type of units and conceptual plans and elevations for
3154 residential structures.

3155 (12) Written documents. In addition to those indicated above:

3156 (a) The zoning district or districts in which the project is
3157 located.

3158 (b) A general statement of objectives to be achieved by the
3159 MICD through the particular approach proposed by the applicant.

3160 (c) A statement of the applicant's intentions with regard to
3161 the future selling and/or leasing of all or portions of the MICD.

3162 (13) Additional information. Any additional information required by
3163 the Town Council in order to evaluate the impact of the proposed MICD. The Town
3164 Council may waive a particular requirement if, in its opinion, the inclusion is not
3165 essential to a proper decision on the project. The advice and recommendations of the
3166 Planning Board is 1 of advisory capacity, and the Town Council has final authority on
3167 granting or denying a special use permit.

3168 (H) Final site plan. Upon approval of the preliminary development plan
3169 by the Town Council, except as waived under division (F)(6), the developer shall
3170 submit a final site plan that shall contain the following information:

3171 (1) The proposed name of the development and the names of the
3172 developer, land owner, engineer, architect, designer, landscape architect or other
3173 professional.

3174 (2) The site plan to a scale not less than [one \(1\)](#) inch equals 30 feet,
3175 a North arrow, a vicinity map and date; topographic mapping with contour intervals
3176 of not more than 2 feet indicating existing and proposed contours.

3177 (3) A legal boundary description of the entire tract proposed for
3178 development, the location of all existing rights-of-way, easements, streams or

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3179 waterways, adjacent property uses and the names of adjacent property owners. If the
3180 final plans are for a phase of the MICD, the specific phase of the project shall be shown.

3181 (4) Project layout, including the location of all existing structures
3182 and, for each proposed principal and accessory structure and use, setbacks, roads, off-
3183 street parking and loading layout. A typical cross section and public or private
3184 designation for all roads shall be submitted if not approved with a preliminary site
3185 plan.

3186 (5) Basic floor plans, rendered elevations or perspectives.

3187 (6) The landscaping and screening plans and the location of all
3188 walkways, recreational areas, fences and walls, lighting and signage. If the proposed
3189 typical site details for these items were not approved with a preliminary site plan, the
3190 details shall be submitted with the final site plan.

3191 (7) The location, easement, size and gradient of all sanitary and
3192 storm sewers and water mains. The location of all other utilities within or adjacent to
3193 the development site.

3194 (8) Method of buffering or concealing service areas, garbage
3195 retention and collection areas and mechanical equipment from public and residential
3196 areas.

3197 (9) Method of collecting, channeling or piping to discharge
3198 stormwater into natural drainageways that will assure no damage to neighboring
3199 properties.

3200 (10) Approval of water and sewage systems; plans from the
3201 appropriate agency if applicable.

3202 (11) Approval of the soil erosion and sedimentation control plan by
3203 the appropriate agency.

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3204 (12) Submission of the proposed documents for the ownership and
3205 maintenance of all common areas and facilities, open space, landscaping and
3206 screening, roads and utilities.

3207 (13) Submission of the proposed guaranty of performance
3208 provisions, including a list of all improvements to be covered by the guaranty
3209 agreement.

3210 (14) Summary of project data, including:

3211 (a) Total project area: area in proposed phase.

3212 (b) Net project area in proposed phase.

3213 (c) Total density proposed: density in proposed phase,
3214 including number of persons per acre.

3215 (d) Percentage of building coverage in proposed phase in
3216 relation to project total building coverage.

3217 (e) Percentage of building coverage in proposed phase in
3218 relation to project total open space.

3219 (f) Length of roads and public or private designation in the
3220 proposed phase.

3221 (15) Additional information. Any additional information required by
3222 the Town Council in order to evaluate the impact of the proposed MICD. The Town
3223 Council may waive a particular requirement if in its opinion the inclusion is not
3224 essential to a proper decision on the project. The advice and recommendations of the
3225 Planning Board is [one](#) of advisory capacity, and the Town Council has final authority
3226 on granting or denying a special use permit.

3227 (I) Initiation of construction. No construction ground-disturbing
3228 activities shall be initiated until the preliminary or final site plans have been approved
3229 by the Town Council, a guaranty of performance has been approved and until all local

3230 utility approvals and an approved soil erosion and sedimentation control plan have
3231 been received.

3232 (J) Guaranty of performance.

3233 (1) In order to insure that the public improvements are completed
3234 properly within a period of time specified, the developer shall enter into a guaranty
3235 for completion with the Town Council. A performance guaranty shall be negotiated
3236 between the developer and the Town Council prior to the issuance of the special use
3237 permit by the Zoning Administrator.

3238 (2) The guaranty of performance shall require that the developer
3239 complete the public improvements, including, but not limited to, roads, parking areas
3240 and rights-of-way; water and sewer facilities; drainage, erosion and sedimentation
3241 control facilities; and lighting and landscaping. The specific improvements to be
3242 guaranteed are to be designated with submission of the final site plan. The guaranty
3243 shall be provided by a performance bond, letter of credit, certified check, cash escrow,
3244 cash payment or property bond as approved by the Town Council. No certificate of
3245 occupancy may be issued until either the improvements are completed or adequate
3246 guaranties are approved.

3247 (3) The guaranty of performance shall be in an amount equal to
3248 125% of the cost of the improvements included in the final site plan. If the project is
3249 to be completed in phases, the guaranty of performance may be applied to each phase.
3250 The release of a guaranty of performance by the Town Council, in total or in part,
3251 based on the percentage of improvements completed, shall be made upon a
3252 certification from the Zoning Administrator that the improvements have been
3253 completed in accordance with the approved final site plan for a phase of the overall
3254 project or the entire project.

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3255 (K) Default. Upon default (meaning failure on the part of the developer
3256 to complete the required improvements as specified and within the time period
3257 specified in the guaranty) the developer shall, if requested by the Town Council, pay
3258 all or any portion as may be required of the guaranty to the Town of Mills River for
3259 the purpose of completing the specified improvements. Upon payment, the Town
3260 Council, at its discretion, may expend the portion of the funds as it deems necessary
3261 to have completed all or any portion of the required improvements. The town shall
3262 return to the institution any funds not spent in completing the improvements.

3263 (L) Construction codes. The developer must comply with all applicable
3264 state and local construction codes and requirements.

3265 (M) Amendments to the development plan. Minor changes in the
3266 location, siting or character of buildings and structures may be authorized by the
3267 Zoning Administrator, if required by engineering or other circumstances not foreseen
3268 at the time the final development program was approved; provided, however, that no
3269 change authorized by the Zoning Administrator under this section may increase the
3270 size of any building or structure by more than 10%, nor change the location of any
3271 building or structure by more than 10 feet in any direction, nor make any changes
3272 beyond the minimum or maximum requirements set forth in this chapter. All other
3273 changes in the MICD, including changes listed below, shall not be made without re-
3274 submission of the MICD according to the procedures in this section:

- 3275 (1) A change in the use or character of the development.
- 3276 (2) An increase in overall density.
- 3277 (3) An increase in intensity of use.
- 3278 (4) Alteration of the traffic circulation system.
- 3279 (5) A reduction in approved open space.
- 3280 (6) A reduction of off-street parking and loading space.

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3281 (7) Any change in ownership or control of all or a portion of the
3282 development.

3283 (N) Failure to comply. Construction and/or use of the MICD shall be set
3284 forth in the plans, application and supporting documents approved by the Town
3285 Council. Construction and/or use differing from the approved plans and application,
3286 except as herein provided, shall be deemed a violation of this chapter and subject to
3287 penalties as provided in Administration and Enforcement.

3288 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
3289 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

3290 **§ 154.085 STRUCTURED ENVIRONMENT HOMES.**

3291 The following development standards shall apply to Structured Home
3292 Environment Uses:

3293 (A) *Land development standards.* The following land development
3294 standards shall apply for a Structured Home Environment. Structured Home
3295 Environment Uses may be located in the MR-NC, MR-MU, and MR-GB and MR-LI
3296 districts as a special use, subject to a finding by the Mills River Town Council on the
3297 advice and recommendation of the Planning Board that certain conditions shall be
3298 met.

3299 (1) *Distance from a School.* The site for a Structured Home
3300 Environment must be at least one mile in linear distance from a school.

3301 (2) *Maximum Density.* A Structured Home Environment has a
3302 maximum density of five residents.

3303 (3) *Minimum requirements.*

3304 (a) The lot size and dimensional requirements of the district in
3305 which the development is proposed shall apply.

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3306 (b) Publicly-owned and maintained water and sewer shall
3307 be required for a Structured Home Environment.

3308 (c) The Structured Home Environment shall comply with
3309 parking, buffer and landscape requirements as listed in the code for commercial uses.

3310 (B) *Application Process.* Prior to submission of an application for a [Major](#)
3311 ~~s~~Special ~~u~~Use ~~p~~Permit to the Town Council, the applicant shall arrange a pre-
3312 application conference with the Planning Board and its staff.

3313 (1) The applicant shall submit to the Planning Board a sketch
3314 development plan for the proposed site. The sketch plan and development strategy
3315 shall show and describe the layout of the Structured Environment Home along with
3316 adequate parking and landscaping.

3317 (2) The pre-application conference is designed to inform the
3318 developer of the local government's regulations and policies concerning development
3319 alternatives and to inform the local government of the developer's intentions, enough
3320 to be able to give him or her some informal, non-binding feedback on the acceptability
3321 of his or her ideas. The greater the level of common understanding between the
3322 developer and the local government that can be achieved at the pre-application
3323 conference stage, the smoother the remaining steps of the review process will be.

3324 (3) Special use permit. Upon completion of the pre-application
3325 conference with the Planning Board, the applicant shall submit to the Town Council a
3326 written application for a [Major](#) ~~s~~Special ~~u~~Use ~~p~~Permit in accordance with § 154.180.
3327 The special use permit shall expire two years from the date of issuance without
3328 substantial progress towards development of the site.

3329 (4) *Development plan.* After the pre-application conference and
3330 upon submission of a written application for a special use permit, the applicant shall
3331 submit a development plan to the Town Council. A second copy of the development

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3332 plan shall be submitted to the Planning Board for review and recommendations.
3333 The Town Council shall not issue a special use permit until it has received
3334 recommendations from the Planning Board. If no action is taken by the Planning
3335 Board within 45 days of the meeting at which the Planning Board first considers the
3336 development plan, it shall be deemed to have recommended approval of the
3337 development plan, and the Town Council may proceed to act upon the application.

3338 (5) The Planning Board shall review the development plan for
3339 conformance with the land development standards of this section, the sketch plan and
3340 development strategy presented in the pre-application conference and the
3341 requirements of the development plan which shall include the following information
3342 and supporting documentation.

3343 (6) *Written documents.*

3344 (a) A legal description of the total site proposed for
3345 development, including a statement of present and proposed ownership.

3346 (b) The zoning district or districts in which the project is
3347 located.

3348 (c) A general statement of the way the Structured Home
3349 Environment shall be operated.

3350 (d) Documentation showing that the development meets the
3351 requirements as outlined for Structured Home Environments.

3352 (e) *Site plan and supporting maps.* A map or maps drawn to
3353 an appropriate scale, with the date of preparation and North point, shall include the
3354 following information:

3355 (f) Existing site conditions, including contours,
3356 watercourses, identified flood hazard areas and any unique natural or man-made
3357 features.

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3358 (g) Boundary lines of the proposed development, proposed
3359 lot lines and plot designs.

3360 (h) Proposed location and use of all existing and proposed
3361 structures.

3362 (i) Approximate location of proposed utility systems,
3363 including documentation approving the proposed water and sewer systems from the
3364 appropriate local and state agencies. Water and sewer documentation must reflect
3365 the current development name and densities, be issued within the past 6 months and
3366 state that the public entity intends to accept both flow and maintenance.
3367 Documentation of an approved sedimentation and erosion control plan shall also be
3368 submitted.

3369 1. Location and/or notation of existing and
3370 proposed easements and rights-of-way.

3371 2. The proposed treatment of the perimeter of the
3372 development, including materials and/or techniques, such as screens, fences and
3373 walls.

3374 3. Information on adjacent land areas, including
3375 land use, zoning classifications, public facilities and any unique natural features.

3376 (j) *Additional information.* Any additional information
3377 required by the Mills River Town Council in order to evaluate the impact of the
3378 proposed Structured Home Environment. The Town Council may waive a
3379 particular requirement if, in its opinion, the inclusion is not essential to a proper
3380 decision on the project. The advice and recommendation of the Planning Board is
3381 1 of an advisory capacity, and the Town Council has final authority on granting or
3382 denying a special use permit.

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3383 (7) The Town Council shall submit a copy of its decision on a
3384 specific Structured Home Environment to the Planning Board.
3385 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
3386 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00055,
3387 passed 4-23-2009)

3388 **§ 154.086 SITE STANDARDS FOR CERTAIN USES IN MR-MU**
3389 **DISTRICT: TINY HOME PARKS, PARK MODEL PARKS, AND**
3390 **RECREATIONAL VEHICLE PARKS.**

3391 A tiny home park, park model park, and recreational vehicle park development
3392 may be located in the MR-MU district as a special use [under a Major Special Use](#)
3393 [Permit](#), subject to a finding by the Town Council on the advice and recommendation
3394 of the Planning Board that certain conditions be met. The purpose of this section is to
3395 provide reasonable design standards for said developments for greater design
3396 flexibility. The Town Council shall exercise ultimate discretion as to whether the
3397 development plan does comply with the spirit and intent of this section.

3398 (A) *Land development standards.* The following land development
3399 standards shall apply for all tiny home park, park model park, and recreational
3400 vehicle park developments.

3401 (1) *Ownership control.* The land in a tiny home park, park model
3402 park, and recreational vehicle park development shall be under single ownership or
3403 management by the applicant before final approval and/or construction, or proper
3404 assurances (legal title or execution of a binding sales agreement) shall be provided
3405 that the development can be successfully completed by the applicant.

3406 (2) *Density requirements.* The maximum density for tiny home park,
3407 park model park, and recreational vehicle park developments (dwelling units per
3408 acre) shall be 4 units per acre.

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3409 (3) *Minimum size.* The minimum parcel size for a tiny home park,
3410 park model park, and recreational vehicle park development shall be 5 contiguous
3411 acres.

3412 (4) *Setback requirements.* tiny home park, park model park, and
3413 recreational vehicle park developments shall adhere to the following setbacks:

3414 (a) Front setback: 75 feet from major thoroughfare, 60 feet
3415 from all other streets.

3416 (b) Side and rear setback: 30 feet from parcel line.

3417 (c) All tiny homes, park model homes, recreational vehicles,
3418 and any slip for a tiny home, park model home, or recreational vehicle, and buildings
3419 that support the development as a whole (such as a leasing office, recreational
3420 facilities, etc.) shall adhere to the setback requirements. Development infrastructure
3421 (such as roads, etc.) is allowed within the setback area.

3422 (5) *Leasing office.* A leasing office is required in all tiny home, park
3423 model, and recreational vehicle park developments. The office should have regular
3424 business hours but also have 24 hour availability for emergencies.

3425 (6) *Lease time limits.* Each tiny home, park model, or recreational
3426 vehicle shall be limited to a maximum stay of 3 months per calendar year within an
3427 approved development. The leasing office shall keep a record of each tiny home, park
3428 model, and recreational vehicle that leases space in the development and provide the
3429 Zoning Administrator with a record on a semi-annual basis. The leasing office shall
3430 only lease the space/slip for location of a tiny home, park model home, or recreational
3431 vehicle. Direct leasing of tiny homes, park model homes, and recreational vehicles is
3432 not allowed.

3433 (7) *Parking.* A minimum of 2 parking spaces is required for each
3434 individual tiny home, park model, or recreational vehicle lot.

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3435 (8) *Landscape plan.* Landscaping shall be designed as a single
3436 architectural scheme with appropriate common landscaping. In addition, a buffer
3437 strip of no less than 20 feet is required around the entire perimeter of the property.
3438 Landscaping shall meet the requirements of §§ 154.230 through 154.237.

3439 (9) *Commercial dumpsters.* Dumpsters are required for every 20
3440 lots/slips within the development and must be wildlife secure. Dumpsters shall be
3441 screened according requirements in § 154.115.

3442 (10) *Road standards.* The minimum travelway for a one (1) way road
3443 shall be 12 feet. The minimum travelway for a ~~2two-~~way street shall be 18 feet. Any
3444 cul-de-sacs or other turn arounds shall be sufficient to accommodate emergency
3445 vehicles.

3446 (B) Prior to issuance of a special use permit, approval or receipt of review
3447 from other review agencies is required. Stormwater/erosion control, watershed,
3448 environmental health, water, sewer, NCDOT, and fire are common components of site
3449 plan review for a special use permit. Location of a proposed development will dictate
3450 which agencies require review of a tiny home park, park model park, and recreational
3451 vehicle park development.

3452 (C) All tiny homes, park model homes, and recreational vehicles within a
3453 park development shall meet NCDOT safety and road standards.

3454 (Ord. 2018-03, passed 3-8-2018)

3455 **§ 154.087 SITE STANDARDS FOR CERTAIN USES IN MR-MU**
3456 **DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY REQUIRED.**

3457 (A) *Introduction and purpose.* The purpose of this section is to specify the
3458 minimum specific site standards and the general site standards stated in § 154.138
3459 which will provide the flexibility to impose a higher level of specific site standards if

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3460 necessary to mitigate the neighborhood impact of certain uses which are permitted
3461 in the MR-MU District. These certain uses are subject to the Town Council finding that
3462 both the general site standards and the specific site standards listed in this section
3463 will be met. These site standards may apply to other use districts if specifically
3464 required therein.

3465 (B) *General site standards.* The general site standards stated in § 154.138
3466 must be met for all uses requiring a special use permit in the MR-MU District.

3467 (C) *Specific site standards.* The specific site standards for each use
3468 requiring a special use permit in the MR-MU District are contained in § 154.138 and
3469 must be met.

3470 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
3471 Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007)

3472 **§ 154.088 APPLICATION REQUIREMENTS FOR CERTAIN USES IN**
3473 **MR-MU DISTRICT AND OTHER DISTRICTS AS SPECIFICALLY**
3474 **REQUIRED.**

3475 (A) The following uses shall be required to comply with the Application
3476 requirements provided for in § 154.088(B) below:

3477 (1) MR-MU District: those uses listed in § 154.088(E), Uses
3478 permitted with standards, vehicle graveyards mobile/manufactured home
3479 graveyards.

3480 (2) MR-MU District: those uses listed in § 154.088(G), special uses,
3481 incinerators solid waste management facilities mining and extraction operations
3482 concrete plants; asphalt plants; junkyards; motor sports facilities; slaughtering
3483 plants; amusement parks, chip mills and heavy industry.

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3484 (B) All applicants for those uses listed in § 154.088(A), above, shall provide
3485 the following information by completing an application form (to be provided by the
3486 Zoning Administrator) and providing supporting documentation as required:

3487 (1) Name and address of applicant [all uses].

3488 (2) Permit fee as set forth by the Mills River Town Council on a fee
3489 schedule (all uses).

3490 (3) Site plan prepared by an active North Carolina registered land
3491 surveyor, registered professional engineer or registered landscape architect and
3492 containing the following information (All uses, except vehicle graveyards in the MR-
3493 MU District, and mobile/manufactured home graveyards in the MR-MU District):

3494 (a) Names, addresses and telephone numbers of the
3495 applicant and the property owner.

3496 (b) Plan scale, a North arrow and a vicinity map.

3497 (c) Tax parcel identification number for any parcel of land
3498 containing the proposed use.

3499 (d) Name, address, signature and seal of the person who
3500 prepared the site plan.

3501 (e) Surveyed boundary lines of any parcel, or portion
3502 thereof, that will contain the proposed use, and surveyed point of highest elevation
3503 (finished grade) to the nearest foot. (The boundary lines shall be surveyed by an
3504 active North Carolina registered land surveyor).

3505 (f) Proposed location, use and dimensions of all structures,
3506 and areas not within structures, devoted to principal uses. All the structures and areas
3507 shall be appropriately labeled, including a description of each sufficient to give the
3508 Town Council a reasonable understanding of each.

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3509 (g) Proposed location, use and dimensions of all structures,
3510 and areas not within structures, devoted to accessory uses. All the structures and
3511 areas shall be appropriately labeled, including a description of each sufficient to give
3512 the Town Council a reasonable understanding of each.

3513 (h) Proposed location(s), use and dimensions of the stated
3514 minimum buffer and the stated minimum setback.

3515 (i) Existing site conditions, including watercourses, flood
3516 hazard areas, existing utilities and streets and rights-of-way.

3517 (j) Proposed locations, dimensions and arrangement of all
3518 off-street parking and loading areas.

3519 (k) Proposed locations (including line and grade) of access
3520 road corridor(s), travelway(s) and service road(s).

3521 (l) Proposed location and description of facilities to be used
3522 for sewage disposal, water supply, stormwater drainage and any other utilities.

3523 (4) Site plan containing the following information (vehicle
3524 graveyard and manufactured/mobile home graveyard):

3525 (a) Names, addresses and telephone numbers of the
3526 applicant and the property owner.

3527 (b) Plan scale (if any used), a North arrow and a vicinity map.

3528 (c) Tax parcel identification number for any parcel of land
3529 containing the proposed use.

3530 (d) Name, address, signature of the person who prepared the
3531 site plan.

3532 (e) Approximate boundary lines of the parcel or any portion
3533 thereof that will contain the proposed use, according to county tax records, and the
3534 acreage.

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- 3535 (f) Stated minimum buffer and setback.
- 3536 (g) Approximate location of the access road corridor,
3537 including approximate line and grade.
- 3538 (h) Approximate location of any existing buildings or
3539 structures.
- 3540 (i) Approximate location of existing site conditions
3541 including existing watercourses.
- 3542 (5) Map from the Henderson County Assessor's Office showing that
3543 the residential density requirements and separation requirements for the proposed
3544 use, if any, will be met (all uses).
- 3545 (6) Certification of the applicant stating that the residential density
3546 requirements and the separation requirements, if any, have been met (all uses).
- 3547 (7) Names, mailing addresses and tax parcel identification numbers
3548 for all property owners adjacent to the proposed use (all uses except vehicle
3549 graveyards and mobile/manufactured home graveyards in the MR-MU District).
- 3550 (8) Schedule of proposed hours of operation which shall be subject
3551 to approval by the Town Council (all uses except vehicle graveyards and
3552 mobile/manufactured home graveyards in the MR-MU District).
- 3553 (9) Estimated peak noise emission measured at the property
3554 boundaries during hours of operation (all uses except vehicle graveyards and
3555 mobile/manufactured home graveyards in the MR-MU District).
- 3556 (10) Noise mitigation plan, which shall be subject to approval by the
3557 Town Council (all uses except vehicle graveyards and mobile/manufactured home
3558 graveyards in the MR-MU District).
- 3559 (11) Lighting plan (all uses except vehicle graveyards and
3560 mobile/manufactured home graveyards in the MR-MU District).

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3561 (12) A detailed plan describing or showing the proposed method(s)
3562 of screening (Junkyards in the MR-MU District).

3563 (13) A detailed plan describing or showing the proposed method(s)
3564 of fencing.

3565 (14) Written narrative which provides a description and details
3566 regarding the proposed use including, but not limited to:

3567 (a) A description of the operations associated with the
3568 proposed use.

3569 (b) Number of employees, if any.

3570 (c) Maximum patron capacity for which application is being
3571 made. If approved, this shall be the maximum permitted patron capacity for the use.

3572 (d) Types of material and equipment to be used on site.

3573 (e) Whether operations will be indoors and/or outdoors,
3574 with specificity as to which operations will be located indoors and/or outdoors.

3575 (f) A listing of the federal and state permits which must be
3576 acquired for the proposed use.

3577 (g) Type(s) and maximum quantity(ies) of units to be
3578 produced, extracted, disposed of, processed and/or stored as applicable for the
3579 proposed use. If approved, the type(s) and quantity(ies) requested shall be the
3580 maximum permitted type(s) and quantity(ies).

3581 (h) Any other information necessary to fully convey the
3582 intended scope, intensity, capacity and/or size of the proposed use

3583 (15) Identification of any and all extremely hazardous substances to
3584 be used, stored, handled, processed or manufactured and their proposed location(s)
3585 on the required site plan (All uses except vehicle graveyards and
3586 mobile/manufactured home graveyards in the MR-MU District).

3587 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
3588 Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00066,
3589 passed 4-28-2011)

3590 **§ 154.089 SOLAR ENERGY GENERATION FACILITY SITE**
3591 **STANDARDS.**

3592 (A) Area devoted to solar energy generation facilities may not exceed 15
3593 acres per facility on any lot.

3594 (B) Solar energy generation facilities shall be completely enclosed within:

3595 (1) A woven wire fence; or

3596 (2) A masonry wall; or

3597 (3) A wooden fence that contains spacing no greater than 6 inches.

3598 (4) The fences shall be at least 6 feet in height. Wire woven fences
3599 shall be vinyl-coated or painted with a dark green, brown or black color. Vinyl-
3600 coating or painting of razor-wire or barbed-wire portions of the fence is not required.

3601 (C) A buffer strip as defined in § 154.007(B) shall be planted to screen the
3602 site from all other properties. This may be along the lot line or surrounding the area
3603 designated for the solar energy generation facility.

3604 (D) All new power transmission lines shall be underground and any
3605 electrical disconnection switches should be clearly marked and unobstructed.

3606 (E) Wind and snow load must be certified upon application. All
3607 equipment and structures shall comply with the North Carolina State Building Code
3608 requirements for survival wind speeds and ground snow loads for buildings.
3609 Although the North Carolina State Building Code may require load designs for only
3610 buildings, all structures and equipment associated with this use shall meet those
3611 same wind and snow load requirements. Note that the requirements vary based on

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3612 the elevation and location of the site. The Zoning Administrator shall require a
3613 certification from a structural engineer, licensed in North Carolina as a professional
3614 engineer, stating the designed wind and snow load standards for equipment and
3615 structures have been constructed according to the State Building Code and will meet
3616 the following:

3617 (1) Structures and buildings will meet a minimum wind survival
3618 speed of 90 m.p.h.; and

3619 (2) Structures and buildings will meet a minimum snow load of 15
3620 lbs. per square foot.

3621 (F) Should the facility stop being used or become unable to generate
3622 power, the property owner shall decommission the facility by removing the
3623 structures from the property within 180 days. After that time period, the town shall
3624 reserve the right to contract to have the equipment removed and lien against the
3625 property until payment for the contract is received in full.

3626 (Ord. 00080, passed 5-23-2013)

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3627

COMMUNICATION TOWERS

3628

§ 154.090 STATUTORY AUTHORITY; PURPOSE.

3629

3630

3631

(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 ~~160A~~, ~~Article 19~~[160D, Article 9, Part 3](#).

3632

3633

(B) The purpose of this subchapter is to protect the health, safety and welfare of citizens of Town of Mills River.

3634

3635

3636

(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.

3637

(Ord. 00079, passed 4-25-2013)

3638

§ 154.091 JURISDICTION.

3639

3640

3641

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)

3642

§ 154.092 TOWER GROUPS.

3643

3644

Tower groups. For the purposes of this subchapter, communications towers and tower activities shall be grouped as follows:

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3647

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3650

(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

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3651 higher than the alternative structure, the construction is exempt from the terms of
3652 this subchapter. If collocation of an antenna on an existing tower results in the tower
3653 height not increasing by more than 30 feet, the construction is exempt from the terms
3654 of this subchapter. Exemption herein does not constitute exemption from any other
3655 applicable federal, state or local law or regulation.

3656 (B) *Group 2: collocation or replacement.* The Town of Mills River requires
3657 collocation of antennas on existing communications towers where collocation
3658 opportunities are available. Upon enactment of this subchapter, any person,
3659 corporation, partnership or other entity which intends to collocate on an existing
3660 communications tower within the jurisdiction of this subchapter, where the
3661 collocation results in the tower height increasing by more than 20 feet, shall first
3662 obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance with the
3663 terms of this subchapter. Replacement towers shall be placed so as not to increase the
3664 degree of any existing non-conformities.

3665 (C) *Group 3: towers for residential, amateur radio.* Upon enactment of this
3666 subchapter, any person, corporation, partnership or other entity which intends to
3667 construct a communications tower, within the jurisdiction of this subchapter, which
3668 is 80 feet or more in height and which is intended for residential or amateur radio
3669 shall first obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance
3670 with the terms of this subchapter.

3671 (D) *Group 4: new communications towers less than 50 feet.* Upon enactment
3672 of this subchapter, any person, corporation, partnership or other entity which intends
3673 to construct a new communications tower up to 50 feet in height within the
3674 jurisdiction of this subchapter shall first obtain a permit from the ~~Ordinance~~-[Zoning](#)
3675 Administrator in accordance with the terms of this subchapter. Allowed in districts
3676 MR-GB, MR-NC, MR-LI and MR-MU.

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3677 (E) *Group 5: new communications towers 50 feet through 250 feet.* Upon
3678 enactment of this subchapter, any person, corporation, partnership or other entity
3679 which intends to construct a new communications tower up to 250 feet in height
3680 within the jurisdiction of this subchapter shall first obtain a permit from the
3681 ~~Ordinance~~-[Zoning](#) Administrator in accordance with the terms of this subchapter.
3682 Allowed in districts MR-GB, MR-NC, MR-LI and MR-MU.

3683 (F) *Group 6: special use new communications towers.* Upon enactment of
3684 this subchapter, any person, corporation, partnership or other entity which intends
3685 to construct a new communications tower greater than 250 feet in height within MR-
3686 GB, MR-NC, MR-LI and MR-MU districts and under the jurisdiction of this subchapter
3687 shall first obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance
3688 with the terms of this subchapter. Any person, corporation, partnership or other
3689 entity which intends to construct a new communications tower less than 100 feet in
3690 height within MR-30 district and under the jurisdiction of this subchapter shall first
3691 obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in accordance with the
3692 terms of this subchapter.

3693 (G) *Group 7: location of antennas on alternative structures.* Upon
3694 enactment of this subchapter, any person, corporation, partnership or other entity
3695 which intends to mount an antenna on an alternative structure that would add more
3696 than 20 feet to the height of the alternative structure within the jurisdiction of this
3697 subchapter shall first obtain a permit from the ~~Ordinance~~-[Zoning](#) Administrator in
3698 accordance with the terms of this subchapter.

3699 (H) *Group 8: public safety and governmental Use.* Upon enactment of this
3700 subchapter, any government agency which intends to construct a new
3701 communications tower shall first obtain a permit from the ~~Ordinance~~-[Zoning](#)
3702 Administrator in accordance with the terms of this subchapter.

3703 (Ord. 00079, passed 4-25-2013)

3704 **§ 154.093 TOWER STANDARDS BY GROUP.**

3705 *Standards for communications towers.* Tower owners should exercise best
3706 efforts in the placement of communications towers so that they have minimal impact
3707 on adjacent residents and land owners. Conformance with the following standards
3708 shall be conclusive proof of best efforts on the part of tower owners. The following
3709 standards shall apply to communications towers:

3710 (A) *Standards for Group 1.* The structures shall be located on sufficient land
3711 to meet the setback requirements of the zoning district, if applicable.

3712 (B) *Standards for Group 2.*

3713 (1) The replacement tower shall be placed as close to the existing
3714 tower as is reasonable feasible and on the same parcel as the original tower.

3715 (2) The replacement tower shall meet the setback requirements of
3716 the zoning district, if applicable. However, if the existing tower is non-conforming for
3717 setbacks, the replacement tower shall not increase the degree of non-conformity.

3718 (3) The existing tower being replaced shall be removed within 90
3719 days of completion of the replacement tower.

3720 (C) *Standards for Group 3.* The structures shall be located on sufficient land
3721 to meet the setback requirements of the zoning district, if applicable.

3722 (D) *Standards for Groups 5, 6 and 7.*

3723 (1) *District setback requirements.* The structures shall be located on
3724 sufficient land to meet the setback requirements of the zoning district, if applicable.

3725 (2) *Separation from existing communications towers.* New
3726 monopole towers shall be located at least half (1/2) mile from any existing or
3727 permitted tower of any type (monopole, lattice or guyed) which is greater than 150

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3728 feet in height. New lattice or guyed towers shall be located at least [one \(1\)](#) mile from
3729 any existing or permitted tower of any type which is greater than 150 feet in height.

Separation <i>from Existing or Permitted</i>	
New Tower Type	Towers Greater than 150 feet in Height
Monopole	1/2 mile
Guyed or lattice	1 mile

3730

3731 (3) Separation *from* occupied buildings.

3732 (a) Separation *distance*. New monopole towers shall be
3733 separated from occupied buildings and other structures by a distance equal to 75%
3734 of the height of the proposed tower. New lattice or guyed towers shall be separated
3735 from occupied buildings and other structures by a distance equal to the height of the
3736 proposed tower.

Separation <i>from</i> Occupied Buildings	
Tower Type	(Percentage of tower height)
Monopole	75%
Guyed or lattice	100%

3737

3738 (b) *Exception*. The required separation area for all types of
3739 new towers may include occupied buildings if the applicant obtains affidavits of
3740 understanding or similar documents from the owners of property containing the
3741 buildings. The affidavits or other documents shall state that the property owners do
3742 not object to the construction of the tower as proposed in the application and agree

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3743 to hold the Town of Mills River harmless from any and all liability for the location and
3744 construction of the tower as proposed in the application. The affidavits should also
3745 cite the specific plan or drawing reviewed by the property owner.

3746 (4) *Lighting.* No permanent or strobe lights shall be allowed on the
3747 tower unless required by federal, state or local law or regulation. Ground level
3748 security lighting may be permitted if designed to minimize impacts on adjacent
3749 properties.

3750 (5) *Color.* Towers shall be light gray or any other color that blends
3751 into the environment in which the tower is located, except when otherwise required
3752 by applicable federal and state law or regulations.

3753 (6) *Signs.* A sign which includes the name of the tower operator and
3754 a telephone number for emergencies shall be displayed in a visible location near the
3755 tower. No sign may be placed on the tower for commercial advertisement purposes.
3756 "Warning" and "no trespassing" signs are permitted and encouraged.

3757 (7) *Fencing.* The base of any tower shall be surrounded by a secured
3758 fence or an enclosed wall of at least 8 feet in height.

3759 (8) *Compliance with federal and state regulations.* The applicant
3760 shall be required to provide documentation satisfactory to the Zoning Administrator
3761 of compliance with all applicable federal and state laws and regulations.

3762 (9) *Siting towers on protected mountain ridges.* The height of any
3763 new monopole tower proposed for a protected mountain ridge, as defined, shall not
3764 be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to
3765 the tower site. The height of new lattice or guyed towers proposed for a protected
3766 mountain ridge shall not be greater than 20 feet above the existing vegetative canopy
3767 adjacent to the tower site. For purposes of this subchapter, the vegetative canopy

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3768 shall be the average tree line height within 500 feet of the tower site or, if no such
3769 adjacent vegetation exists, then the canopy shall be set at 40 feet.

3770 (10) *Design to accommodate additional user.* All new
3771 communications towers shall be designed to accommodate at least [one \(1\)](#) additional
3772 user.

3773 (11) *Option to town on collocation opportunity.* For all new towers,
3774 the applicant shall give the Town of Mills River the option of collocating, for
3775 governmental use, an antenna space on the new tower at fair market value, if
3776 technically feasible and if requested by the Town of Mills River in writing within 30
3777 days of the submission of a permit approval.

3778 (12) *Landscaped buffer.* A landscaped buffer shall be provided
3779 around the outside of the fence enclosing the base of the tower, except where access
3780 to the base of the tower is provided. The purpose of the buffer is to screen the base of
3781 the tower and fencing from surrounding land uses. The buffer shall be installed and
3782 approved by the Zoning Administrator prior to issuance of a certificate of occupancy
3783 for the tower by the Henderson County Inspections Department.

3784 (a) *Material.* The buffer shall consist of at least 1 row of
3785 evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in
3786 height. The plants shall be at least 3 gallon container plants or 24 inches tall at the
3787 time of planting. Individual plants shall be spaced not more than 8 feet apart.

3788 (b) *Installation.* The required buffer shall be installed
3789 according to established planting procedures using good quality plant materials.
3790 Plant materials used for installation shall conform to the standards established by the
3791 American Association of Nurserymen in the American Standard for Nursery Stock.

3792 (c) *Maintenance.* The tower owner shall be responsible for
3793 providing, protecting and maintaining all buffer plant materials in a healthy and

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3794 growing condition. Unhealthy or dead plant materials shall be replaced in a timely
3795 manner. Replacement materials shall conform to the materials specified in the
3796 landscaped buffer planting plan submitted with the application for the proposed
3797 tower (see § 154.094(B)(2)(a)12.) and shall, at a minimum, be of the same size and
3798 quality of the original plantings.

3799 (d) *Waiver of requirements.* Mills River Town Council may
3800 waive the buffer requirements, in whole or in part, if:

3801 1. The applicant cannot feasibly meet the
3802 requirements because of physical constraints or characteristics of the site. In the
3803 cases Mills River Town Council may require that plant material be placed in another
3804 feasible location on the site which would serve to meet the intent of the buffer
3805 requirements.

3806 2. The existing vegetation, topography or other
3807 natural means provide screening of the tower base which satisfies the intent of the
3808 buffer requirements.

3809 3. The proposed tower is in a district where
3810 residential dwellings are not allowed.

3811 (E) *Standards for Group 8.*

3812 (1) *District setback requirements.* The structures shall be located on
3813 sufficient land to meet the setback requirements of the zoning district, if applicable.

3814 (2) *Lighting.* No permanent or strobe lights shall be allowed on the
3815 tower unless required by federal, state or local law or regulation. Ground level
3816 security lighting may be permitted if designed to minimize impacts on adjacent
3817 properties.

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3818 (3) *Color.* Towers shall be light gray or any other color that blends
3819 into the environment in which the tower is located, except when otherwise required
3820 by applicable federal and state law or regulations.

3821 (4) *Fencing.* The base of any tower shall be surrounded by a secured
3822 fence or an enclosed wall of at least 8 feet in height.

3823 (5) *Compliance with federal and state regulations.* The applicant
3824 shall be required to provide documentation satisfactory to the Zoning Administrator
3825 of compliance with all applicable federal and state laws and regulations.

3826 (6) *Siting towers on protected mountain ridges.* The height of any
3827 new monopole tower proposed for a protected mountain ridge, as defined, shall not
3828 be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to
3829 the tower site. The height of new lattice or guyed towers proposed for a protected
3830 mountain ridge shall not be greater than 20 feet above the existing vegetative canopy
3831 adjacent to the tower site. For purposes of this subchapter, the vegetative canopy
3832 shall be the average tree line height within 500 feet of the tower site or, if no such
3833 adjacent vegetation exists, then the canopy shall be set at 40 feet.

3834 (7) *Option to town on collocation opportunity.* For all new towers,
3835 the applicant shall give the Town of Mills River the option of collocating, for
3836 governmental use, an antenna on the new tower at fair market value, if technically
3837 feasible and if requested by the Town of Mills River in writing within 30 days of the
3838 submission of a permit application.

3839 (8) *Landscaped buffer.* A landscaped buffer shall be provided
3840 around the outside of the fence enclosing the base of the tower, except where access
3841 to the base of the tower is provided. The purpose of the buffer is to screen the base of
3842 the tower and fencing from surrounding land uses. The buffer shall be installed and

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3843 approved by the Zoning Administrator prior to issuance of a certificate of occupancy
3844 for the tower by the Henderson County Inspections Department.

3845 (a) *Material.* The buffer shall consist of at least ~~1~~[one \(1\)](#) row
3846 of evergreen shrubs capable of forming a continuous hedge or screen at least 8 feet in
3847 height. The plants shall be at least 3 gallon container plants or 24 inches tall at the
3848 time of planting. Individual plants shall be spaced not more than 8 feet apart.

3849 (b) *Installation.* The required buffer shall be installed
3850 according to established planting procedures using good quality plant materials.
3851 Plant materials used for installation shall conform to the standards established by the
3852 American Association of Nurserymen in the American Standard for Nursery Stock.

3853 (c) *Maintenance.* The tower owner shall be responsible for
3854 providing, protecting and maintaining all buffer plant materials in a healthy and
3855 growing condition. Unhealthy or dead plant materials shall be replaced in a timely
3856 manner. Replacement materials shall conform to the materials specified in the
3857 landscaped buffer planting plan submitted with the application for the proposed
3858 tower (see § 154.094(B)(2)(a)12.) and shall, at a minimum, be of the same size and
3859 quality of the original plantings.

3860 (d) *Waiver of requirements.* Mills River Town Council may
3861 waive the buffer requirements, in whole or in part, if:

3862 1. The applicant cannot feasibly meet the
3863 requirements because of physical constraints or characteristics of the site. In the
3864 cases Mills River Town Council may require that plant material be placed in another
3865 feasible location on the site which would serve to meet the intent of the buffer
3866 requirements.

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3890 3. A sketch plan in sufficient detail to show the
3891 location of the tower, the foundation, accessory structures and antennas within the
3892 tower site.

3893 4. A structural engineering certification signed and
3894 sealed by an active, registered, North Carolina professional engineer, certifying the
3895 structural integrity of the tower and the tower base. The Zoning Administrator may
3896 accept, in lieu of the above, other documentation evidencing the structural integrity
3897 of the tower and the tower base. Applicants for towers for residential, amateur radio
3898 or governmental use or those in Group 4 do not have to submit the structural
3899 engineering certification or similar documentation.

3900 5. A copy of the valid Federal Communications
3901 Commission license must be provided to the Town before the communication tower
3902 shall be operational.

3903 (b) *Review procedure.* If an application for a Group 2, 3, 4 or
3904 7 permit meets the requirements of this subchapter, the Zoning Administrator shall
3905 issue a permit for the tower. The Zoning Administrator shall have 10 business days
3906 from the date a complete application is filed to issue or deny the permit. If the Zoning
3907 Administrator has reason to deny a permit, the Zoning Administrator shall notify the
3908 applicant of the nonconformity which could cause a denial and give the applicant 10
3909 business days to cure the nonconformity. If the applicant fails to cure the
3910 nonconformity within 10 business days, the Zoning Administrator may deny the
3911 permit, but the denial shall be made in writing and shall be accompanied by the
3912 reasons stating why the permit was denied.

3913 (2) *Requirements for Group 5 or 8.* In order to obtain a permit for
3914 towers or tower activities in Group 5 or 8, the applicant shall submit the following
3915 items to the Zoning Administrator:

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3916

(a) *Application.*

3917

1. An application form (to be provided by the Zoning

3918

Administrator).

3919

2. A permit fee (to be set by the Town Council in a

3920

fee schedule).

3921

3. A tower profile, with dimensions, which shows

3922

the proposed tower, the foundation, accessory structures and antennas.

3923

4. A structural engineering certification signed and

3924

sealed by an active, registered, North Carolina professional engineer, certifying the

3925

structural integrity of the tower and the tower base.

3926

5. A site plan, prepared by an active North Carolina

3927

registered land surveyor, registered professional engineer or registered landscape

3928

architect, which contains the following information:

3929

a. The names, addresses and telephone

3930

numbers of the applicant and the property owner.

3931

b. The plan scale, a North arrow and a

3932

vicinity map.

3933

c. Tax parcel identification number for any

3934

parcel of land containing the tower site and the tower's latitude and longitude

3935

coordinates.

3936

d. The name, address, signature and seal of

3937

the person who prepared the site plan.

3938

e. The boundary lines of any parcel or

3939

portion thereof that will contain the proposed tower. The boundary lines shall be

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surveyed by an active North Carolina registered land surveyor.

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3941 f. The general location of boundary lines of
3942 any parcel or portion thereof within a radius from the tower base equal to the
3943 proposed tower height.

3944 g. The names and tax parcel identification
3945 numbers of all owners of property immediately adjacent to any parcel containing the
3946 tower site.

3947 h. All identifiable buildings and other
3948 structures (including existing towers), roads and perennial streams located on the
3949 parcel containing the tower site and within a radius from the tower base equal to the
3950 tower height.

3951 i. The tower base and the foundations for all
3952 guyed line anchors and support structures, all proposed buildings, accessory
3953 structures and any other proposed improvements, including roads and utilities
3954 serving the proposed site.

3955 j. The ground elevation of the base of the
3956 proposed tower to the nearest foot.

3957 6. Statement regarding accommodation of
3958 additional user. The applicant shall submit a document signed and sealed by an active,
3959 registered, North Carolina professional engineer which indicates that the proposed
3960 tower will accommodate at least [one \(1\)](#) additional user.

3961 7. Statement regarding collocation. The applicant
3962 shall submit a written statement which indicates that he or she is willing to allow
3963 future collocations and will make space available at fair market value. This statement
3964 may include a caveat for rejecting a collocation based on concern regarding frequency
3965 disruption as certified by a state certified radio frequency engineer.

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3966 8. Evidence of mailing of notices of intent. The
3967 applicant must submit documentation which shows that the applicant has sent
3968 required notices of intent to file an application for a communications tower permit to
3969 all owners of property immediately adjacent to the parcel containing the tower site
3970 as well as to all owners of property within a radius measured from the tower base
3971 equal to a half (1/2) mile. The notice of intent shall include the following: a vicinity
3972 map showing the proposed tower location; a sketch of the tower with dimensions
3973 which indicates the proposed tower type and height; and a general statement from
3974 the Zoning Administrator outlining the procedure by which the proposed tower may
3975 be permitted. (See sample on file with the Zoning Administrator.) The notices of
3976 intent shall be mailed no fewer than 10 days and no more than 30 days prior to the
3977 date on which an application for a tower permit is filed. A list of all current adjacent
3978 property owners as listed with Henderson tower Land Records shall be included.

3979 9. Evidence of lack of alternative antenna sites shall
3980 be presented when a tower falls within the required distance listed in § 154.093,
3981 separation from existing communication towers. The applicant for a Group 5 must
3982 provide written documentation which shows that a reasonable effort has been made
3983 to collocate a proposed antenna for a communications tower on an existing tower or
3984 alternative structure and that there are no feasible alternatives to constructing the
3985 proposed tower because the owner of an existing tower or alternative structure
3986 which could be used for an antenna is unwilling or unable to allow the collocation or
3987 because no tower or structure exists which: could provide coverage to the proposed
3988 service area; or is structurally capable of supporting the intended equipment; or is
3989 the proper height; or would not cause frequency interference. Group 8 is exempt from
3990 this application requirement.

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3991 10. Easement acquisition documents. Where any
3992 adjacent property to the tower site falls within the distance of the tower height
3993 measured from the tower base, the applicant shall submit, with the application, a
3994 statement of intent to grant an easement to the applicant. If the application is
3995 subsequently approved, no certificate of occupancy for tower operation may be
3996 issued by the Town of Mills River until easement documents are recorded in the
3997 Henderson County Register of Deeds office and copies of such are submitted to the
3998 Town of Mills River.

3999 11. Evidence of compliance with federal and state
4000 regulations. The applicant shall be required to provide documentation satisfactory to
4001 the Zoning Administrator of compliance with all applicable federal and state
4002 regulations.

4003 12. Landscaped buffer planting plan. The applicant
4004 shall submit a sketch which shows the general type(s) of plant materials to be used
4005 for the buffer and where the materials will be planted on the tower site.

4006 13. A copy of the valid Federal Communications
4007 Commission license must be provided to the Town before the communication tower
4008 shall be operational.

4009 (b) *Review procedure.* If an application for Group 5 or 8
4010 permit meets the requirements of this subchapter, the Zoning Administrator shall
4011 issue a permit for the tower. The Zoning Administrator shall have 15 business days
4012 from the date a complete application is filed to issue or deny the permit. If the Zoning
4013 Administrator has reason to deny a permit, the Zoning Administrator shall notify the
4014 applicant of the nonconformity that would cause a denial and give the applicant 10
4015 business days to cure the nonconformity. If the applicant fails to cure the
4016 nonconformity within 10 business days, the Zoning Administrator may deny the

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4017 permit, but the denial shall be made in writing and shall be accompanied by the
4018 reasons stating why the permit was denied.

4019 (3) *Requirements for Groups 6.* In order to obtain a permit for towers
4020 or tower activities in Groups 6, the applicant shall submit the following items to the
4021 Zoning Administrator:

4022 (a) *Application.* All of the items stated in division (B)(2)(a)1.
4023 through 13., requirements for Group 5 and 8, above, except that the permit fee shall
4024 be set by the Town Council in a fee schedule reflected as a special use permit fee.

4025 (b) *Review procedure.* Review and approval for Group 6
4026 permits shall be by the Mills River Town Council in accordance with § 154.138. special
4027 uses, and § 154.180, powers and duties of the Town Council, of this subchapter. In
4028 addition, the Town Council may consider the economic impacts of a proposed
4029 communications tower on surrounding properties in determining whether to grant a
4030 special use permit.

4031 (Ord. 00079, passed 4-25-2013)

4032 **§ 154.095 DISCONTINUED USE.**

4033 Written notice shall be provided to the Zoning Administrator by the
4034 tower/operator and the tower site owner when the use of a communications tower
4035 is discontinued. If the use of a communications tower has been discontinued for a
4036 continuous period of 90 days, then the tower owner/operator or the tower site owner
4037 shall remove the tower within 90 days. The tower owner/operator and the tower site
4038 owner shall be jointly and severally responsible for the removal.

4039 (Ord. 00079, passed 4-25-2013)

4040 **§ 154.096 CONTINUED COMPLIANCE REQUIRED.**

4041 All permits for the construction of communications towers shall be issued
4042 upon a presumption that the application and documents submitted do not contain
4043 any misrepresentations or inaccuracies and that the tower will strictly conform to the
4044 plans which are submitted as the basis for the permit. Any misrepresentation or
4045 inaccuracy in the application or documents submitted or failure to strictly conform
4046 the tower to the plans submitted shall constitute a violation of this subchapter.
4047 Further, once constructed, the tower must continue to be at all times maintained in
4048 strict compliance with the provisions of this subchapter; failure to do so shall also
4049 constitute a violation of this subchapter. Any violation shall subject the tower
4050 owner/operator and the tower site owner to revocation pursuant to § 154.098 and
4051 penalties pursuant to § 154.101.

4052 (Ord. 00079, passed 4-25-2013)

4053 **§ 154.097 VARIANCES.**

4054 (A) Where, because of severe topographical or other conditions peculiar to
4055 the site, strict adherence to the provisions of this subchapter would cause an
4056 unnecessary hardship, the Town Council may authorize a variance, if the variance can
4057 be made without compromising the intent of this subchapter. Notwithstanding the
4058 foregoing, no variance may be issued allowing the modification of any height
4059 restriction or limitation contained in this subchapter. Anyone desiring a variance
4060 from the terms of this subchapter shall make application, in writing, justifying the
4061 request. The Zoning Administrator shall prepare an item requesting that the Town
4062 Council set a quasi-judicial public hearing on the application for variance and shall
4063 forward the item to the Town Manager or other appropriate personnel designated by
4064 Town Council by the agenda deadline for the first regularly scheduled meeting of the

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4065 Town Council after the application has been submitted. The Town Council shall
4066 schedule the public hearing for a regular evening meeting on a date which allows
4067 sufficient time for notice of the hearing to be mailed to owners of adjacent property
4068 and to be published in the newspaper, as outlined in § 154.199 Notice of a quasi-
4069 judicial public hearing on an application for a proposed tower shall comply with the
4070 provisions of G.S. §§ [160D-601](#)~~160A-364~~ and ~~160A-384~~, as amended. (see § 154.199).

4071 The Town Council shall consider the public health, safety and welfare when ruling on
4072 applications for variance. Any grant of a variance pursuant to this section must be
4073 based upon specific findings of the fact made by the Board that support the following
4074 conclusions:

4075 (1) There are practical difficulties or unnecessary hardships in the
4076 way of carrying out the strict letter of this subchapter.

4077 (2) The variance applied for is in harmony with the general purpose
4078 and intent of this subchapter and preserves its spirit.

4079 (3) In the granting of the variance, the public safety and welfare
4080 have been assured and substantial justice has been done.

4081 (B) Any variance authorized by the Town Council is required to be entered
4082 in the minutes of the meeting of the Town Council and the reasoning on which the
4083 departure was justified set forth. In addition, the grant of the variance shall be made
4084 in writing and delivered to the applicant.

4085 (Ord. 00079, passed 4-25-2013)

4086 **§ 154.098 REVOCATION OF PERMIT.**

4087 (A) *Revocation by Zoning Administrator.* The Zoning Administrator shall
4088 revoke any permit issued by the Zoning Administrator pursuant to this subchapter
4089 for any violation of this subchapter upon the Zoning Administrator having knowledge

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4090 of the violation; provided, however, that the Zoning Administrator shall notify the
4091 tower owner/operator and tower site owner of the violation that may cause the
4092 permit to be revoked and give the tower owner/operator and tower site owner at
4093 least 10 business days to cure the violation. If the tower owner/operator and/or the
4094 tower site owner fails to cure the violation within the time prescribed, the Zoning
4095 Administrator shall revoke the permit. The revocation of the permit must be made in
4096 writing and must be accompanied by the reasons for which the permit was revoked.

4097 (B) *Revocation by Town Council.* The Town Council may revoke any permit
4098 issued pursuant to this subchapter for any violation of this subchapter; provided,
4099 however, that prior to the Town Council consideration of the revocation of the permit,
4100 the Zoning Administrator shall notify the tower owner/operator and tower site
4101 owner of the violation that may cause the permit to be revoked and give the tower
4102 owner/operator and tower site owner at least 10 business days to cure the violation.
4103 If the tower owner/operator and/or the tower site owner fails to cure the violation
4104 within the time prescribed, the Zoning Administrator may prepare an item requesting
4105 that the Town Council set a quasi-judicial public hearing on the revocation of the
4106 permit and shall forward the item to the appropriate personnel by the agenda
4107 deadline for the first regularly scheduled meeting of the Town Council after the
4108 revocation request has been submitted. The Town Council shall schedule the public
4109 hearing for a regular evening meeting on a date which allows sufficient time for notice
4110 of the hearing to be mailed to owners of adjacent property and to be published in the
4111 newspaper, as outlined in § 154.199. Notice of a quasi-judicial public hearing on an
4112 application for a proposed tower shall comply with the provisions of G.S. §§ 160D-
4113 601~~160A-364 and 160A-384~~, as amended. (See § 154.199). The revocation of the
4114 permit must be made in writing and must be accompanied by the reasons for which
4115 the permit was revoked. The request for revocation of the permit submitted to the

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4116 Town Council may be accompanied by an application for variance related to the
4117 violation and the same may be considered by the Town Council as outlined in §
4118 154.097.
4119 (Ord. 00079, passed 4-25-2013)

4120 **§ 154.099 APPEALS.**

4121 (A) *Decision of the Zoning Administrator.* The denial or the revocation of a
4122 permit by the Zoning Administrator or the imposition of any conditions to the permit
4123 by the Zoning Administrator may be appealed to the Mills River Town Council by
4124 giving written notice within 15 days of notification to the applicant of the Zoning
4125 Administrator's decision. Further appeal shall be made pursuant to division (B) as
4126 below set forth.

4127 (B) *Decision of the Town Council.* The denial or the revocation of a permit
4128 by the Town Council or the imposition of any conditions to the permit by the Town
4129 Council may be appealed to the Superior Court of Henderson County in the nature of
4130 certiorari. A petition for writ of certiorari in the Superior Court must be filed with the
4131 Clerk of Superior Court within 30 days after the decision of the Mills River Town
4132 Council is served upon the applicant. Unless otherwise ordered by a court of
4133 competent jurisdiction, this subchapter may be enforced pursuant to § 154.101
4134 during the pendency of any appeal under this division.
4135 (Ord. 00079, passed 4-25-2013)

4136 **§ 154.100 PERMIT FEES AND EXPENSES.**

4137 The Town Council may set fees for any and all permits granted under the terms
4138 of this subchapter and for processing applications for variances. All reasonable and
4139 necessary expenses associated with the processing, issuance or denial of any

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4140 application or variance, including, but not limited to, advertising fees, postage, travel,
4141 engineering studies and technical consultations, may be recovered from the
4142 applicant.

4143 (Ord. 00079, passed 4-25-2013)

4144 **§ 154.101 PENALTY.**

4145 The construction of a communications tower, collocation of an antenna on an
4146 existing tower, location of an antenna on an alternative structure or the replacement
4147 of an existing tower in violation of this subchapter, or failure to comply with any of
4148 the requirements of this subchapter or with any permit issued pursuant to this
4149 subchapter subject the applicant, the tower owner/operator and/or the owner of the
4150 tower site to revocation of the permit (§ 154.098) and the penalties and enforcement
4151 provisions pursuant to G.S. § 160A-175, including, but not limited to, the following:

4152 (A) *Equitable remedies.* This subchapter may be enforced by equitable
4153 remedies, and any unlawful condition existing in violation of this subchapter may be
4154 enforced by injunction and order of abatement in accordance with G.S. § 160A-175.

4155 (1) *Injunction.* Where necessary to effectuate compliance with this
4156 subchapter, the Zoning Administrator or the other official charged with the
4157 responsibility of enforcing the Town of Mills River Ordinances may institute an action
4158 in a court of competent jurisdiction seeking an injunction against the further violation
4159 of this subchapter. The action may be joined with a civil action instituted to collect
4160 accrued civil penalties in accordance with the provisions herein.

4161 (2) *Order of abatement.* Where necessary to abate a condition
4162 existing upon land in violation of this subchapter or a use made of land in violation of
4163 this subchapter, the Zoning Administrator or the other official charged with the
4164 responsibility of enforcing the Town of Mills River Ordinances may institute an action

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4165 in a court of competent jurisdiction seeking an order of abatement of the use or
4166 condition of land in violation of this subchapter. The action may be joined to an action
4167 for an injunction and/or an action to recover civil penalties accrued against an
4168 individual for the use or condition of land in violation of this subchapter.

4169 (3) *Other equitable remedies.* This subchapter may be enforced by
4170 any other equitable remedy which a court of competent jurisdiction deems just and
4171 proper.

4172 (B) *Civil penalties.* Any individual who is found in violation of this
4173 subchapter may be subject to a civil penalty of \$50. Each day's violation shall be
4174 treated as a separate offense.

4175 (1) *Compliance order.*

4176 (a) Upon making a determination that a person is in
4177 violation of this subchapter, the Zoning Administrator or the other official charged
4178 with the responsibility of enforcing the Town of Mills River Ordinances shall issue a
4179 compliance order to the owner of the property and/or owner/lessor of the tower in
4180 violation of this subchapter. The compliance order shall notify the violator of the
4181 violation in writing. The order shall identify the circumstances giving rise to the
4182 violation, including the times, dates and places of the violation. The notification shall
4183 further identify the action which is necessary to comply with this subchapter. The
4184 notification shall state that if the violator does not comply within a reasonable time,
4185 not to exceed 15 days, the individual will be subjected to a civil penalty. If
4186 circumstances exist that the violator cannot come into compliance within 15 days, the
4187 Zoning Administrator or the other official charged with the responsibility of enforcing
4188 the Town of Mills River Ordinances may grant an extension of time commensurate
4189 with the magnitude of the violation. The compliance order shall further state that

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4190 failure to comply with the terms of the compliance order will subject the violator to a
4191 civil penalty and shall further state the amount of the civil penalty.

4192 (b) Failure to comply with the terms of a compliance order
4193 issued by the Zoning Administrator or the other official charged with the
4194 responsibility of enforcing the Town of Mills River Ordinances within the time stated
4195 in the order shall subject the violator to a civil penalty of \$50. Each day that the
4196 violation continues shall be considered a separate offense, and the violator may be
4197 subject to an additional civil penalty for each separate offense.

4198 (2) *Civil action.* When necessary to collect any civil penalty or
4199 accrued civil penalties, a civil action may be instituted against an individual for the
4200 collection of all accrued penalties by the Zoning Administrator or the other official
4201 charged with the responsibility of enforcing the Town of Mills River Ordinances.

4202 (C) *Criminal penalties.* Unless otherwise provided by this subchapter or
4203 other applicable law, violation of this subchapter shall constitute a Class 3
4204 misdemeanor punishable by a fine not to exceed \$500. Each day's violation shall be
4205 treated as a separate offense.

4206 (1) *Warning ticket.* Upon the initial violation of a particular
4207 provision of this subchapter, an individual may be issued a warning ticket. The
4208 warning ticket shall identify the particular practice which is in violation of this
4209 subchapter and shall state the time, date and place of the violation. The warning ticket
4210 shall further state that if the individual commits further similar violations within the
4211 6 months following the date of the warning ticket, the Zoning Administrator or the
4212 other official charged with the responsibility of enforcing the Town of Mills River
4213 Ordinances may cause a warrant to be issued for the individual's arrest.

4214 (2) *Warrant.* If an individual violates this subchapter within the 6
4215 months following the issuance of a warning ticket in a manner that is similar to the

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4216 violation specified in the warning ticket, the Zoning Administrator or the other official
4217 charged with the responsibility of enforcing the Town of Mills River Ordinances may
4218 cause a warrant to be issued for the arrest of the individual.

4219 (3) *Enforcement.* Notwithstanding any other provisions of this
4220 subchapter, the Zoning Administrator or the other official charged with the
4221 responsibility of enforcing the Town of Mills River Ordinances may cause a warrant
4222 to be issued without having first issued a warning ticket where he or she deems it
4223 necessary to effectively enforce the terms of this subchapter.

4224 (Ord. 00079, passed 4-25-2013)

4225

GENERAL REGULATIONS

4226 § 154.105 NONCONFORMING USES.

4227 Any parcel of land, use of land, building or structure lawfully existing at the
4228 time of the adoption of this chapter, or any amendment thereto, that does not conform
4229 to the use, [lot size](#) or [dimensional](#) requirements of the district in which it is located
4230 may be continued and maintained subject to the following provisions:

4231 (A) *Nonconforming vacant lots.* This category of nonconformance
4232 consists of vacant lots for which plats or descriptions have been recorded in the
4233 Register of Deeds office of Henderson County, which at the time of the adoption of
4234 this chapter or any amendment thereto fail to comply with the minimum area
4235 requirements of the districts in which they are located. Any such nonconforming lot
4236 may be used for any of the uses permitted in the district in which it is located,
4237 provided that the lot conforms with § 154.131 of this chapter.

4238 (B) *Nonconforming occupied lots.* This category of nonconformance
4239 consists of lots, occupied by buildings or structures at the time of adoption of this
4240 chapter or any amendment thereto, that fail to comply with the minimum
4241 requirements for [lot](#) area, yard and setbacks for the districts in which they are
4242 located, but were in compliance with the Henderson County Zoning Ordinance
4243 immediately prior to the adoption of this chapter.

4244 (C) *Nonconforming open uses of land.* This category of nonconformance
4245 consists of lots used for storage yards, used car lots, auto wrecking, junkyards and
4246 similar open spaces where the only buildings on the lot are incidental and accessory
4247 to the open use of the lot and where the use of the land is not permitted to be
4248 established hereafter under this chapter, or any amendment thereto, in the district in

4249 which it is located. A legally established nonconforming open use of the land may be
4250 continued except as follows:

4251 (1) When a nonconforming open use of land has been changed to a
4252 conforming use, it shall not thereafter revert to any nonconforming use.

4253 (2) Nonconforming open use of land shall not be changed to any but
4254 conforming use.

4255 (3) A nonconforming open use of land shall not be enlarged to cover
4256 more land than was occupied by that use when it became nonconforming.

4257 (4) When any nonconforming open use of land is discontinued for a
4258 period in excess of 180 days, any future use of the land shall be limited to those uses
4259 permitted in the district in which the land is located. Vacancy and/or non-use of the
4260 land, regardless of the intent of the owner or tenant, shall constitute discontinuance
4261 under this provision.

4262 (5) When any nonconforming use was not in compliance with
4263 the Henderson County Zoning Ordinance immediately prior to the adoption of this
4264 chapter.

4265 (D) Nonconforming uses *or* structures. This category of nonconformance
4266 consists of buildings or structures used at the time of enactment of this chapter or any
4267 amendment thereto for purposes of use not permitted in the district in which they
4268 are located. The uses may be continued as follows:

4269 (1) An existing nonconforming use may be changed to another
4270 nonconforming use of the same or higher classification, provided that the other
4271 conditions in this section are complied with. For the purpose of this chapter, the rank
4272 order of uses from higher to lower shall be:

4273 (a) Residential;

4274 (b) Public;

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4275 (c) Commercial; and

4276 (d) Industrial.

4277 (2) When a nonconforming use has been changed to a conforming
4278 use, it shall not thereafter be used for any nonconforming use.

4279 (3) A nonconforming use may not be extended or enlarged nor shall
4280 a nonconforming structure be altered except as follows:

4281 (a) Structural alterations as required by law or ordinance or
4282 as ordered by the Zoning Administrator to secure the safety of the structure are
4283 permissible.

4284 (b) Maintenance and repair necessary to keep a
4285 nonconforming structure in sound condition is permissible.

4286 (c) Existing single-family residential structures in business
4287 or industrial districts may be enlarged, extended or structurally altered, provided that
4288 no additional dwelling units result therefrom. However, any such enlargement,
4289 extension or alteration shall comply with the dimensional requirements of the MR-30
4290 Residential District.

4291 (d) Expansion of a nonconforming use of a building or
4292 structure into portions of the structure which, at the time the use became
4293 nonconforming, were already erected and arranged and designed for the
4294 nonconforming use.

4295 (4) When any nonconforming use of a building or structure is
4296 discontinued for a period in excess of 180 days, the building or structure shall not
4297 thereafter be used except in conformance with the regulations of the district in which
4298 it is located.

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4299 (5) When any nonconforming use was not in compliance with
4300 the Henderson County Zoning Ordinance immediately prior to the adoption of this
4301 chapter.

4302 (E) *Reconstruction of damaged buildings or structures.* Any
4303 nonconforming use which has been damaged by fire, wind, flood or other causes may
4304 be repaired and used as before, provided that:

4305 (1) Repairs are initiated in 12 months and completed within 2 years
4306 of the damage.

4307 (2) The total amount of space devoted to a nonconforming use may
4308 not be increased.

4309 (3) The dimensions of a reconstructed building may not be larger
4310 than the original building if the non-conformance was related to dimensional
4311 restrictions.

4312 (F) *Use of existing lot of record.* Where the owner of a lot of official record
4313 in any district at the time of the adoption of this chapter or any amendment thereto,
4314 or his or her successor in title thereto, does not own sufficient contiguous land to
4315 enable him or her to conform to the minimum lot size requirements of this chapter,
4316 the lot may be used as a building site, provided that the Board of Adjustment is
4317 authorized to approve as a variance such dimensions as shall conform as closely as
4318 possible to the required dimensions.

4319 (G) *Non-conforming Residential.* Non-conforming residential lots may be
4320 permitted for family child care home, adult day care homes, adult day health homes
4321 and incidental home occupations.

4322 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4323 00055, passed 4-23-2009)

4324 **§ 154.106 OFF-STREET PARKING.**

4325 Off-street automobile storage or parking spaces shall be provided on every lot
4326 on which any of the following uses are hereafter established. The number of parking
4327 spaces provided shall be at least as great as the number specified below for various
4328 uses. When application of the provision results in a fractional space requirement, the
4329 next larger requirement shall prevail. Each lot abutting a major thoroughfare, as
4330 determined by the Zoning Administrator, shall be provided with vehicular access
4331 thereto and shall be provided with adequate space for turning so that no vehicle shall
4332 be required to back into the street.

4333 (A) *Minimum parking requirements.*

4334 (1) Motor vehicle parking spaces shall measure nine feet by 18 feet.
4335 Aisle width shall be based on parking angle and direction of flow according to the
4336 following table:

<i>Parking Angle (Degrees)</i>	<i>One Way Aisle Width (Feet)</i>	<i>Two Way Aisle Width (Feet)</i>
30	14	18
45	15	19
60	17	21
90	24	24

4337

4338 (2) The required number of off-street parking spaces specified
4339 below for each use shall be provided, (etc.)

<i>Residential Uses</i>	Required Parking
Residential dwellings, single-family and duplexes <u>2-family</u>	2 spaces for each dwelling unit

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<i>Residential Uses</i>	Required Parking
Residential dwelling, multifamily	1-1/2 spaces for each dwelling unit
<i>Public and Semipublic Uses</i>	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

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<i>Residential Uses</i>	Required Parking
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
<i>Business Uses</i>	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

4340

<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

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	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</i> Industrial Uses	Required Parking
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

4341

4342 (B) Location on other property. If the required automobile parking
4343 spaces cannot reasonably be provided on the same lot on which the principal use is
4344 conducted, the spaces may be provided on other off-street property, provided that
4345 the property lies within 400 feet of the main entrance to the principal use. The

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4346 automobile parking space shall be associated with the principal use and shall not
4347 thereafter be reduced or encroached upon in any manner.

4348 (C) Extension of parking space into a residential district. Required
4349 parking space may extend up to 120 feet into a residential zoning district, provided
4350 that the parking space:

4351 (1) Adjoins a commercial or industrial district;

4352 (2) Has its only access to or fronts upon the same street as the
4353 property in the commercial or industrial district for which it provides the required
4354 parking space; and

4355 (3) Is separated from abutting properties in the residential district
4356 by a buffer strip.

4357 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4358 00055, passed 4-23-2009; Am. Ord. 2018-10, passed 11-8-2017)

4359 **§ 154.107 OFF-STREET LOADING AND UNLOADING SPACE.**

4360 Every lot on which a business, trade or industry use is hereafter established
4361 shall provide space as indicated herein for the loading and unloading of vehicles off
4362 the street. The space shall have access to an alley or, if there is no alley, to a street. For
4363 the purpose of this section, an off-street loading space shall have minimum
4364 dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in height above
4365 the alley or street grade.

4366 (A) Retail businesses and adult establishments: 1 space for each 10,000
4367 square feet of gross floor area.

4368 (B) Wholesale and industry: 1 space for each 25,000 square feet of gross
4369 floor area or area devoted to principal use.

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4370 (C) Truck terminals and other nonresidential uses: sufficient space to
4371 accommodate the maximum number of trucks to be stored or to be loading or
4372 unloading at any [one](#) time.

4373 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4374 **§ 154.108 REQUIRED YARDS AND OTHER SPACES.**

4375 No part of a yard or open space or off-street parking or loading space required
4376 about or in connection with any building for the purpose of complying with this
4377 chapter shall be included as part of a yard, open space or off-street parking or loading
4378 space similarly required for any other building.

4379 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4380 **§ 154.109 ONE PRINCIPAL BUILDING ON A LOT.**

4381 ~~Only~~ [Only one \(1\)](#) principal building and its customary accessory buildings
4382 may hereafter be erected on any ~~1~~ [one](#) lot, except as otherwise provided in this
4383 chapter. This restriction shall not apply in the MR-MU District or the MR-LI District.

4384 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4385 00071, passed 3-22-2012)

4386 **§ 154.110 CONFORMITY WITH REGULATIONS REQUIRED.**

4387 No building or land shall hereafter be used and no building or part thereof
4388 shall be erected, moved or altered, except in conformity with the regulation ~~herein~~
4389 specified for the [zoning](#) district in which it is located and ~~except as hereinafter as~~
4390 [otherwise](#) provided in the ~~the Mills River Town Code is chapter~~. Any existing building or
4391 land that is proposed for a change of use shall conform to the regulation ~~herein in the~~
4392 [Mills River Town Code and as](#) specified for the [zoning](#) district in which it is located.

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4393 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4394 2017-07, passed 11-10-2017)

4395 **§ 154.111 RELATIONSHIP OF BUILDING TO LOT.**

4396 Every building hereafter erected, moved or structurally altered shall be
4397 located on a lot, and in no case shall there be more than [one \(1\)](#) principal building and
4398 its customary accessory buildings on the lot, except in the case of a specially designed
4399 group development of institutional, residential, commercial or industrial buildings in
4400 an appropriate zoning district, e.g., school campus, cluster housing, shopping centers,
4401 industrial parks, manufactured home parks and planned unit developments. This
4402 restriction shall not apply in the MR-MU District or the MR-LI District.

4403 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord.
4404 00071, passed 3-22-2012)

4405 **§ 154.112 ACCESSORY STRUCTURES AND BUILDINGS.**

4406 (A) Rear yards. Accessory structures and buildings shall be permitted in
4407 rear yards, provided that they are located not less than 10 feet from any property line.

4408 (B) Side yards. Accessory structures and buildings may be permitted in
4409 side yards, provided that their placement shall not exceed the minimum side yard
4410 setback requirement for that district or use.

4411 (C) Front yards.

4412 (1) Accessory structures and buildings shall not be permitted in
4413 front yards, except in the following cases:

4414 (a) Where, by definition, more than [one \(1\)](#) front yard exists,
4415 such as in corner lots or double fronted lots.

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4416 (b) Where the measurement of a lot's perimeter boundary is
4417 equal to or exceeds 50% of the abutting road right-of-way [width](#).

4418 (2) In division (C)(1)(a) and (b) above, an accessory building or
4419 structure shall not be located closer to the center line of the abutting road than is
4420 otherwise permitted by this chapter.

4421 (3) In these cases only, the determination shall be made by the
4422 Zoning Administrator on a case-by-case basis. Determinations shall take into account
4423 orientation of the structure and dwelling, road and driveway location, topographical
4424 features, traffic volume and visual buffers.

4425 (D) Height. In no case shall an accessory structure or building be
4426 permitted in any front, side or rear yard if it exceeds 15 feet in height or if it occupies
4427 more than 30% of the required yard area; however, height restrictions do not apply
4428 on lots of 1 acre or more.

4429 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4430 **§ 154.113 VEHICLE GRAVEYARD OR MOBILE/MANUFACTURED**
4431 **HOME GRAVEYARD AS ACCESSORY USES.**

4432 Where a vehicle graveyard or a mobile/manufactured home graveyard is
4433 allowed as an accessory use, the following site standards shall apply:

4434 (A) Secured fencing shall be required.

4435 (B) Full screening shall be required.

4436 (C) There shall be a minimum front yard, side yard and rear yard setback
4437 of 25 feet.

4438 (D) At least [one \(1\)](#) direct access road corridor, as defined in § 154.066(B),
4439 having a minimum width of 20 feet, and a minimum travelways width of 20 feet, shall
4440 be required.

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4441 (E) Fire protection shall be required.

4442 (F) The vehicle graveyard and/or mobile/manufactured home graveyard
4443 shall be separated from any existing school by a minimum of ½ mile.

4444 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4445 **§ 154.114 RECREATIONAL VEHICLES.**

4446 Recreational vehicles may be used as a temporary single-family dwelling only
4447 in those districts that permit recreational vehicle parks and then only within the
4448 parks. In no case shall a recreational vehicle be used as a single-family dwelling on an
4449 individual lot or in conjunction with a primary residence on an individual lot, except
4450 as provided in § 154.179(D).

4451 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4452 **§ 154.115 COMMERCIAL WASTE CONTAINER SCREENING**
4453 **REQUIREMENTS.**

4454 (A) Commercial waste container screening *requirements*. New commercial
4455 sites in all districts shall locate commercial waste containers so that they are screened
4456 from view from the public right of way by either:

4457 (1) A solid fence; or

4458 (2) Screened with evergreen landscaping. Shrubbery used for
4459 screening must be a minimum of 24" high at planting and maintained so as to grow
4460 vertically to screen the commercial waste container. Any landscaping used for
4461 screening may also count towards interior plantings on the landscape plan; or

4462 (3) By a building or natural barrier.

4463 (4) Construction related waste containers, as defined in §
4464 154.007(B) are to be excluded from this provision.

4465 (Ord. 00066, passed 4-28-2011)

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4466 **§ 154.116 TRAFFIC IMPACT ANALYSIS (TIA) REQUIRED.**

4467 Residential developments that [are defined as a major subdivision](#) ~~require a~~
4468 ~~special use permit~~ must provide a traffic impact analysis (TIA) [prepared by a licensed](#)
4469 [North Carolina civil engineer](#) ~~administered by a Certified Traffic Engineer~~. The
4470 analysis must be submitted with an application for a special use permit. The report
4471 shall document the traffic operational impacts and any recommended improvements
4472 on the key roadway segments and intersections that have been identified as primary
4473 accesses to the proposed development.

4474 (Ord. 2018-02, passed 2-8-2018)

4475 **EXCEPTIONS AND MODIFICATIONS**

4476 **§ 154.130 WAIVER OF REQUIREMENTS.**

4477 Compliance with the requirements of this chapter is mandatory, except that
4478 under the specific conditions enumerated in the following sections [of this subchapter](#),
4479 the requirements may be waived or modified as so stated.

4480 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

4481 **§ 154.131 EXISTING LOTS.**

4482 (A) *Lots of insufficient land area.* Where the owner of a lot at the time of
4483 the adoption of this chapter or any amendment thereto or his or her successor in title
4484 thereto does not own sufficient land to enable him or her to conform to the minimum
4485 [lot](#) area requirements of this chapter, the lot may nonetheless be used as a building
4486 site, provided that any [principal structure on an](#) existing lot with an area below the
4487 minimum set forth in this chapter shall meet the setbacks required in the district.

4488 Applicants ~~who do not feel they that~~ [cannot](#) meet the setback requirements may
4489 appeal to the Board of Adjustment as provided in § 154.105(F). If, however, the

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4490 owner of [two \(2\)](#) or more adjoining lots either of which contains insufficient land area
4491 to comply with the applicable provisions of this chapter decides to build on or sell
4492 these lots as a building lot, he or she must first combine the lots to comply with the
4493 area and dimensional requirements of this chapter [and meet the lot design standards](#)
4494 [of Chapter 153 Subdivisions](#). As used in the section, “the time of the adoption of this
4495 chapter or any amendment thereto” means the date on which this chapter or any
4496 amendment thereto is made applicable to the use district in which the lot is located.

4497 (B) *Nonconforming occupied lots established prior to the date this chapter is*
4498 *adopted or any amendment thereto.* Any lot on which a building is located or
4499 improvements thereon shall be considered a nonconforming occupied lot if the
4500 building or improvement located on the lot was lawfully constructed in compliance
4501 with the Henderson County Zoning Ordinance prior to the date this chapter or any
4502 amendment thereto is adopted. All conditions and provisions of Subsection A of this
4503 section and § 154.105, "Nonconforming Uses" shall apply to the aforementioned lots
4504 and the development thereon.

4505 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4506 Ord. 00055, passed 4-23-2009)

4507 **§ 154.132 FRONT YARD SETBACK.**

4508 (A) Front yard setback requirements. The front yard setback
4509 requirements of this chapter for buildings shall not apply on any lot where the
4510 average setback of existing buildings located wholly or in part within 100 feet on each
4511 side of the lot within the same block and zoning district and fronting on the same side
4512 of the street is less than the minimum required setback. In such cases, the setback
4513 may be less than the required setback but not less than the average of the setbacks of
4514 the aforementioned existing buildings.

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4515 (B) Reduction of front yard setback for single-family dwellings on steep
4516 slopes.

4517 (1) On undeveloped lots for single-family dwellings located in the
4518 MR-30 District, the minimum front yard setback requirements may be reduced as
4519 follows:

4520 (a) Where the average slope at the proposed building site is
4521 greater than 18% but is less than 25%, the minimum front yard setback may be
4522 reduced by 10 feet.

4523 (b) Where the average slope at the proposed building site is
4524 equal to or greater than 25% but is less than 35%, the minimum front yard setback
4525 may be reduced by 15 feet.

4526 (2) The Zoning Administrator shall verify that lots qualify for the
4527 reduction in front yard setbacks and may therefore require that documentation
4528 indicating the average slope at proposed building sites be submitted at the time of
4529 application for zoning compliance permits. The average slope (percent) of a proposed
4530 building site shall equal the difference in elevation divided by the horizontal distance
4531 measured from a point 100 feet from the front property line (edge of right-of-way).

4532 (3) The provisions of this section shall not apply to undeveloped
4533 lots for single-family dwellings which front on a major street as defined by this
4534 chapter.

4535 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4536 **§ 154.133 SIDE YARD SETBACK.**

4537 Where a side yard abuts a street, the setback requirements for the side yard
4538 shall be the same as the front yard setback requirements for the district.

4539 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4540 **§ 154.134 GROUP DEVELOPMENTS.**

4541 (A) A shopping center, industrial park, cluster housing or school campus of
4542 2 or more buildings to be located on a plot of land at least 1-1/2 acres not to be
4543 subdivided into customary streets and lots, and which will not be so subdivided, may
4544 be constructed, provided that:

4545 (1) Uses are limited to those permitted within the district in which
4546 the project is located.

4547 (2) The overall intensity of land use within the project is no higher
4548 and the standard of open space is no lower than that permitted in the district in which
4549 the project is located.

4550 (3) The distance of every building from the nearest property line
4551 shall meet the front yard setback and the side and rear yard requirements of the
4552 district in which the project is located.

4553 (4) There shall be a buffer strip along the rear or side lot lines
4554 abutting residential zoned properties.

4555 (5) Other information, maps or plans that the Planning Board may
4556 request in order to properly review the project are provided.

4557 (B) Before any group development shall be constructed, plans, maps,
4558 graphs and other information shall be submitted to the Planning Board for its
4559 approval. No group development shall be allowed to be constructed until the
4560 developer shows that the project will be landscaped with shrubs, grass, trees, flower
4561 beds, as required by [the](#) Landscaping [subchapter](#) of this chapter.

4562 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4563 **§ 154.135 COMPLETION OF BUILDINGS UNDER CONSTRUCTION.**

4564 Nothing in this chapter shall require any change in the plans, construction or
4565 designated use of a building under construction at the date of the passage of this
4566 chapter or any amendment thereto, provided that construction of the building is
4567 diligently pursued and the entire building is completed within 18 months from the
4568 date of passage of this chapter or any amendment thereto and construction is
4569 consistent with the Henderson County Zoning Ordinance. A building shall be deemed
4570 to be under construction if, at the date of passage of this chapter or any amendment
4571 thereto, architect's plans have been prepared and preparation of the site has
4572 commenced. As used in this section, the "date of passage of this chapter or any
4573 amendment thereto" means the date on which this chapter or any amendment
4574 thereto is first made applicable to the use district in which the property is located.

4575 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4576 **§ 154.136 RESIDENCE ADDITIONS AND ACCESSORY BUILDINGS.**

4577 A zoning compliance permit shall be required for the construction of an
4578 addition to a single-family dwelling, or for the construction of an accessory building
4579 on the same lot as a single-family dwelling, to ensure that the addition or outbuilding
4580 is constructed in such a manner as to comply with the other requirements of this
4581 chapter.

4582 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4583 **§ 154.137 ~~CONDITIONAL~~ MINOR SPECIAL USE PERMITS.**

4584 (A) When a ~~conditional~~Minor Special ~~u~~Use ~~p~~Permit is required by the
4585 terms of this chapter, application for such a permit shall accompany the application
4586 for a zoning compliance permit. The application shall be transmitted immediately to

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4587 the Zoning Board of Adjustment, which may refer it to the Planning Board for review
4588 and recommendations prior to an ~~public~~ evidentiary hearing.

4589 (B) A notice of the ~~public~~ evidentiary hearing shall be given once a week
4590 for 2 successive calendar weeks in a newspaper published in the county, as provided
4591 in § 154.179(C)(1)(b).

4592 (C) The applicant shall identify all adjacent property owners, whom the
4593 Zoning Administrator will notify by registered mail of the ~~conditional~~ special use
4594 application. The Zoning Administrator shall post the property with a hearing notice
4595 detailing the ~~conditional~~ special use sought and the hearing time. The Mills River
4596 Town Council may establish and maintain a fee schedule to recover costs of legal
4597 notices, posting the property and notifying the adjacent property owners. These fees
4598 shall be paid by the applicant before a ~~conditional~~ special use permit is issued.

4599 (D) If the Zoning Board of Adjustment shall find after the ~~public~~ evidentiary
4600 hearing the use for which the ~~conditional~~ special use permit is sought will not
4601 adversely affect the health and safety of persons residing or working in the
4602 neighborhood of the proposed use, and will not be detrimental to the public welfare
4603 or injurious to property or public improvements in the neighborhood, it shall issue a
4604 ~~conditional~~ special use permit. All uses requiring a special use permit must meet the
4605 general site standards listed in § 154.138 (D). In granting such a permit, the Zoning
4606 Board of Adjustment shall designate the conditions in connection therewith as will,
4607 in its opinion, assure that the use will conform to the requirements of this chapter.

4608 (E) If at any time after a ~~conditional~~ special use permit has been issued for
4609 any ~~conditional~~ use the Zoning Board of Adjustment finds that the conditions imposed
4610 and agreements have not been or are not being fulfilled by the holder of a
4611 ~~conditional~~ special use permit, the permit shall be terminated immediately and the
4612 operation of the use discontinued.

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4613 (F) If a ~~conditional~~[special](#) use permit is terminated for any reason, it may
4614 be reinstated upon application as in the case of a new matter.
4615 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4616 **§ 154.138 [MAJOR SPECIAL USES PERMITS.](#)**

4617 (A) When a ~~Major s~~[Special u](#)~~se~~ ~~p~~[Permit](#) is required by the terms of this
4618 chapter, application for such a permit shall accompany the application for a zoning
4619 compliance permit. The application shall be transmitted immediately to the Mills
4620 River Town Council, which shall refer it to the Planning Board for review and
4621 recommendations prior to an ~~an~~ ~~public~~[evidentiary](#) hearing.

4622 (B) A notice of the ~~public~~[evidentiary](#) hearing shall be given once a week for
4623 2 successive calendar weeks in a newspaper published in the county as provided in §
4624 154.180(A)(1)(b).

4625 (C) The applicant shall identify all adjacent property owners, whom the
4626 Zoning Administrator will notify by registered mail of the special use application. The
4627 Zoning Administrator shall post the property with a hearing notice detailing the
4628 special use sought and the hearing time. The Mills River Town Council may establish
4629 and maintain a fee schedule to recover costs of legal notices, posting the property and
4630 notifying the adjacent property owners. These fees shall be paid by the applicant
4631 before a special use permit is issued.

4632 (D) General site standards. All uses requiring a special use permit must
4633 meet the general site standards listed below. In evaluating whether the general site
4634 standards have been met, the Mills River Town Council may consider the type and
4635 size of the principal use, size of the property and other relevant factors. The applicant
4636 will not bear the burden of proving that all of the general site standards as listed
4637 below have been met. The applicant will, however, be required to produce evidence

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4638 sufficient to rebut any evidence presented that the general site standards would not
4639 be met or that a condition is necessary.

4640 (1) The following general site standards shall apply to all uses
4641 requiring a special use permit:

4642 (a) Establishments requiring a special use permit shall not
4643 be located or developed in such a manner as to adversely affect the health or safety
4644 of the persons residing or working in the neighborhood of the proposed use and will
4645 not be detrimental to the public welfare or injurious to property or public
4646 improvements in the neighborhood.

4647 (b) Establishments requiring a special use permit shall be
4648 located or developed in such a manner as to minimize the effects of noise, glare, dust,
4649 solar access and odor on those persons residing or working in the neighborhood of
4650 the proposed use and the property and public improvements in the neighborhood.

4651 (c) Establishments requiring a special use permit shall not
4652 be located or developed in such a manner as to seriously worsen the traffic congestion
4653 so as to endanger the public safety.

4654 (d) Establishments requiring a special use permit shall be
4655 located or developed in such a manner as to comply with all applicable federal, state
4656 and local laws, rules and regulations.

4657 (e) Establishments requiring a special use permit shall be
4658 located and developed in such a manner as to be consistent with any approved Official
4659 Thoroughfare Plans.

4660 (f) Establishments requiring a special use permit shall be
4661 located and developed in such a manner as to minimize the environmental impacts
4662 on the neighborhood including the following: groundwater, surface water, wetlands,

4663 endangered and threatened species, archeological sites, historical preservation sites
4664 and unique natural areas.

4665 (2) In the event that the Mills River Town Council determines that a
4666 proposed use is contrary to ~~1~~[one](#) or more of the general site standards, then the Town
4667 Council may impose a condition on the issuance of the special use permit when the
4668 condition will avoid a violation of the general site standards. The condition imposed
4669 may be an increase in any minimum specific site standards stated for the regulated
4670 use. The imposition of a condition may only be based on evidence presented at the
4671 hearing that the general site standards would not be met without the imposition of
4672 the condition. The Town Council must make specific findings of fact based upon the
4673 evidence presented prior to the imposition of the condition.

4674 (E) If at any time after a special use permit has been issued for any special
4675 use, the Mills River Town Council finds that the conditions imposed and agreements
4676 made have not been or are not being fulfilled by the holder of a special use permit, the
4677 permit shall be terminated immediately and the operation of the use discontinued.

4678 (F) If a special use permit is terminated for any reason, it may be reinstated
4679 upon application as in the case of a new matter.

4680 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4681 Ord. 00052, passed 6-26-2008)

4682 **§ 154.139 TEMPORARY USES.**

4683 (A) An application for a temporary use permit shall accompany the
4684 application for a zoning compliance permit. The application shall be transmitted
4685 immediately to the Zoning Board of Adjustment, which shall hold a public hearing at
4686 its next regularly scheduled meeting.

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4687 (B) A notice of the public hearing shall be given in a newspaper of general
4688 circulation published in the county.

4689 (C) No temporary use permit may be granted in any district for the
4690 following uses:

4691 (1) Adult establishments.

4692 (2) Hazardous waste disposal facility.

4693 (3) Radioactive waste disposal facility.

4694 (D) Except as provided in § 154.139(E), no temporary use permit may be
4695 granted in the MR-MU District for any regulated use except for the following uses:
4696 asphalt plants; concrete plants; and chip mills. In such instances, the Zoning Board of
4697 Adjustment may impose as a condition of the temporary use permit any specific site
4698 standards listed for the regulated use necessary to make the temporary use comply
4699 with the general site standards listed for special use permits.

4700 (E) Isolated racing events, not otherwise allowed under a valid zoning
4701 permit, may be conducted only upon the issuance of a temporary use permit in
4702 accordance with this subsection and subject to the restrictions and limitations
4703 contained within this subsection:

4704 (1) Temporary use permits may not be issued for more than [two \(2\)](#)
4705 racing events per calendar year for any ~~1~~[one](#) location or individual or entity.

4706 (2) Temporary use permits for racing events shall be limited in
4707 duration to a 24 hour period.

4708 (3) Temporary use permits for racing events shall not be issued for
4709 locations that would violate the separation requirements for motor sports facilities
4710 contained within the applicable zoning district, if any.

4711 (4) The Zoning Board of Adjustment should consider the following
4712 factors in evaluating the application:

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- 4713 (a) Type and size of the proposed event.
4714 (b) Size of the parcel on which the event will be conducted.
4715 (c) Time and duration of the event.
4716 (d) Other activities in the specified geographic area at the
4717 same time as the proposed event that might be disturbed by the proposed event.
4718 (e) Residential density in the proposed location.
4719 (f) Effect of the racing event on the residential areas.
4720 (g) Economic benefit to the community; any economic
4721 hardship on the applicant if the permit is denied or on others if it is allowed.
4722 (h) Previous violations of this chapter by the applicant.
4723 (i) Any other relevant factor.
4724 (5) The Zoning Board of Adjustment may impose as a condition of
4725 the temporary use permit any specific site standards listed for motor sports facilities
4726 necessary to make the temporary use comply with the general site standards listed
4727 for special use permits.
4728 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4729 **§ 154.140 ACQUISITION OF LAND FOR PUBLIC PURPOSES.**

- 4730 (A) Nothing in this chapter shall prohibit duly authorized agencies of the
4731 Town of Mills River from acquiring and using land whenever necessary to protect the
4732 public health and provide necessary public services and public works; however, the
4733 Mills River Town Council shall hold a public hearing before the action is taken.
4734 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

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ADMINISTRATION AND ENFORCEMENT

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§ 154.155 ZONING ENFORCEMENT OFFICER.

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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)

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§ 154.156 ZONING COMPLIANCE PERMIT.

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(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.

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(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.

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4760 (C) A zoning compliance permit shall be required for those uses permitted
4761 with standards in the MR-MU District, (See § 154.066(E)).

4762 (D) Events occurring off-site subsequent to the date of an application for
4763 any zoning compliance permit shall not operate to invalidate any permit validly
4764 issued.

4765 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4766 Ord. 00052, passed 6-26-2008; Am. Ord. 2018-02, passed 2-8-2018)

4767 **§ 154.157 DURATION OF PERMIT.**

4768 If no substantial construction progress has been made within 6 months of the
4769 date of the issuance of the zoning compliance permit, the permit becomes invalid.

4770 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4771 **§ 154.158 APPEALS.**

4772 It is the intention of this chapter that all questions arising in connection with
4773 the enforcement of this chapter shall be presented first to the Zoning Administrator
4774 and that the questions shall be presented to the Zoning Board of Adjustment only on
4775 appeal from the Zoning Administrator.

4776 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4777 **§ 154.159 REMEDIES.**

4778 If any building or structure is erected, constructed, repaired, converted or
4779 maintained or any building, structure or land is used in violation of this chapter, the
4780 Zoning Administrator or any other appropriate authority or adjacent or other
4781 property owner who would be damaged by the violation, in addition to other
4782 remedies, may institute injunction, mandamus or other appropriate action in
4783 proceeding to stop the violation.

4784 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4785 **ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL**

4786 **§ 154.175 ESTABLISHMENT OF ZONING BOARD OF ADJUSTMENT.**

4787 A Zoning Board of Adjustment is hereby established. The Board shall consist
4788 of 5 regular members, who shall be citizens of the Town of Mills River and shall be
4789 appointed by the Mills River Town Council for overlapping terms of 3 years. The
4790 Board shall also consist of as many alternate members as the Town Council deems
4791 appropriate, who shall be citizens of the Town of Mills River and who shall also serve
4792 overlapping 3 year terms. Alternate members shall serve in the absence of any regular
4793 member and, while serving, shall have and exercise all the powers and duties of a
4794 regular member of the Zoning Board of Adjustment. The Mills River Town Council
4795 may, by resolution duly adopted, establish guidelines for appointment of regular
4796 and/or alternate members, including, but not limited to, the establishment of
4797 representative districts for Zoning Board of Adjustment membership. Initial
4798 appointment of regular members shall be as follows: 1 member for a term of 3 years,
4799 2 members for terms of 2 years and 2 members for terms of 1 year. Initial
4800 appointment for alternate members shall be staggered in a like manner. Any vacancy
4801 in the membership shall be filled for the unexpired term in the same manner as the
4802 initial appointment. Members shall serve without pay but may be reimbursed for any
4803 expenses incurred while representing the Zoning Board of Adjustment.

4804 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4805 **§ 154.176 PROCEEDINGS OF ZONING BOARD OF ADJUSTMENT.**

4806 The Zoning Board of Adjustment shall elect a Chairperson and a Vice
4807 Chairperson from its members, who shall serve for 1 year or until reelected or until

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4808 their successors are elected. The Board shall appoint a Secretary, who may be a town
4809 officer, an employee of the town, a member of the Planning Board or a member of the
4810 Zoning Board of Adjustment. The Board shall adopt rules and bylaws in accordance
4811 with the provisions of this chapter and of Chapter 160DA of the North Carolina
4812 General Statutes (G.S. § 160D-302A-388). Meetings of the Board shall be held at the
4813 call of the Chairperson and at the other times as the Board may determine. The
4814 Chairperson or, in his or her absence, the Vice Chairperson may administer oaths and
4815 compel the attendance of witnesses by subpoena. All hearings held by the Board shall
4816 be open to the public.

4817 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4818 **§ 154.177 DECISIONS OF ZONING BOARD OF ADJUSTMENT.**

4819 The concurring vote of 4/5 of the members of the Zoning Board of Adjustment
4820 shall be necessary to approve a variance. The concurring vote of a majority of the
4821 members shall be required to decide any other quasi-judicial matter, to determine an
4822 appeal to the Zoning Board of Adjustment in the nature of certiorari or any other
4823 matter upon which the Zoning Board of Adjustment is required to act. For purposes
4824 of this chapter, vacant positions on the Zoning Board of Adjustment and members
4825 who are disqualified from voting on quasi-judicial matters shall not be considered
4826 members of the Zoning Board of Adjustment for calculation of the requisite majority
4827 if there are no qualified alternates available to take the place of such members. On all
4828 appeals, applications and other matters brought before the Board of Adjustment, the
4829 Board shall inform in writing all parties involved of its decisions and the reasons
4830 thereof. The Zoning Board of Adjustment is authorized to interpret the Zoning Map
4831 and pass upon disputed questions of lot lines or district boundary lines and other
4832 similar questions as they arise in the administration of this chapter.

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4833 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
4834 Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014)

4835 **§ 154.178 APPEALS OF ZONING BOARD OF ADJUSTMENT.**

4836 Appeals to the Zoning Board of Adjustment may be taken by any person
4837 aggrieved or by any official or board of the Town of Mills River affected by any action
4838 of the Zoning Administrator. The appeal shall be taken within 30 days, as provided by
4839 the rules of the Board, by filing with the Zoning Administrator and with the Secretary
4840 of the Zoning Board of Adjustment a notice of appeal and specifying the grounds
4841 thereof. The Zoning Administrator shall forthwith transmit to the Board all papers
4842 constituting the record upon which the action appealed was taken. An appeal stays
4843 all proceedings in furtherance of the action appealed unless the Zoning Administrator
4844 certifies to the Zoning Board of Adjustment, after the notice of appeal shall have been
4845 filed with him or her, that by reason of facts stated in the certificate a stay would, in
4846 his or her opinion, cause imminent peril to life or property. In such case, proceedings
4847 shall not be stayed other than by a restraining order which may be granted by the
4848 Board of Adjustment or by a court of record on application on notice to the Zoning
4849 Administrator and on due cause shown.

4850 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

4851 **§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF**
4852 **ADJUSTMENT.**

4853 The Zoning Board of Adjustment shall have the following powers and duties:
4854 (A) *Administrative review.* To hear and decide appeals where it is alleged
4855 there is error in an order, requirement, decision, determination or interpretation
4856 made by the Zoning Administrator in the enforcement of this chapter pursuant to any
4857 of the following:

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4858 (1) Any person who has standing under G.S. § ~~160D-1402(c)160A-~~
4859 ~~393(d)~~ or the city may appeal a decision to the board of adjustment. An appeal is
4860 taken by filing a notice of appeal with the city clerk. The notice of appeal shall state
4861 the grounds for the appeal.

4862 (2) The official who made the decision shall give written notice to
4863 the owner of the property that is the subject of the decision and to the party who
4864 sought the decision, if different from the owner. The written notice shall be delivered
4865 by personal delivery, electronic mail, or by first-class mail.

4866 (3) The owner or other party shall have 30 days from receipt of the
4867 written notice within which to file an appeal. Any other person with standing to
4868 appeal shall have 30 days from receipt from any source of actual or constructive
4869 notice of the decision within which to file an appeal.

4870 (4) It shall be conclusively presumed that all persons with standing
4871 to appeal have constructive notice of the decision from the date a sign containing the
4872 words "Zoning Decision" or "Subdivision Decision" in letters at least 6 inches high and
4873 identifying the means to contact an official for information about the decision is
4874 prominently posted on the property that is the subject of the decision, provided the
4875 sign remains on the property for at least 10 days. Posting of signs is not the only form
4876 of constructive notice. Any such posting shall be the responsibility of the landowner
4877 or applicant. Verification of the posting shall be provided to the official who made the
4878 decision. Absent an ordinance provision to the contrary, posting of signs shall not be
4879 required.

4880 (5) The official who made the decision shall transmit to the board
4881 all documents and exhibits constituting the record upon which the action appealed
4882 from is taken. The official shall also provide a copy of the record to the appellant and

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4883 to the owner of the property that is the subject of the appeal if the appellant is not the
4884 owner.

4885 (6) An appeal of a notice of violation or other enforcement order
4886 stays enforcement of the action appealed from unless the official who made the
4887 decision certifies to the board of adjustment after notice of appeal has been filed that
4888 because of the facts stated in an affidavit, a stay would cause imminent peril to life or
4889 property or because the violation is transitory in nature, a stay would seriously
4890 interfere with enforcement of the ordinance. In that case, enforcement proceedings
4891 shall not be stayed except by a restraining order, which may be granted by a court. If
4892 enforcement proceedings are not stayed, the appellant may file with the official a
4893 request for an expedited hearing of the appeal, and the board of adjustment shall meet
4894 to hear the appeal within 15 days after such a request is filed. Notwithstanding the
4895 foregoing, appeals of decisions granting a permit or otherwise affirming that a
4896 proposed use of property is consistent with the ordinance shall not stay the further
4897 review of an application for permits or permissions to use such property; in these
4898 situations the appellant may request and the board may grant a stay of a final decision
4899 of permit applications or building permits affected by the issue being appealed.

4900 (7) Subject to the provisions of subdivision (6) of this subsection,
4901 the board of adjustment shall hear and decide the appeal within a reasonable time.

4902 (8) The official who made the decision shall be present at the
4903 hearing as a witness. The appellant shall not be limited at the hearing to matters
4904 stated in the notice of appeal. If any party or the city would be unduly prejudiced by
4905 the presentation of matters not presented in the notice of appeal, the board shall
4906 continue the hearing. The board of adjustment may reverse or affirm, wholly or
4907 partly, or may modify the decision appealed from and shall make any order,

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4908 requirement, decision, or determination that ought to be made. The board shall have
4909 all the powers of the official who made the decision.

4910 (9) When hearing an appeal pursuant to G.S. § ~~160A-400.9(e)~~[160D,](#)
4911 [Article 4,](#) or any other appeal in the nature of certiorari, the hearing shall be based on
4912 the record below and the scope of review shall be as provided in G.S. §[160D-1402\(c\)](#)
4913 ~~160A-393(k).~~

4914 (10) The parties to an appeal that has been made under this
4915 subsection may agree to mediation or other forms of alternative dispute resolution.
4916 The ordinance may set standards and procedures to facilitate and manage such
4917 voluntary alternative dispute resolution.

4918 (B) *Variances.* To authorize, upon appeal, variations or modifications of any
4919 regulation or provision of this chapter relating to the dimensional requirements,
4920 construction or alteration of buildings or other provisions, so that the spirit of this
4921 chapter is observed, public safety and welfare secured and substantial justice done;
4922 however, the Zoning Board of Adjustment shall not permit a use of land, building or
4923 structure which is not permitted by right or ~~conditional~~[by a special](#) use [permit](#) in the
4924 district involved.

4925 (1) The Zoning Board of Adjustment may issue a variance only on
4926 the basis of affirmative findings of fact for all of the following criteria:

4927 (a) There are practical difficulties or unnecessary hardships
4928 in carrying out the strict letter of this chapter, as demonstrated by:

4929 (b) The hardship results from conditions that are peculiar to
4930 the property, such as location, size, or topography. Hardships resulting from personal
4931 circumstances, as well as hardships resulting from conditions that are common to the
4932 neighborhood or the general public, may not be the basis for granting a variance.

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4933 (c) The hardship did not result from actions taken by the
4934 applicant or the property owner. The act of purchasing property with knowledge that
4935 circumstances exist that may justify the granting of a variance shall not be regarded
4936 as a self-created hardship.

4937 (d) The requested variance is consistent with the spirit,
4938 purpose, and intent of the ordinance, such that is secured, and substantial justice is
4939 achieved. No change in permitted uses may be authorized by variance.

4940 (2) Appropriate conditions may be imposed on any variance,
4941 provided that the conditions are reasonably related to the variance.

4942 (C) ~~Conditional~~Minor Special ~~u~~Uses; *conditions governing application*. To
4943 grant, in particular cases and subject to appropriate conditions and safeguards,
4944 permits for ~~conditional~~Minor Special ~~u~~Uses as authorized by this chapter and set
4945 forth as conditional uses under the various use districts.

4946 (1) The Zoning Board of Adjustment shall not grant a
4947 ~~conditional~~special use permit unless and until:

4948 (a) A written application for a ~~conditional~~special use permit
4949 shall be submitted indicating the section of this chapter under which the
4950 ~~conditional~~special use permit is sought.

4951 (b) An ~~public~~evidentiary hearing is held pursuant to §
4952 154.182.

4953 (2) If the Board of Adjustment finds that in the particular case in
4954 question, the use for which the ~~conditional~~special use permit is sought will not
4955 adversely affect the health or safety of the persons residing or working in the
4956 neighborhood of the proposed use and will not be detrimental to the public welfare
4957 or injurious to property or public improvements in the neighborhood, a permit may
4958 be granted. In granting such a permit, the Zoning Board of Adjustment may designate

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4959 the conditions in connection therewith as will, in its opinion, assure that the proposed
4960 use will conform to the requirements and spirit of this chapter.

4961 (3) If at any time after a ~~conditional~~special use permit has been
4962 issued the Board of Adjustment finds that the conditions imposed and agreements
4963 made have not been or are not being fulfilled by the holder of a ~~conditional~~special
4964 use permit, the permit shall be terminated and the operation of the use discontinued.
4965 If the ~~conditional~~special use permit is terminated for any reason, it may be reinstated
4966 only after an public~~evidentiary~~ hearing is held.

4967 (4) The Planning Board and/or Zoning Board of Adjustment may
4968 ask for the submission of a preliminary site plan where a site plan is not required by
4969 this chapter.

4970 (5) Before any ~~conditional~~special use permit is issued, the Board
4971 may ask for advice and recommendation of the Planning Board.

4972 (6) Before any ~~conditional~~special use permit is issued, the Zoning
4973 Board of Adjustment shall make written findings certifying compliance with the
4974 specific rules governing the individual ~~conditional~~special use and that satisfactory
4975 provision and arrangement has been made concerning the following where
4976 applicable:

4977 (a) Satisfactory ingress and egress to property and proposed
4978 structures thereon with particular reference to automotive/pedestrian safety and
4979 convenience and traffic flow and control.

4980 (b) Provision of off-street parking and loading areas where
4981 required, with particular attention to the items in division (C)(6)(a) above and the
4982 economic, noise, glare and odor effects of the ~~conditional~~special use on adjoining
4983 properties in the area.

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4984 (c) Utilities with reference to locations, availability and
4985 compatibility.

4986 (d) Buffering with reference to type, location and
4987 dimensions.

4988 (e) Playgrounds, open spaces, yards, landscaping, access
4989 ways and pedestrian ways with reference to location, size and suitability.

4990 (f) Building and structures with reference to location, size
4991 and use.

4992 (D) *Temporary uses.* Except as otherwise provided in this chapter, the
4993 Zoning Board of Adjustment may grant a temporary use permit to allow a use not
4994 ordinarily permitted in the district, provided that the permit has a fixed expiration
4995 date, and the applicant satisfies any conditions imposed by the Zoning Board of
4996 Adjustment.

4997 (E) *Watershed Review Board.* The Henderson County Board of
4998 Adjustment may hear and decide cases which arise from appeals or may perform
4999 other proper administrative functions pursuant to the provisions set forth in Chapter
5000 192, *General Provisions*, Henderson County Water Supply Watershed Protection.

5001 (F) [Major Special](#) ~~u~~Uses. The Zoning Board of Adjustment shall have the
5002 authority to hear and grant, grant with conditions or deny an application for a [Major](#)
5003 ~~s~~Special ~~u~~Use ~~p~~Permit where the Mills River Town Council has determined that the
5004 Mills River Town Council cannot hear the application due to conflict of interest, bias,
5005 lack of a quorum or other similar reasons and has specifically delegated its authority
5006 to hear and decide the application to the Zoning Board of Adjustment by resolution.
5007 In such event, the Board of Adjustment shall have all of the powers and duties of the
5008 Town Council as defined in § 154.180(A). Notice requirements of § 154.182 shall
5009 apply.

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5010 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
5011 Ord. 00083, passed 10-10-2013)

5012 ***Editor's note:***

5013 *G.S. § 160A-393 repealed by S.L. 2013-264, § 2, passed 7-17-2013.*

5014 **§ 154.180 POWERS AND DUTIES OF MILLS RIVER TOWN**
5015 **COUNCIL.**

5016 (A) ~~Major~~ Special Uses; *conditions governing application.* The Mills River
5017 Town Council shall have the power to grant, in particular cases and subject to
5018 appropriate conditions and safeguards, permits for ~~Major~~ Special Uses as
5019 authorized by this chapter and set forth as special uses under the various use districts.

5020 (1) The Mills River Town Council shall not grant a special use
5021 permit unless and until:

5022 (a) A written application for a special use permit is
5023 submitted, indicating the section of this chapter under which the special use permit
5024 is sought.

5025 (b) ~~An evidentiary~~ public hearing is held. Notice of the ~~public~~
5026 hearing shall be given per § 154.182.

5027 (2) If the Mills River Town Council finds that in the particular case
5028 in question the use will meet all of the required general standards (see § 154.138)
5029 and the applicable specific site standards or site conditions, a permit may be granted.
5030 In granting such a permit, the Mills River Town Council may designate the conditions
5031 in connection therewith as will, in its opinion, assure that the proposed use will
5032 conform to the requirements and spirit of this chapter.

5033 (3) If at any time after a special use permit has been issued the Mills
5034 River Town Council finds that the conditions imposed and agreements made have not

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5035 been or are not being fulfilled by the holder of a special use permit, the permit shall
5036 be terminated and the operation of the use discontinued. If a special use permit is
5037 terminated for any reason, it may be reinstated only after an ~~an~~ [publicevidentiary](#)
5038 hearing is held.

5039 (4) The Planning Board and/or Town Council may ask for the
5040 submission of any additional information or evidence relevant to the determination
5041 of whether the proposed special use meets the applicable requirements of this
5042 chapter.

5043 (5) Before any special use permit is issued, the Mills River Town
5044 Council shall ask for advice and recommendation of the Planning Board.

5045 (6) Before any special use permit is issued, the Mills River Town
5046 Council shall make written findings certifying compliance with the specific rules
5047 governing the individual special use and that satisfactory provision and arrangement
5048 has been made concerning the following where applicable:

5049 (a) Satisfactory ingress and egress to property and proposed
5050 structures thereon with particular reference to automotive/pedestrian safety and
5051 convenience and traffic flow and control.

5052 (b) Provision of off-street parking and loading areas where
5053 required, with particular attention to the items in division A(6)(a) above and the
5054 economic, noise, glare and odor effects of the special use on adjoining properties in
5055 the area.

5056 (c) Utilities with reference to locations, availability and
5057 capability.

5058 (d) Buffering with reference to type, location and
5059 dimensions.

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5060 (e) Playgrounds, open spaces, yards, access ways and
5061 pedestrian ways with reference to location, size and suitability.

5062 (f) Building and structures with reference to location, size
5063 and use.

5064 (7) Variances. The Town Council shall be authorized, upon
5065 application, to approve variations or modifications of any regulation or provisions of
5066 this chapter for any special use so that the spirit of this chapter is observed, public
5067 safety and welfare secured and substantial justice done; however, the Town Council
5068 shall not permit a use of land, building or structure which is not allowed in the district
5069 involved.

5070 (a) The Town Council may issue a variance only on the basis
5071 of affirmative findings of fact for all of the following criteria:

5072 1. There are practical difficulties or unnecessary
5073 hardships in carrying out the strict letter of this chapter, as demonstrated by the
5074 following:

5075 a. If the applicant complies with the literal
5076 terms of this chapter, he or she cannot secure a reasonable return from, or make a
5077 reasonable use of, his or her property.

5078 b. The hardship of which the applicant
5079 complains results from unique circumstances related to the applicant's land.

5080 c. The hardship is not the result of the
5081 applicant's own action.

5082 2. The variance is in harmony with the general
5083 purpose and intent of this chapter and will preserve its spirit.

5084 3. The variance will secure the public safety and
5085 welfare and will do substantial justice.

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5086 (b) The existence of a nonconforming use of neighboring
5087 land, buildings or structures in the same district or permitted or nonconforming uses
5088 in other districts shall not constitute a reason for the requested variance.

5089 (c) A notice that describes the variance requested, property
5090 location and time and place of the hearing shall be published as a legal notice in a local
5091 newspaper of general circulation not less than 5 days before the hearing date. A
5092 second notice shall be published in the same newspaper as a commercial
5093 advertisement between the legal notice date and the hearing date.

5094 (B) The Mills River Town Council may establish and maintain a fee
5095 schedule to recover costs of legal notices, posting the property and notifying adjacent
5096 property owners. These fees shall be paid by the applicant before a special use permit
5097 is issued. Additionally, the applicant shall be required to pay the cost of any special
5098 experts or studies which the Town Council and the applicant agree are necessary to
5099 evaluate the application.

5100 (C) The Mills River Town Council shall have the authority to delegate the
5101 power to hear and grant, grant with conditions or deny an application for a Major
5102 ~~s~~Special u~~Use p~~Permit to the Zoning Board of Adjustment by resolution, where it
5103 determines that the Mills River Town Council cannot hear the application due to
5104 conflict of interest, bias, lack of a quorum or other similar reasons. In the event the
5105 Board of Adjustment shall have all of the powers and duties of the Mills River Town
5106 Council as defined in § 154.180(A) above. In adopting such a resolution, the Mills
5107 River Town Council shall state with specificity the reasons that it could not hear the
5108 application.

5109 (D) *Voting for special uses.* The consideration of a special use permit is a
5110 quasi-judicial matter. The granting of a special use permit shall require the concurring
5111 vote of a majority of the Town Council. For purposes of this section, vacant positions

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5112 on the Town Council and members who are disqualified from voting on quasi-judicial
5113 matters shall not be considered members of the Town Council for calculation of the
5114 requisite majority if there are no qualified alternates available to take the place of
5115 such members.
5116 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.
5117 Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014)

5118 **§ 154.181 APPEALS TO COURT.**

5119 Appeals from decisions of the Zoning Board of Adjustment and the Mills River
5120 Town Council shall be taken to the appropriate court of record as provided by law.
5121 Appeals must be filed within 30 days from the date the Zoning Board of Adjustment
5122 or the Mills River Town Council issues its order.
5123 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5124 **§ 154.182 NOTICE REQUIREMENTS FOR QUASI-JUDICIAL PUBLIC**
5125 **HEARINGS.**

5126 The following shall be required notice requirements when conducting quasi-
5127 judicial hearings:

5128 (A) Notice of hearings shall be mailed to the person or entity whose appeal,
5129 application, or request is the subject of the hearing; to the owner of the property that
5130 is the subject of the hearing if the owner did not initiate the hearing; and to the owners
5131 of all parcels abutting the parcel of land that is the subject of the hearing. Notice shall
5132 be deposited in the mail at least 10 days, but not more than 25 days prior to the date
5133 of the hearing.

5134 (B) Notice shall be placed via prominently posted notice of ~~public~~ hearing
5135 on the site that is the subject of the hearing or on an adjacent street or highway right-

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5136 of-way not less than 10 days, but not more than 25 days prior to the date of the
5137 hearing.
5138 (Ord. 00083, passed 10-10-2013)

AMENDMENTS

5140 **§ 154.195 AUTHORITY OF MILLS RIVER TOWN COUNCIL.**

5141 This chapter, including the Official Zoning Map of the Town of Mills River, may
5142 be amended by the Mills River Town Council [upon a majority vote on first reading](#)
5143 [and](#) in accordance with the provisions of this subchapter.
5144 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5145 **§ 154.196 INITIATION.**

5146 (A) The text of this chapter and the Official Zoning Map of the Town of Mills
5147 River may be amended in order to:

- 5148 (1) Correct an error or clarify statements or boundaries;
- 5149 (2) Change the regulations in the text;
- 5150 (3) Apply zoning to previously unzoned areas of the town; or
- 5151 (4) Change the zoning of an area (re-zoning).

5152 (B) Proposed changes or amendments to this chapter or to the Official
5153 Zoning Map ~~of the~~ [of the](#) Town of Mills River may be initiated by the Mills River
5154 Town Council, the Planning Board, the Zoning Board of Adjustment, the Town
5155 Manager, the Henderson County Watershed Review Board, or 1 or more owners of
5156 property within the area proposed to be changed or affected, as applicable.

5157 (C) [When adopting or rejecting any zoning text or map amendment](#) ~~All~~
5158 proposed changes to this chapter, ~~including the Official Zoning Map of the Town of~~
5159 ~~Mills River~~, shall first be reviewed by the Planning Board prior to consideration by

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5160 the Town Council. All changes shall include a statement describing whether its action
5161 is consistent or inconsistent with an adopted comprehensive plan. If a zoning map
5162 amendment is adopted and the action was deemed inconsistent with the adopted plan,
5163 the zoning amendment shall have the effect of also amending any future land-use map in
5164 the approved plan, and no additional request or application for a plan amendment shall
5165 be required.

5166 (D) When adopting or rejecting any petition for a zoning map amendment, a
5167 statement analyzing the reasonableness of the proposed rezoning shall be approved by
5168 the governing board. This statement of reasonableness may consider, among other
5169 factors, (i) the size, physical conditions, and other attributes of the area proposed to be
5170 rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the
5171 surrounding community, (iii) the relationship between the current actual and
5172 permissible development on the tract and adjoining areas and the development that
5173 would be permissible under the proposed amendment; (iv) why the action taken is in the
5174 public interest; and (v) any changed conditions warranting the amendment. If a zoning
5175 map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the
5176 governing board statement on reasonableness may address the overall rezoning.

5177 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-
5178 2005)

5179 **§ 154.197 APPLICATION.**

5180 (A) Text amendments. In order for a person authorized by § 154.197 to
5181 initiate a change to the text of this chapter, an application accompanied by the
5182 application fee shall be submitted to the Mills River Town Hall at least 30 days prior
5183 to the date of the Planning Board meeting at which the application is to be considered.
5184 The application shall contain the name(s) and address(es) of the applicant(s), a copy

5185 of the proposed text change and a statement from the applicant(s) which explains the
5186 purpose for the amendment.

5187 (B) Map amendments. In order for a property owner to initiate a change
5188 to the Official Zoning Map, an application accompanied by the application fee shall be
5189 submitted to the Mills River Town Hall at least 30 days prior to the date of the
5190 Planning Board meeting at which the application is to be considered. The application
5191 shall contain the name(s) and address(es) of the owner(s) of the property in question,
5192 the location of the property, a list of the name(s) and address(es) of the owner(s) of
5193 property abutting the property in question as shown on the county tax listing and a
5194 description and/or statement of the present and proposed zoning regulation or
5195 district. All applications requesting a change in the Zoning Map shall include a
5196 description of the property in question sufficient to unequivocally describe and
5197 identify the property. The description may take the form of a property survey, a legal
5198 description or a legible copy of a Henderson County cadastral or composite Tax Map
5199 clearly annotated with district lines which follow political boundaries, geographical
5200 features or property lines.

5201 (C) Modification. Application forms may be modified by the Town
5202 Council or Planning Board, as necessary.

5203 (D) Consideration. The Planning Board and the Mills River Town Council
5204 will not consider an application for an amendment denied within the preceding 12
5205 months by the Town Council.

5206 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5207 **§ 154.198 PLANNING BOARD ACTION.**

5208 Before taking any action on a proposed amendment to this chapter or the
5209 Official Zoning Map, the Mills River Town Council shall consider the Planning Board's

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5210 recommendation on each proposed amendment. The Planning Board shall have 45
5211 days after the first consideration of an application for re- zoning at a regular meeting
5212 to submit its recommendations to the Mills River Town Council. Failure of the
5213 Planning Board to submit recommendations within the 45 day period shall constitute
5214 a favorable recommendation, except that, if by agreement of the Planning Board and
5215 the applicant 45 days is insufficient due to the size of the area, the complexity of the
5216 request or similar circumstances, the Planning Board shall have 90 days to submit the
5217 recommendation. Time limitations, however, shall not be applied to applications for
5218 areas not previously zoned, to text amendments or to zoning amendments initiated
5219 by the Planning Board, the Board of Adjustment, the Town Manager, the Town
5220 Council, or the Henderson County Watershed Review Board.
5221 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

5222 **§ 154.199 ~~PUBLIC~~[LEGISLATIVE HEARING](#).**

5223 Before enacting any amendment to this chapter or the Official Zoning Map, the
5224 Mills River Town Council shall hold a ~~public~~[legislative](#) hearing. Public notification of
5225 the hearing shall comply with the provisions of G.S. §§ ~~160D-601~~~~160A-364~~ and ~~160A-~~
5226 ~~384, if applicable, both~~ as amended.

5227 (A) Newspaper notice. In accordance with G.S. § ~~160D-601~~~~160A-364~~, a
5228 notice of the ~~public~~[legislative](#) hearing shall be published in a newspaper of general
5229 circulation in the Town of Mills River once a week for ~~two~~ [\(2\)](#) successive weeks, the
5230 first publication of which shall not appear less than 10 days or more than 25 days
5231 prior to the date fixed for the ~~public~~ hearing. The notice shall include the time, place
5232 and date of the hearing and include a description of the property or the nature of the
5233 change or amendment to the ordinance and/or map.

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5234 (B) Mailed notice. In accordance with G.S. §~~160A-384~~160D-602,
5235 whenever there is an amendment to the Official Zoning Map, the owner of that parcel
5236 of land as shown on the county tax listing and the owners of all parcels of land
5237 abutting that parcel of land as well as all properties separated from the subject
5238 property by street, reserved right-of-way, railroad, or other transportation corridor
5239 as shown on the county tax listing shall be mailed a notice of a ~~public~~legislative
5240 hearing on the proposed amendment by first class mail at the last addresses listed for
5241 the owners on the county tax abstracts. This notice must be deposited in the mail at
5242 least 10 but not more than 25 days prior to the date of the ~~public~~legislative hearing.
5243 The person(s) mailing the notices shall certify to the Town Council that fact, and the
5244 certificate shall be deemed conclusive in the absence of fraud. However, with specific
5245 approval of the Mills River Town Council at the time the Town Council sets a
5246 ~~public~~legislative hearing on a particular application, the Town Council may elect to
5247 use the expanded notice procedure which follows in lieu of or in addition to the first
5248 class notice required by this division if:

5249 (1) The proposed amendment would initially zone property added
5250 to the territorial coverage of the Official Zoning Map; or

5251 (2) The proposed amendment directly affects more than 50
5252 properties owned by a total of at least 50 different property owners.

5253 (C) Expanded published notice procedure. If the Town Council elects to
5254 utilize the expanded notice procedure, the town shall publish once a week for 4
5255 successive calendar weeks in a newspaper having general circulation in the area an
5256 advertisement of the ~~public~~legislative hearing that shows the boundaries of the area
5257 affected by the proposed Zoning Map amendment and explains the nature of the
5258 proposed change. The final two (2) advertisements shall comply with and be deemed
5259 to satisfy the provisions of G.S. § 160A-364160D-602. The advertisement shall not be

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5260 less than ½ of a newspaper page in size. The advertisement shall only be effective for
5261 property owners who reside in the area of general circulation of the newspaper which
5262 publishes the notice. Property owners who reside outside of the newspaper
5263 circulation area, according to the address listed on the most recent property tax
5264 listing for the affected property, shall be notified by first class mail pursuant to this
5265 section. The person(s) mailing the notices shall certify to the Town Council that fact,
5266 and the certificates shall be deemed conclusive in the absence of fraud. In addition to
5267 the published notice, the Town of Mills River shall post 1 or more prominent signs on
5268 or immediately adjacent to the subject area reasonably calculated to give public
5269 notice of the proposed re-zoning.

5270 (D) Posted notice. For any proposed amendment to the Official Zoning
5271 Map, the Town of Mills River shall post a sign in a prominent location on or near the
5272 subject property which indicates that a zoning change has been proposed for the
5273 subject property. In the event that more than 1 parcel is involved in a particular
5274 Zoning Map amendment, at least 1 sign shall be posted in a central location; however,
5275 the Town of Mills River may post multiple signs. The sign(s) shall be posted at least
5276 ~~10~~during the period between 25 days prior ~~to~~and 10 days prior to the
5277 ~~public~~legislative hearing date.

5278 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005)

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

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5285 Appointed Boards. Town of Mills River staff includes and anyone employed by the
5286 Town or acting in an official capacity on behalf of the Town. These boards and
5287 individuals shall follow conflict of interest rules as described in this section.

5288 (a) Governing Board. A governing board member shall not vote on any
5289 legislative decision regarding a development regulation adopted pursuant to Title XV
5290 of the Mills River Town Code where the outcome of the matter being considered is
5291 reasonably likely to have a direct, substantial, and readily identifiable financial impact
5292 on the member. A governing board member shall not vote on any zoning amendment
5293 if the landowner of the property subject to a rezoning petition or the applicant for a
5294 text amendment is a person with whom the member has a close familial, business, or
5295 other associational relationship.

5296 (b) Appointed Boards. Members of appointed boards shall not vote on any
5297 advisory or legislative decision regarding a development regulation adopted
5298 pursuant to Title XV of the Mills River Town Code where the outcome of the matter
5299 being considered is reasonably likely to have a direct, substantial, and readily
5300 identifiable financial impact on the member. An appointed board member shall not
5301 vote on any zoning amendment if the landowner of the property subject to a rezoning
5302 petition or the applicant for a text amendment is a person with whom the member
5303 has a close familial, business, or other associational relationship.

5304 (c) Administrative Staff. No staff member shall make a final decision on an
5305 administrative decision required by Title XV of the Mills River Town Code if the
5306 outcome of that decision would have a direct, substantial, and readily identifiable
5307 financial impact on the staff member or if the applicant or other person subject to that
5308 decision is a person with whom the staff member has a close familial, business, or
5309 other associational relationship. If a staff member has a conflict of interest under this
5310 section, the decision shall be assigned to the supervisor of the staff person or such

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5311 other staff person as may be designated by the governing board. No staff member
5312 shall be financially interested or employed by a business that is financially interested
5313 in a development subject to regulation under Title XV of the Mills River Town Code
5314 unless the staff member is the owner of the land or building involved. No staff
5315 member or other individual or an employee of a company contracting with the Town
5316 of Mills River to provide staff support shall engage in any work that is inconsistent
5317 with his or her duties or with the interest of the Town, as determined by the
5318 governing board.

5319 (d) Quasi-Judicial Decisions. A member of any board or Town staff member
5320 facilitating or exercising quasi-judicial functions pursuant to Title XV of the Mills
5321 River Town Code shall not participate in or vote on any quasi-judicial matter in a
5322 manner that would violate affected persons' rights to an impartial decision maker and
5323 process. Impermissible violations of due process include, but are not limited to, a
5324 member having a fixed opinion prior to hearing the matter that is not susceptible to
5325 change, undisclosed communications with affected persons outside of defined
5326 decision making processes, a close familial, business, or other associational
5327 relationship with an affected person, or a financial interest in the outcome of the
5328 matter.

5329 (e) Resolution of Objection. If an objection is raised to a board member's
5330 participation at or prior to the hearing or vote on a particular matter and that member
5331 does not recuse himself or herself, the remaining members of the board shall by
5332 majority vote rule on the objection.

5333 (f) Familial Relationship. For purposes of this section, a "close familial
5334 relationship" means a spouse, parent, child, brother, sister, grandparent, or
5335 grandchild. The term includes the step, half, and in-law relationships.

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5336 (g) Additional Rules and Procedures. Nothing in this section precludes the
 5337 Town, its boards or its staff from enacting additional rules and procedures to ensure
 5338 conflict of interest issues do not adversely affect parties seeking rulings and
 5339 approvals on legislative or quasi-judicial matters that come before the Town provided
 5340 that additional rules and procedures are not inconsistent with G.S. § 160D-109 and
 5341 any amendments thereto.

LEGAL STATUS

5343 **§ 154.215 CONFLICT WITH OTHER LAWS.**

5344 Wherever the regulations of this chapter require a greater size of yards or
 5345 require a greater percentage of lot to be left unoccupied or impose other more
 5346 restrictive standards than are required in or under any other statutes, the
 5347 requirements of this chapter shall govern. Whenever the provisions of any other
 5348 statute require more restrictive standards than are required by this chapter, the
 5349 provisions of the statute shall govern.

Table A. Dimensional Requirements							
	Minimum Lot Area	Minimum Lot Area Per Dwelling (Family) Unit	Maximum Building Height	Yard Setback From Center Line of Street		Minimum Setbacks	
				Major¹	All Others	Side	Rear
District	(sq. ft.)	(sq. ft.)	(ft.)	(ft.)	(ft.)	(ft.)	(ft.)
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

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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.

5350

Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
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.
	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum
Screening	Secured	Secured	Secured	Secured	Secured
Fencing	100	500	500	100	100
Buffer (feet)	300	1,500 (landfill) 500 (other)	No stated minimum	200	500
Setback (feet)	See § 154.106	See § 154.106	See § 154.106	See § 154.106	See § 154.106
Parking	See § 154.107	See § 154.107	See § 154.107	See § 154.107	See § 154.107
Loading	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
Access Road Corridor	30	30	30	30	30

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Width of Travel-way (feet)					
	Required	Required	Required	Required	Required
Fire Protection	Plan required	Plan required	Plan required	Plan required	Plan required
Noise Mitigation	Required	Required	Required	Required	Required
Lighting	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
Separation ¹	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

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant	
Maximum Residential Density	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	
Protected Mountain Ridge						
Table B Part 2: Minimum Specific Standards	Incinerator	Junkyard	Motor Sports Facility	Slaughtering Plant	Amusement Park	Chip Mill
	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.

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Hours of Operation	No Stated Minimum	Full	No State d Mini mum	No Stated Minimum	No Stated Minimum	No Stated Minimum
Screening	Secured	Secured	Secur ed	Secured	Secured	Secured
Fencing	100	50	100	100	100	100
Buffer (feet)	300	300 (from public road)	500 (min or) 1,500 (maj or)	1,000	500	200
Setback (feet)	see § 154.106	see § 154.106	see § 154.1 06	see§ 154.106	see § 154.106	see § 154.106
Parking	see § 154.107	see § 154.107	see § 154.1 07	see § 154.107	see § 154.107	see § 154.107

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Loading	Number :1 Width: 60 feet	Number : 1 Width: 60 feet	Num ber: 1 (min or); 2 (maj or) Widt h: 45 feet	Number:1 Width: 60 feet	Number:2 Width: 45 feet	Number:1 Width: 60 feet
Access Road Corridor	30	20	20	30	20	30
Width of Travelways (feet)	Required	Require d	Requ ired	Required	Required	Required
Fire Protection	Plan required	Plan require d	Plan requi red	Plan required	Plan required	Plan required

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Noise Mitigation	Required	Require d	Requ ired	Required	Required	Required
Lighting	½ mile- schools ½ mile- health- care	½ mile- schools	½ mile- scho ols ½ mile- healt h- care	½ mile- schools ½ mile- health- care	½ mile- schools ½ mile- health- care	½ mile- schools
Separation1	1 unit per 8 acres radius: 1 mile	N/A	1 unit per 2 acres radiu s: 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

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Table B Part 1: Minimum Specific Site Standards	Heavy Industry	Solid Waste Management Facility		Mining and Extraction Operation	Concrete Plant	Asphalt Plant
Maximum Residential Density	Prohibited	Prohibit ed	Prohi bited	Prohibited	Prohibited	Prohibited
Protected Mountain Ridge						
<p style="text-align: center;">NOTES:</p> <p style="text-align: center;">1. The term HEALTH-CARE refers to health-care facilities as that term is defined in this chapter. (See § 154.007(B))</p>						

5351

5352 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am.

5353 Ord. 00066, passed 4-28-2011)

5354

LANDSCAPING

5355

§ 154.230 LANDSCAPE PLAN REQUIRED.

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5357

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(A) This ~~section~~-[subchapter](#) 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.

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(B) For the purposes of this ~~chapter~~[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, ~~either paved or unpaved~~ 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.

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(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.

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- (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

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5379 and preserved for credit; ~~the size is to be measured by taking the circumference of~~
5380 ~~the tree at approximately 4-1/2 above the grade.~~

5381 (3) The location and description of any barriers to be erected to
5382 protect any vegetation from damage both during and after construction.

5383 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5384 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5385 **§ 154.231 ~~LANDSCAPE SPECIFICATIONS~~ RESERVED.**

5386 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5387 2005; Am. Ord. 00038, passed 11-21-2006)

5388 **§ 154.232 STREETS OR PERIMETER PLANTING BEDS.**

5389 (A) Street and perimeter planting beds shall be at least 10 feet in width and
5390 shall be provided for all commercial or industrial uses that are visible from the public
5391 right-of-way.

5392 (1) Plantings within this area shall include trees and vegetative
5393 ground cover.

5394 (2) Earth berms may be used in addition to, but not instead of
5395 plantings. Earth berms should have a minimum of 4 feet at its highest point. Walls
5396 constructed of similar material as the principal building and not exceeding 3 feet in
5397 height may also be used; however, they may not be used instead of plantings.

5398 (3) Planting areas shall be protected from vehicular encroachment
5399 by curbing or wheel stops at least 4 inches in height.

5400 (B) One large shade tree (expected height of 15 feet at maturity) is required
5401 for every 40 feet of linear street frontage of the lot minus the width of driveways and
5402 access points.

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5403 (1) Required street trees shall be placed 30 feet apart at minimum
5404 or 50 feet at maximum.

5405 Example: If a lot has street frontage of 150 feet on Hwy 280 and a proposed
5406 driveway is a total 30 feet in width, the developer will be required to plant 3 trees in
5407 the perimeter planting bed.

5408 (2) Inclusion of existing trees in the landscape design is encouraged.

5409 (C) Shrubbery, ground cover, and other planting materials shall be used to
5410 complement the tree planting.

5411 (1) No area in the perimeter planting area may be exposed soil, but
5412 instead shall be covered with vegetation, whether grass, mulch or shrubbery. The
5413 only area which shall remain uncovered is the 6 foot radius surrounding the trunk of
5414 any tree; however, it is recommended that this area be mulched.

5415 (2) Within the perimeter planting bed, shrubs shall be planted at a
5416 minimum rate of ~~three~~ (3) per every 100 square feet.

5417 Example: If a perimeter planting bed has a total square footage of
5418 950 square feet, then the developer is required to plant 28 shrubs within the planting
5419 bed.

5420 (3) Shrubs shall be a minimum of 18 inches in height at planting and
5421 reach a minimum height of 36 inches in ~~three~~ (3) years. No more than 50% may be
5422 deciduous.

5423 (4) At the discretion of the Zoning Administrator, the requirement
5424 for street trees ~~may~~ be waived if the applicant submits detailed plans which show
5425 a suitable vegetation screen will surround the perimeter of the property adjacent to
5426 public ~~rights-of-way~~. An example of a suitable vegetative screen would be an
5427 appropriate combination of earth berms and evergreen hedges.

5428 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5429 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5430 **§ 154.233 INTERIOR PLANTINGS.**

5431 All parking areas (not including parking decks) shall provide and maintain
5432 landscaped planting areas within the interior of or adjacent to the parking area or
5433 both, which planting areas shall exclude and be in addition to the street or perimeter
5434 planting beds.

5435 (A) Landscaped planting areas are to be located within or adjacent to the
5436 parking area as tree islands, at the end of parking bays, inside medians, or between
5437 rows of cars. Planting areas shall be protected from vehicular encroachment by
5438 curbing or wheel stops at least [four \(4\)](#) inches in height.

5439 (B) There shall be [one \(1\)](#) large shade tree for every 10 parking spaces.
5440 There shall be 1 large shade tree for any additional 1,500 square feet of driveway or
5441 loading area.

5442 (C) There shall be 6 shrubs [for every](#) 10 parking spaces. There shall be [two](#)
5443 [\(2\)](#) shrubs for every 500 square feet of additional area of driveway or loading area.
5444 Shrubs must be 18 inches tall at planting and reach a minimum height of 36 inches in
5445 3 years. No more than 50% may be deciduous.

5446 (D) All trees and shrubs are to be planted within a landscaped planting area
5447 not less than 175 square feet in area.

5448 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5449 2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 2018-01, passed 1-12-2018)

5450 **§ 154.234 PARKING AREA LANDSCAPING FOR STRUCTURES.**

5451 Employee and customer parking areas and the driveway(s) which serve these
5452 areas, unless located on or within a structure, shall be separated from the exterior
5453 wall of a structure by a paved pedestrian walkway or a landscaped strip at least 5 feet
5454 in width. The landscaping may consist of small trees, a variety of shrubs or ground
5455 cover appropriate to the area. The Zoning Administrator must approve the planting
5456 plans.

5457 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5458 2005; Am. Ord. 00038, passed 11-21-2006)

5459 **§ 154.235 EXCEPTIONS.**

5460 Modifications to these standards may be granted in writing by the Zoning
5461 Administrator if the Administrator finds any of the following circumstances exist on
5462 the proposed building site, or surrounding properties:

5463 (A) Natural land characteristics such as topography or existing vegetation
5464 on the proposed building site would achieve the same intent of this section.

5465 (B) Innovative landscaping or architectural design is employed on the
5466 building site to achieve an equivalent screening or buffering effect.

5467 (C) The required screening and landscaping would be ineffective at
5468 maturity due to the proposed topography of the site, and or the location of the
5469 improvements on the site.

5470 (D) The topography of adjacent and surrounding sites is such as to render
5471 required screening ineffective at maturity.

5472 (E) If, in the opinion of the Zoning Administrator, the landscaping or
5473 screening required will interfere with traffic safety.

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5474 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5475 2005; Am. Ord. 00038, passed 11-21-2006)

5476 **§ 154.236 NONCONFORMING PARKING AREAS.**

5477 Nonconforming parking lots existing at the time of the adoption of this
5478 amendment shall be required to comply with this amendment at the time the parking
5479 area is increased to a total area greater than 30,000 square feet.

5480 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5481 2005; Am. Ord. 00038, passed 11-21-2006)

5482 **§ 154.237 MAINTENANCE.**

5483 (A) Landscaping shall not be installed or retained in any location which
5484 constitutes a hazard or infringement to the public health, safety and welfare.
5485 Landscaping shall not obstruct the view of motorists using any street, private
5486 driveway, parking aisles or the approach to any street intersection.

5487 (B) Whenever any planting areas required by this section are adjacent to
5488 parking or vehicular circulation areas, the planting areas shall be protected from
5489 vehicular intrusion or damage from excessive vehicle fuels.

5490 (C) All landscaped planting areas shall be stabilized from soil erosion
5491 immediately upon planting and shall be maintained for the duration of the premises.

5492 (D) The property owner is responsible for maintaining all required plant
5493 material in good health. Any dead, unhealthy or missing plants must be removed
5494 which conforms with the initial planting standards of this section within 1 planting
5495 season.

5496 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
5497 2005; Am. Ord. 00038, passed 11-21-2006)

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SIGNS

5499 **§ 154.250 PURPOSE AND INTENT.**

5500 It is the intent of this subchapter to authorize the use of signs:

5501 (A) To encourage the effective use of signs as a means of communication in
5502 the town.

5503 (B) To preserve Mills River as a community that is attractive to business
5504 and industry while also preserving the natural beauty of the area.

5505 (C) To protect existing property values in both residential and non-
5506 residential areas.

5507 (D) To improve pedestrian and traffic safety.

5508 (E) To minimize the possible adverse effects of signs on nearby public and
5509 private property.

5510 (F) To improve the overall aesthetics of the community by preventing
5511 over-concentration, improper placement, and excessive height, bulk, and area of
5512 signs.

5513 (Ord. 2017-07, passed 11-10-2017)

5514 **§ 154.251 GENERAL PROVISIONS/ APPLICABILITY.**

5515 The regulations in the following sections pertaining to signs specify the
5516 number, types, sizes, heights, and locations of signs, which are permitted within the
5517 jurisdiction of the town. Except as otherwise provided, no sign shall be erected,
5518 placed, altered, constructed, moved, converted, or enlarged except with the
5519 provisions of this chapter.

5520 (Ord. 2017-07, passed 11-10-2017)

5521 **§ 154.252 DEFINITIONS.**

5522 The following words or terms shall have the meanings as herein defined:

5523 **ABANDONED SIGN.** A sign erected on property in conjunction with a particular
5524 use, which use has been discontinued for a period of 180 days or more, or a temporary
5525 sign for an event which has occurred.

5526 **AGRICULTURAL SIGN.** A sign in use advertising the sale of seasonal produce,
5527 crops, livestock and animal products and horticulture products.

5528 **AWNINGS.** Cloth, vinyl, plastic or other similar type material permanently
5529 attached to a rigid frame on the face of a structure, typically over a door or entryway.
5530 This is not intended to include banners as defined and regulated in this chapter.

5531 **BANNER.** A sign or outside advertising display having the characters, letter,
5532 illustrations, ornamentation, symbol, color or visual representation applied to cloth,
5533 paper, vinyl, fabric, plastic or like kind of malleable material, with or without frame.
5534 The term **BANNER** shall include flags, pennants, ribbons, spinners, streamers, kites,
5535 balloons and/or, or any other material or outside advertising display fastened in such
5536 a manner as to move upon being subjected to movement of the atmospheres or any
5537 mechanical device. Flags on residential use properties are exempt from regulation.

5538 **BILLBOARD.** A panel for the display of advertisements in public areas, such as
5539 along highways or on the sides of buildings.

5540 **CHANGEABLE COPY SIGN.** A sign on which message copy is changed
5541 manually in the field or through electronic means. Time and temperature signs are
5542 not included in this definition.

5543 **CONSTRUCTION SIGN.** A temporary sign whose message is limited to
5544 identification of architects, engineers, contractors, and other individuals or firms
5545 involved with construction on a specific site, the name of the building, the intended
5546 purpose of the building and the expected completion date.

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5547 **EXEMPT SIGN.** Any sign that is specifically listed as exempt from this
5548 subchapter. The listed exempt signs are not regulated by the terms of this subchapter.

5549 **FLASHING SIGN.** A sign that incorporates flashing, strobe, pulsating or
5550 blinking lights, or a sign with moving or rotating parts or parts which simulate
5551 movement, including signs or lights or signs reflecting or emitting a glaring light that
5552 could impair driver vision.

5553 **FREESTANDING SIGN.** A sign which stands alone or on its own foundation free
5554 of support or attachment to a building or other structure.

5555 **GOVERNMENTAL SIGN.** Any sign erected by or on the order of an authorized
5556 public official in the performance of his or her office or duty including, but not limited
5557 to, traffic control signs, street name signs, warning and directions signs, public notice
5558 or signs of a similar nature.

5559 **INCIDENTAL SIGN.** A single face, non- illuminated professional or
5560 announcement sign attached wholly to a building, window or door or posted on
5561 property containing information relative to emergencies, store hours, credit cards
5562 honored and other similar accessory information. Including signs directing drivers
5563 such a "Drive Thru", "ATM", "Loading Dock", "Truck Entrance Only", and the like.

5564 **MARQUEE (AWNING).** A permanent rooflike structure other than a roof
5565 attached to, supported by, and projecting from a building, providing protection from
5566 the natural elements over the ground, sidewalk, or walkway.

5567 **MONUMENT SIGN.** Similar to a freestanding sign, typically with a substantial
5568 base made of natural material and with a lower height requirement.

5569 **NONCONFORMING SIGN.** A sign legally erected and in existence prior to the
5570 date of adoption of this subchapter or an amendment, that does not meet the
5571 standards imposed by this chapter.

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5572 **NO TRESPASSING/WARNING SIGNS.** A sign which carries a message
5573 forbidding the unlawful entry upon the land or building of another or a sign which
5574 carries a message warning of danger which could cause injury to a person entering
5575 upon the land or building of another.

5576 **POLITICAL SIGN.** A sign erected for the purpose of advertising a candidate or
5577 stating a position regarding an issue upon which the voters of the town may vote.

5578 **PORTABLE SIGN.** A sign generally constructed to be easily movable without a
5579 permanent attachment to the ground and which may or may not be equipped with
5580 wheels. Such signs may be designed for changeable messages. Signs painted on or
5581 attached to operational vehicles and trailers with permanent signage are not included
5582 in this definition.

5583 **PROJECTING SIGN.** A sign which projects from and is supported by a building
5584 or other structure.

5585 **REAL ESTATE SIGN.** A sign erected by the owner, or his or her agent,
5586 advertising real property upon which the sign is located for rent, for lease or for sale.

5587 **SEASONAL/HOLIDAY SIGN.** A sign setting forth information concerning the
5588 observance of activities which occur once per year.

5589 **SETBACK.** The shortest horizontal distance between the edge of the pavement
5590 or traveled surface and the closest point of a sign or its supporting member.

5591 **SIGN.** Any form of publicity or advertising which is designed to be visible from
5592 any public way, directing attention to an individual business, commodity, service,
5593 activity or product by means of words, lettering, numerals, trade names or
5594 trademarks, or other pictorial matter designed to convey such information. **SIGNS**
5595 shall include the SIGN STRUCTURE.

5596 **SIGN STRUCTURE.** A supporting structure erected or intended for the purpose
5597 of identification, with or without a sign thereon, situated upon or attached to the

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5598 premises upon which any sign may be fastened, affixed, displayed or applied,
5599 provided however, said definition shall not include a building or fence.

5600 ***SUBDIVISION AND DEVELOPMENT SIGNS.*** Signs that are intended to identify
5601 larger scale developments such as major subdivisions, multi- family developments,
5602 office parks, and industrial parks.

5603 ***TEMPORARY SIGN.*** Any sign, whether attached to a principle structure or
5604 freestanding, which is intended to be displayed for a limited time. This definition does
5605 not include portable signs. If a sign display area is permanent but the copy displayed
5606 is subject to periodic changes, that sign shall not be regarded as temporary.

5607 ***WALL SIGN.*** A sign which is placed on and/or attached to and supported
5608 throughout its entire length by the facade or exterior side of a building wall by means
5609 of adhesive, paint, manufacturing process, structural and/or mechanical attachment,
5610 which said sign is not more than 12 inches from the facade or exterior wall line and
5611 when its exposed face is parallel or approximately parallel to the plane of the building
5612 or structure on which the sign is affixed. Such sign may not extend above the roofline.
5613 (Ord. 2017-07, passed 11-10-2017)

5614 **§ 154.253 SIGN PERMIT REQUIRED.**

5615 (A) Unless otherwise provided, all signs must obtain a sign permit This
5616 includes the erection, placement, alteration, construction, moving, conversion, or
5617 enlargement of any sign within the town's jurisdiction.

5618 (B) All permit requests are reviewed by the Zoning Administer of his/her
5619 designee. Applications for a sign permit shall be accompanied by plans or drawings
5620 that depict the location and dimensions of said sign(s). Sign permits expire after 6
5621 months after issuance unless the applicant has completed construction of the
5622 permitted sign(s).

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5623 (C) Notwithstanding the above, changing or replacing the permanent copy
5624 of an existing and conforming sign shall not require a permit, provided the copy
5625 change does not change the nature of the sign such as to render the sign in violation
5626 of the Town Code.
5627 (Ord. 2017-07, passed 11-10-2017)

5628 **§ 154.254 DETERMINATION OF SIGN COPY AREA AND SIGN**
5629 **HEIGHT.**

5630 (A) In measuring the copy area of a sign, the entire face of the sign shall be
5631 included. Where both sides of a double-faced sign contain lettering or other allowable
5632 display, one side only shall be used to compute the allowable copy area of the sign.
5633 Where the sign consists of individual letters, numbers, characters, figures, or displays
5634 attached in some manner to a building or a sign face of irregular shape, the sign copy
5635 area shall include the area of the smallest circle, square, or rectangle that can
5636 encompass the total sign area composed of letters, numbers, characters, figures, or
5637 displays or the irregular shaped sign face. Where signs have appendages or additions,
5638 such as "pop-ups" or "cutouts" that extend beyond the main sign copy area, the area
5639 of such appendages or additions shall be measured separately, but included in the
5640 total sign copy area. Also to be included in the total sign copy area shall be any area
5641 designed for changeable copy as defined in § 154.261. Spherical, cylindrical or other
5642 three-dimensional signs not having conventional sign faces shall be computed from
5643 the smallest three- dimensional geometrical shape or shapes which best approximate
5644 the actual surface area of the sign.

5645 (B) The maximum height of a sign shall be measured from the highest point
5646 of natural grade under the sign to the highest point of the sign. The grade shall not be
5647 altered in such a way as to increase the sign height.

5648 (Ord. 2017-07, passed 11-10-2017)

5649 **§ 154.255 SIGN ILLUMINATION.**

5650 All sign illumination shall be provided by a continuous light source that is
5651 installed only with the intent to illuminate said sign.

5652 (A) Signs illuminated by an external source shall be directed to the sign
5653 only with minimal spillover onto a street or adjacent properties.

5654 (B) Whether illuminated internally or externally, the sign shall not produce
5655 glare or reflection that interferes with traffic safety.

5656 (C) No internal or external illuminated sign shall flash, pulse, blink, strobe,
5657 or alternate light at any time.

5658 (Ord. 2017-07, passed 11-10-2017)

5659 **§ 154.256 CONSTRUCTION STANDARDS.**

5660 All signs shall be constructed according to requirements of Chapter 31 of the
5661 North Carolina State Building Code, as amended.

5662 (Ord. 2017-07, passed 11-10-2017)

5663 **§ 154.257 COMMON SIGNAGE PLAN FOR MULTI-UNIT**
5664 **DEVELOPMENTS OR DEVELOPMENTS WITH MORE THAN ONE**
5665 **PRINCIPAL BUILDING.**

5666 (A) A Common Signage Plan shall be prepared for developments with
5667 multiple buildings and/or multiple units. The signs must be uniform in design and
5668 features. All types and colors of signs, as long as they produce a unifying theme and
5669 meet all dimensional requirements in § 154.258, will be considered except for those
5670 expressly prohibited by the Town Code.

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5671 (B) A site layout plan shall be part of the sign permit application for each
5672 existing and proposed signs. The plan shall contain all sign types, location, lighting
5673 scheme, and provisions for shared usage of freestanding signs.
5674 (Ord. 2017-07, passed 11-10-2017)

5675 **§ 154.258 SIGNS PERMITTED IN THE MR-GB, MR-NC, MR-LI, AND**
5676 **MR-MU ZONING DISTRICTS.**

5677 (A) Freestanding signs.

5678 (1) The maximum height of a freestanding sign shall be 20 feet.

5679 (2) The maximum area of a freestanding sign shall be 80 square feet.

5680 (3) The maximum area of a freestanding sign requiring a common
5681 signage shall be 125 square feet.

5682 (4) The maximum number of freestanding signs shall be 1 per street
5683 frontage.

5684 (5) All freestanding signs shall be located behind the street right-of-
5685 way or 10 feet from the curb or edge of a street where right-of-way does not exist or
5686 cannot be determined.

5687 (6) No sign shall be placed so as to interfere with automobiles
5688 entering or exiting the roadway.

5689 (7) Freestanding signs that adjoin a residential use shall adhere to
5690 a 15-foot side yard setback.

5691 (B) Projecting signs.

5692 (1) The minimum width of a building front for a projecting sign shall
5693 be 20 feet.

5694 (2) The maximum height of a projecting sign shall be 8 feet.

5695 (3) The maximum area of a projecting sign shall be 16 square feet.

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- 5696 (4) The maximum projection from a wall shall be [four \(4\)](#) feet.
- 5697 (5) The maximum number of projecting signs shall be 1 per tenant
5698 frontage.
- 5699 (6) No projecting sign shall extend above the highest point of a
5700 roofline or parapet.
- 5701 (7) No projecting sign shall be permitted on the same facade along
5702 which there is a wall sign.
- 5703 (C) Marquee *or* awning signs.
- 5704 (1) The maximum height shall be 16 inches.
- 5705 (2) The maximum width shall be 40 inches.
- 5706 (3) Signs hung below a marquee or awning shall conform in size and
5707 appearance to existing signs under the same marquee or awning.
- 5708 (4) Sign clearance shall be 8 feet from sidewalk or other walkway.
- 5709 (D) Wall signs.
- 5710 (1) Wall signage shall not exceed 10% of the total surface area of
5711 the wall to which the sign(s) is located up to a maximum of 150 square feet. The 150
5712 square foot maximum can be waived as part of a Common Signage Plan if no sign(s)
5713 on a building wall or building unit exceeds the 10% surface area wall requirement.
- 5714 (2) No wall sign shall project more than 18 inches from the building
5715 wall.
- 5716 (3) No wall sign intended for the facade of a building shall cover any
5717 window or part of a window.
- 5718 (4) Signs that are displayed on or through windows are exempt.
- 5719 (5) No wall sign shall extend above the highest point of a roofline or
5720 parapet.
- 5721 (E) Monument signs.

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5722 (1) Only buildings set back more than 30 feet from the right-of-way
5723 and having 100 feet or more of street frontage may use a monument sign.

5724 (2) All monument signs shall be located behind the street right of
5725 way or 10 feet to any adjacent lot line. A 15-foot side yard setback shall be required
5726 of the side lot line abuts a residential use.

5727 (3) Changeable copy is not permitted for a monument sign.

5728 (4) The maximum number of monument signs shall be 1 per street
5729 frontage.

5730 (5) Computation of sign height and area shall be 50% of allowable
5731 height and area of a freestanding sign.

5732 (Ord. 2017-07, passed 11-10-2017)

5733 **§ 154.259 SIGNS FOR NON-RESIDENTIAL USES PERMITTED IN**
5734 **THE MR-30 ZONING DISTRICT.**

5735 Signs for permitted uses in the MR-30 zoning district shall not exceed 50% of
5736 the requirements found in § 154.258.

5737 (Ord. 2017-07, passed 11-10-2017)

5738 **§ 154.260 CHANGEABLE COPY SIGNS.**

5739 (A) *Manual* changeable copy signs. Manual changeable signs must comply
5740 with the following standards:

5741 (1) In no case shall a manual changeable copy sign comprise more
5742 than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5743 (2) The copy area (background) must be one uniform color.

5744 (3) The letters and numbers may be colored red or black.

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5745 (B) *Electronic* changeable copy signs. Electronic changeable copy signs
5746 shall not be permitted in Mills River. Electronic changeable copy signs permitted
5747 before (Amendment adoption date) must comply with the following standards:

5748 (1) Shall be located on freestanding signs only.

5749 (2) In no case shall an electronic changeable copy sign comprise
5750 more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5751 (3) Messages shall remain in a fixed position for at least 8 seconds.

5752 (4) Messages shall not contain flashing, scrolling, blinking or similar
5753 type movements. In addition messages shall not contain any animation.

5754 (5) Message transition must be instantaneous.

5755 (6) Electronic changeable copy shall shall have a black background
5756 screen. All lighted characters, letters, and numbers shall only be green or red in color.

5757 (Ord. 2017-07, passed 11-10-2017; Am. Ord. 2020-06, passed 3-13-2020)

5758 Changeable copy signs are permitted by right in the MR-GB zoning district. In
5759 all other zoning districts a special use permit approval from Town Council is required
5760 as defined in §§ 154.138 and 154.180.

5761 (A) *Manual* changeable copy signs.

5762 (1) In no case shall a manual changeable copy sign comprise more
5763 than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5764 (2) The copy area (background) must be one uniform color.

5765 (3) The letters and numbers may be colored red or black.

5766 (B) *Electronic* changeable copy signs.

5767 (1) Shall be located on freestanding signs only.

5768 (2) In no case shall an electronic changeable copy sign comprise
5769 more than 40% of the freestanding sign copy area, up to a maximum of 32 square feet.

5770 (3) Messages shall remain in a fixed position for at least 8 seconds.

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5771 (4) Messages shall not contain flashing, scrolling, blinking or similar
5772 type movements. In addition messages shall not contain any animation.

5773 (5) Message transition must be instantaneous.

5774 (6) Electronic changeable copy shall shall have a black background
5775 screen. All lighted characters, letters, and numbers shall only be green or red in color.
5776 (Ord. 2017-07, passed 11-10-2017)

5777 **§ 154.261 SIGNS EXEMPT FROM OBTAINING A SIGN PERMIT.**

5778 (A) Signs required by law, statute, or ordinance.

5779 (B) Public (governmental) signs.

5780 (1) Signs erected by or pursuant to the authorization of
5781 governmental agencies including but not limited to DOT (Department of
5782 Transportation), Americans with Disabilities Act signage and warning or hazard
5783 signage. Governmental signs unique to the Town of Mills River are required to abide
5784 by the sign ordinance which would include for example school signage or water
5785 treatment facility signage.

5786 (C) Flags (non-advertising/non-informational).

5787 (D) Political signs. Political signs (less than 4 square feet) may be placed up
5788 to 60 days prior to an election and must be removed within 72 hours of the close of
5789 voting. This includes polling place identification signage. Candidates should obtain
5790 property owners permission before placing signs on their property.

5791 (E) Address numbers.

5792 (F) Window signs. Signs placed or attached to the interior side of a
5793 window or door glass of a building.

5794 (G) Building memorial sign.

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5795 (H) No trespassing or warning signs (soliciting, hunting, fishing, parking,
5796 etc.).

5797 (I) Signs associated with a seasonal or religious holiday.

5798 (J) Agricultural signs. Signs that are designed to advertise seasonal
5799 agricultural products and are limited to 32 square feet of copy area.

5800 (K) Sidewalk. Signs that are used by businesses to advertise daily
5801 specials, sales, etc. These signs must be placed on sidewalks within the development
5802 (not on sidewalks in public right-of- way).

5803 (L) Temporary signs.

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

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On Premise				
	Maximum Number	Maximum Square Feet	Maximum Height	Maximum Time
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

5804

5805 (Ord. 2017-07, passed 11-10-2017)

5806 **§ 154.262 EXTENDED USE TEMPORARY SIGNS.**

5807 Signs that are listed in § 154.261(L) that are larger than the maximum
 5808 dimensions/time may be permitted with an extended use temporary sign permit. The
 5809 sign shall not exceed 32 square feet of copy area with a height not to exceed 10 feet.
 5810 Extended use temporary signs can be issued for up to 1 year and can be applied for
 5811 annually.

5812 (Ord. 2017-07, passed 11-10-2017)

5813 **§ 154.263 SIGNS PROHIBITED.**

5814 (A) Billboards (outdoor advertising).

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- 5815 (B) Flashing, strobing, pulsating, blinking.
- 5816 (C) Motion. [Moving parts by mechanical means.](#)
- 5817 (D) Snipe. Signs attached to utility poles, fences, street lights, hydrants,
5818 trees, etc. on public property or right-of-way.
- 5819 (E) Signs obstructing motorist visibility.
- 5820 (F) Signs in a right-of-way.
- 5821 (G) Signs above roofline.
- 5822 (H) Obscene signs.
- 5823 (I) Permanent off-premise.
- 5824 (I) Balloons and other inflatables.
- 5825 (K) Signs erected or placed without a permit or not in compliance with
5826 regulations.
5827 (Ord. 2017-07, passed 11-10-2017)

5828 **§ 154.264 SUBDIVISION AND DEVELOPMENT SIGNS.**

- 5829 (A) *Residential subdivisions and developments.*
- 5830 (1) One monument sign (per § 154.258) is allowed for each road or
5831 driveway into the development.
- 5832 (2) The sign may identify a single-family residential subdivision or
5833 multi-family residential complex.
- 5834 (3) The sign must be located on a parcel that is associated with the
5835 approved subdivision or development.
- 5836 (B) *Industrial and office parks.*
- 5837 (1) One monument sign (per § 154.258) is allowed for each road or
5838 driveway into the development.

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5839 (2) The sign may identify the name of the subdivision and/or the
5840 tenants of the subdivision.

5841 (3) The sign must be located on a parcel that is associated with the
5842 approved subdivision or development.

5843 (4) Said signs are allowed in addition to the signage allowed for
5844 each individual development in the subdivision.

5845 (Ord. 2017-07, passed 11-10-2017)

5846 **§ 154.265 NON-CONFORMING SIGNS.**

5847 (A) Signs that were erected and were in place prior to the adoption of this
5848 subchapter but which do not conform to the provisions of this chapter are declared
5849 non-conforming signs. Signs that were erected and that are in place and which
5850 conformed to the provisions of this subchapter at the time erected, but which do not
5851 conform to an amendment of this subchapter enacted subsequent to the erection of
5852 said signs are also declared non-conforming signs. Any sign erected after the passage
5853 of this chapter must meet all criteria within this chapter.

5854 (B) A non-conforming sign may be continued but shall not be:

5855 (1) Changed or replaced with another non-conforming sign, except
5856 that copy may be changed.

5857 (2) Expanded or modified in any way which increases the sign's
5858 non-conformity or adds illumination.

5859 (3) Moved except to bring the sign into conformity.

5860 (4) Re-established once the sign structure has been removed.

5861 (5) Re-established after the sign has been damaged as defined in §
5862 154.268.

5863 (6) Re-established after it has been discontinued regardless of
5864 reason or intent for 180 days or more.
5865 (Ord. 2017-07, passed 11-10-2017)

5866 **§ 154.266 SIGN MAINTENANCE.**

5867 All parts of a sign, including the copy area, supports, braces, poles, wires, and
5868 other appurtenances of signs or sign structures shall be kept in good repair and
5869 maintained in safe condition. Any sign deemed to be in a state of disrepair by this
5870 section shall be considered in violation of this chapter.

5871 (A) A sign shall be in a state of disrepair when more than 20% of its total
5872 surface area is covered with disfigured, cracked, ripped, or peeling paint or poster
5873 paper or any combination of these conditions.

5874 (B) No sign shall be allowed to stand with bent or broken sign facing,
5875 broken supports, loose appendages or struts which cause the sign to stand more than
5876 15 degrees from the perpendicular.

5877 (C) No sign or sign structure shall be allowed to have weeds, vines, or other
5878 vegetation growing on it and obscuring it from the street or highway from which it is
5879 intended to be viewed.

5880 (D) No illuminated sign shall be allowed to stand with only partial
5881 illumination operational. All illuminated signs must comply with § 154.255.

5882 (E) Unlawful cutting of trees or shrubs. No person may, for the purpose of
5883 increasing or enhancing the visibility of any sign, damage, trim, destroy or remove
5884 any trees, shrubs or other vegetation located within a public right-of-way of any road
5885 or highway except as required by the North Carolina Department of Transportation.
5886 The Administrator may use discretion in determining alternative forms of compliance
5887 for landscaping in situations where sign visibility is affected.

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5888 (Ord. 2017-07, passed 11-10-2017)

5889 **§ 154.267 DANGEROUS OR UNSAFE SIGNS.**

5890 Pursuant to G. S. 160A-193, the Town Council shall have the authority to
5891 summarily remove, abate, or remedy a sign which is dangerous or prejudicial to the
5892 public health or safety. The expense of the action shall be paid by the sign owner, or
5893 if the sign owner cannot be determined, the land owner, and if not paid, shall be a lien
5894 upon the land or premises where the nuisance arose, and shall be collected as unpaid
5895 taxes.

5896 (Ord. 2017-07, passed 11-10-2017)

5897 **§ 154.268 ENFORCEMENT.**

5898 (A) If the Zoning Administrator or his/her designee shall find any of the
5899 provisions of the Sign Ordinance are in violation, he/she shall notify the person
5900 responsible for such violation, indicating the nature of the violation and ordering the
5901 action necessary to correct it or shall take any other action authorized by §154.999
5902 of the Town Code.

5903 (B) In addition to actions authorized by §154.999 of the Town Code, civil
5904 penalties for sign ordinance violations shall [be set by the Mills River Town Council](#)
5905 [and](#) double ~~from \$50 to \$100~~ after 15 days from the date the individual is notified.
5906 Each day's violation after the initial 15-day period shall be treated as a separate
5907 offense.

5908 (Ord. 2017-07, passed 11-10-2017)

5909

ARCHITECTURAL DESIGN GUIDE REQUIREMENTS

5910

§ 154.270 RESERVED.

5911

(Ord. 00065, passed 7-22-2010; Am. Ord. 2020-07, passed 3-13-2020)

5912

§ 154.999 PENALTY.

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(A) Equitable remedies. This chapter may be enforced by equitable

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remedies, and any unlawful condition existing in violation of this chapter may be

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restrained or abated by injunction and order of abatement in accordance with G.S. §

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160A-175.

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(1) Injunction. Where necessary to effectuate compliance with

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this chapter the Zoning Administrator or the other official charged with the

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responsibility of enforcing the Town of Mills River Zoning Ordinance may institute an

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action in a court of competent jurisdiction seeking an injunction against the further

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violation of this chapter. The action may be joined with a civil action instituted to

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collect accrued civil penalties in accordance with the provisions herein.

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(2) Order of abatement. Where necessary to abate a condition

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existing upon land in violation of this chapter or a use made of land in violation of this

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chapter, the Zoning Administrator or the other official charged with the responsibility

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of enforcing the Town of Mills River Zoning Ordinance may institute an action in a

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court of competent jurisdiction seeking an order of abatement of the use or condition

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of land in violation of this chapter. The action may be joined to an action for an

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injunction and/or an action to recover civil penalties accrued against an individual

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for the use or condition of land in violation of this chapter.

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(3) Other equitable remedies. This chapter may be enforced by

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any other equitable remedy which a court of competent jurisdiction deems just and

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proper.

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5934 (B) Civil penalties. Any individual who is found in violation of this
5935 chapter may be subject to a civil penalty of \$50 or other amount as established by
5936 Town Council. Each day's violation shall be treated as a separate offense. The civil
5937 penalty may be recovered in a civil action in the nature of debt if the penalty is not
5938 paid within 15 days after the individual is notified by the Zoning Administrator of a
5939 violation.

5940 (1) ~~Compliance order~~Notice of Violation.

5941 (a) Upon making a determination that a person is in
5942 violation of this chapter, the Zoning Administrator or the other official charged with
5943 the responsibility of enforcing the Town of Mills River Zoning Ordinance shall issue a
5944 ~~compliance order~~notice of violation to the person in violation of this chapter in
5945 accordance with § 154.999. ~~The compliance order shall notify the violator of the~~
5946 ~~violation in writing.~~The ~~order~~notice shall identify the circumstances giving rise to
5947 the violation, including the times, dates and places of the violation. The notification
5948 shall further identify the action which is necessary to comply with this chapter. The
5949 ~~notification~~notice shall state that if the violator does not comply within a reasonable
5950 time, not to exceed 15 days, the individual will be subjected to a civil penalty. If
5951 circumstances exist such that the violator cannot come into compliance within 15
5952 days, the Zoning Administrator or the other official charged with the responsibility of
5953 enforcing the Town of Mills River Zoning Ordinance may grant an extension of time
5954 after which the individual will be subjected to a criminal penalty commensurate with
5955 the magnitude of the violation. The ~~compliance order~~notice of violation shall further
5956 state that failure to comply with the terms of the ~~compliance order~~notice of violation
5957 will subject the violator to a civil penalty and shall further state the amount of the civil
5958 penalty.

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5959 (b) Failure to comply with the terms of a ~~compliance~~
5960 ~~order~~notice of violation issued by the Zoning Administrator or the other official
5961 charged with the responsibility of enforcing the Town of Mills River Zoning Ordinance
5962 within the time stated in the order shall subject the violator to a civil penalty of \$50
5963 or other amount as established by Town Council. Each day that the violation
5964 continues shall be considered a separate offense, and the violator may be subject to
5965 an additional civil penalty for each such separate offense.

5966 (2) Civil action. When necessary to collect any civil penalty or
5967 accrued civil penalties, a civil action may be instituted against an individual for the
5968 collection of all accrued penalties by the Zoning Administrator or the other official
5969 charged with the responsibility of enforcing the Town of Mills River Zoning
5970 Ordinance.

5971 (C) Criminal penalties. Unless otherwise provided by this chapter or
5972 other applicable law, violation of §§ 154.001 - 154.237 shall constitute a Class 3
5973 misdemeanor punishable by a fine which may be up to but may not exceed \$500. Each
5974 day's violation shall be treated as a separate offense.

5975 (1) Warning ticket. Upon the initial violation of a particular
5976 provision of §§ 154.001 - 154.237, an individual may be issued a warning ticket or
5977 notice of violation. The warning ticket shall identify the particular practice which is
5978 in violation of §§ 154.001 - 154.237 and shall state the time, date and place of the
5979 violation. The warning ticket shall further state that if the individual commits further
5980 similar violations within the 6 months following the date of the warning ticket, the
5981 Zoning Administrator or the other official charged with the responsibility of enforcing
5982 the Town of Mills River Zoning Ordinance may issue a notice of violation or cause a
5983 warrant to be issued for the individual's arrest.

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5984 (2) Warrant. If an individual violates §§ 154.001 - 154.237 within
5985 the 6 months following the issuance of a warning ticket or notice of violation in a
5986 manner that is similar to the violation specified in the warning ticket or notice of
5987 violation, the Zoning Administrator or the other official charged with the
5988 responsibility of enforcing the Town of Mills River Zoning Ordinance may cause a
5989 warrant to be issued for the arrest of the individual.

5990 (3) Notwithstanding any other provisions of §§ 154.001 - 154.237,
5991 the Zoning Administrator or the other official charged with the responsibility of
5992 enforcing the Town of Mills River Zoning Ordinance may issue a notice of violation or
5993 cause a warrant to be issued without having first issued a warning ticket where he or
5994 she deems it necessary to effectively enforce the terms of §§ 154.001 - 154.237.

5995 (D) Revocation of Development Approvals. In addition to initiation of
5996 enforcement actions, development approvals may be revoked by notifying the holder
5997 in writing stating the reason for the revocation. The Town shall follow the same
5998 development review and approval process required for issuance of the development
5999 approval, including any required notice or hearing, in the review and approval of any
6000 revocation of that approval. Development approvals shall be revoked for any
6001 substantial departure from the approved application, plans, or specifications; for
6002 refusal or failure to comply with the requirements of any applicable element of this
6003 chapter; or for false statements or misrepresentations made in securing the approval.
6004 Any development approval mistakenly issued in violation of an applicable State law
6005 or local ordinance may also be revoked. The revocation of a development approval by
6006 a staff member may be appealed pursuant to G.S. § 160D-405.

6007 (DE) Other remedies. The town may utilize any other authority set forth
6008 in the General Statutes of the State of North Carolina to abate any violations of §§
6009 154.250 - ~~2~~154.269.

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6010 (Ord. passed 3-1-2004; Am. Ord. 00016, passed 7-29-2004; Am. Ord. passed 10-13-
6011 2005; Am. Ord. 00037, passed 8-24-2006)